

**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): **March 16, 2007**

THE MACERICH COMPANY

(Exact Name of Registrant as Specified in its Charter)

Maryland

(State or Other Jurisdiction of Incorporation or
Organization)

1-12504

(Commission File Number)

95-4448705

(I.R.S. Employer Identification No.)

**401 Wilshire Boulevard
Suite 700**

Santa Monica, California

(Address of Principal Executive Offices)

90401

(Zip Code)

(310) 394-6000

(Registrant's Telephone Number, Including Area Code)

Not applicable

(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:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 1.01. Entry into a Material Definitive Agreement.

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

Item 3.02. Unregistered Sales of Equity Securities.

Item 8.01. Other Events.

On March 16, 2007, The Macerich Company (the "Company") issued \$950 million aggregate principal amount of 3.25% convertible senior notes due 2012 (the "Notes"). The Notes were issued pursuant to an indenture (the "Indenture"), dated as of March 16, 2007, among the Company, The Macerich Partnership, L.P. and Deutsche Bank Trust Company Americas, as indenture trustee. The Notes are senior unsecured obligations of the Company and are guaranteed by its operating partnership, The Macerich Partnership, L.P. The Notes will pay interest semiannually at a rate of 3.25% per annum and mature on March 15, 2012. Prior to the close of business on the business day prior to December 15, 2011, upon the occurrence of specified events, the Notes will be convertible at the option of the holder into cash, shares of the common stock of the Company or a combination of cash and shares of the common stock of the Company, at the election of the Company, at an initial conversion rate of 8.9702 shares per \$1,000 principal amount of Notes. The initial

conversion price of approximately \$111.48 represents a 20% premium to the closing price of the Company's common stock on March 12, 2007. On and after December 15, 2011, the Notes will be convertible at any time prior to the close of business on the second business day preceding the maturity date of the notes at the option of the holder into cash, shares of common stock of the Company or a combination of cash and shares of common stock of the Company, at the election of the Company, at the initial conversion rate. The initial conversion rate is subject to adjustment in certain circumstances. The Notes will not be redeemable at the Company's option, except to preserve the Company's status as a real estate investment trust. In that case, the Company may redeem all of the Notes at a redemption price equal to the principal amount plus accrued and unpaid interest (including liquidated damages, if any) up to but not including the date of redemption. Holders of the Notes will not have the right to require the Company to repurchase their Notes prior to maturity except in connection with the occurrence of certain fundamental change transactions. The Notes may be accelerated upon an event of default as described in the Indenture, and will be accelerated upon bankruptcy, insolvency, appointment of a receiver and similar events with respect to the Company or a significant subsidiary.

In connection with the issuance of the Notes, the Company entered into a registration rights agreement (the "Registration Rights Agreement") pursuant to which the Company agreed to file with the Securities and Exchange Commission within 90 days after the Notes were issued, and to use its reasonable best efforts to cause to become effective within 180 days after the Notes were issued, a shelf registration statement with respect to the resale of the Company's shares of common stock issuable upon conversion of the Notes. The registration statement will not register the resale of the Notes or the related guarantee.

In connection with the issuance of the Notes, the Company entered into capped call transactions with affiliates of the initial purchasers of the Notes (the "Capped Call Confirmations"). The Capped Call Confirmations effectively increase the conversion price of the Notes to approximately \$130.06, which represents a 40% premium to the March 12, 2007 closing price of \$92.90 per common share of the Company. The cost of the Capped Call Confirmations was approximately \$59.85 million and is recorded as a charge in the stockholders equity section of the Company's balance sheet.

The Company transferred approximately \$870.15 million to The Macerich Partnership, L.P., which constitutes the net proceeds from the issuance of the Notes, after deducting discounts and offering expenses (which include the cost of the Capped Call Confirmations), pursuant to an Eleventh Amendment to the Amended and Restated Limited Partnership Agreement for The Macerich Partnership, L.P. (the "Amendment").

The Company offered and sold the Notes and the related guarantee to the initial purchasers in reliance upon the exemption from registration provided by Section 4(2) of the Securities Act of 1933 (the "Securities Act"). The initial purchasers then sold the Notes and the related guarantee to qualified institutional buyers in accordance with Rule 144A under the Securities Act. The Notes, the related guarantee and the Company's common stock issuable upon conversion of the Notes have not been registered under the Securities Act, or any state securities laws, and unless so registered, may not be offered or sold in the United States except pursuant to an exemption from the registration requirements of the Securities Act and applicable state laws.

Copies of the Indenture, the form of the Notes, the Registration Rights Agreement, the Capped Call Confirmations and the Amendment are included in this Form 8-K as exhibits hereto and incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Item No.	Description
4.1	Indenture, dated as of March 16, 2007, among the Company, The Macerich Partnership, L.P. and Deutsche Bank Trust Company Americas (includes form of the Notes and Guarantee)
4.2	Registration Rights Agreement, dated as of March 16, 2007, among the Company, J.P. Morgan Securities Inc. and Deutsche Bank Securities Inc.
10.1	Eleventh Amendment to the Amended and Restated Limited Partnership Agreement for The Macerich Partnership, L.P., dated as of March 16, 2007
99.1	Capped Call Confirmation dated as of March 12, 2007 by and among the Company, Deutsche Bank AG, London Branch and Deutsche Bank AG, New York Branch

99.2	Amendment to Capped Call Confirmation dated as of March 15, 2007, by and among the Company, Deutsche Bank AG, London Branch and Deutsche Bank AG, New York Branch
99.3	Capped Call Confirmation dated as of March 12, 2007 by and between the Company and JPMorgan Chase Bank, National Association
99.4	Amendment to Capped Call Confirmation dated as of March 15, 2007 by and between the Company and JPMorgan Chase Bank, National Association

SIGNATURE

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.

THE MACERICH COMPANY
(Registrant)

Date: March 22, 2007

By:

/s/ THOMAS E. O'HERN

Thomas E. O'Hern
Executive Vice President, Chief Financial Officer
and Treasurer

4

EXHIBIT INDEX

<u>Item No.</u>	<u>Description</u>
4.1	Indenture, dated as of March 16, 2007, among the Company, The Macerich Partnership, L.P. and Deutsche Bank Trust Company Americas (includes form of the Notes and Guarantee)
4.2	Registration Rights Agreement, dated as of March 16, 2007, among the Company, J.P. Morgan Securities Inc. and Deutsche Bank Securities Inc.
10.1	Eleventh Amendment to the Amended and Restated Limited Partnership Agreement for The Macerich Partnership, L.P., dated as of March 16, 2007
99.1	Capped Call Confirmation dated as of March 12, 2007 by and among the Company, Deutsche Bank AG, London Branch and Deutsche Bank AG, New York Branch
99.2	Amendment to Capped Call Confirmation dated as of March 15, 2007, by and among the Company, Deutsche Bank AG, London Branch and Deutsche Bank AG, New York Branch
99.3	Capped Call Confirmation dated as of March 12, 2007 by and between the Company and JPMorgan Chase Bank, National Association
99.4	Amendment to Capped Call Confirmation dated as of March 15, 2007 by and between the Company and JPMorgan Chase Bank, National Association

5

THE MACERICH COMPANY,
as Issuer,
and
THE MACERICH PARTNERSHIP, L.P.,
as Guarantor
3.25% Convertible Senior Notes due 2012
INDENTURE
DEUTSCHE BANK TRUST COMPANY AMERICAS,
as Trustee
March 16, 2007

CROSS-REFERENCE TABLE*

Trust Indenture Act Section	Indenture Section
310 (a)(1)	7.09
(a)(2)	7.09
(a)(3)	N.A.
(a)(4)	N.A.
(a)(5)	N.A.
(b)	7.08
(c)	N.A.
311 (a)	7.13
(b)	7.13
(c)	N.A.
312 (a)	2.10.
(b)	13.03
(c)	13.03
313 (a)	2.10
(b)	2.10
(c)	2.10.
(d)	2.10.
314 (a)	4.02, 4.03
(b)	N.A.
(c)(1)	13.04.
(c)(2)	13.04
(c)(3)	N.A.
(d)	N.A.
(e)	13.05
(f)	N.A.
315 (a)	7.01(a)
(b)	6.09
(c)	7.01
(d)	7.01(b), 7.01(c)
(e)	6.10
316 (a) (last sentence)	8.04
(a)(1)(A)	6.08
(a)(1)(B)	6.08
(a)(2)	N.A.
(b)	6.05(b)
(c)	8.01
317 (a)(1)	6.03
(a)(2)	6.03
(b)	4.06
318 (a)	13.01
(c)	13.01

TABLE OF CONTENTS

	Page
ARTICLE I DEFINITIONS AND INCORPORATION BY REFERENCE	1
Section 1.01	1
Section 1.02	9
Section 1.03	10
Section 1.04	10
ARTICLE II THE SECURITIES	11
Section 2.01	11
Section 2.02	11
Section 2.03	12
Section 2.04	14
Section 2.05	14
Section 2.06	18
Section 2.07	19
Section 2.08	19
Section 2.09	19
Section 2.10	19
ARTICLE III REDEMPTION AND REPURCHASES	20
Section 3.01	20
Section 3.02	20
Section 3.03	21
Section 3.04	22
Section 3.05	22
Section 3.06	24
Section 3.07	25
Section 3.08	25
Section 3.09	25
Section 3.10	26
ARTICLE IV COVENANTS	26
Section 4.01	26
Section 4.02	26
Section 4.03	27
Section 4.04	27
Section 4.05	27
Section 4.06	27
Section 4.07	28
Section 4.08	29
Section 4.09	29
Section 4.10	29
Section 4.11	29
Section 4.12	29
ARTICLE V SUCCESSOR CORPORATION	30

Section 5.01	When the Company May Consolidate, Merge or Transfer Assets	30
ARTICLE VI DEFAULTS AND REMEDIES		30
Section 6.01	Events Of Default	30
Section 6.02	Acceleration	32
Section 6.03	Payments of Notes on Default; Suit Therefor	33
Section 6.04	Application of Monies Collected by Trustee	35
Section 6.05	Proceedings by Holder	35
Section 6.06	Proceedings by Trustee	36
Section 6.07	Remedies Cumulative and Continuing	36
Section 6.08	Direction of Proceedings and Waiver of Defaults by Majority of Holders	37
Section 6.09	Notice of Defaults	37

Section 6.10	Undertaking to Pay Costs	37
ARTICLE VII THE TRUSTEE		
Section 7.01	Duties and Responsibilities of Trustee	38
Section 7.02	Reliance on Documents, Opinions, etc	39
Section 7.03	No Responsibility for Recitals, etc	40
Section 7.04	Trustee, Paying Agents, Conversion Agents or Note Registrar May Own Notes	40
Section 7.05	Monies to be Held in Trust	40
Section 7.06	Compensation and Expenses of Trustee	40
Section 7.07	Officers' Certificate as Evidence	41
Section 7.08	Conflicting Interests of Trustee	41
Section 7.09	Eligibility of Trustee	41
Section 7.10	Resignation or Removal of Trustee	42
Section 7.11	Acceptance by Successor Trustee	43
Section 7.12	Succession by Merger	43
Section 7.13	Preferential Collection of Claims	44
ARTICLE VIII THE NOTEHOLDERS		
Section 8.01	Action by Noteholders	44
Section 8.02	Proof of Execution by Holders	44
Section 8.03	Absolute Owners	44
Section 8.04	Company-Owned Notes Disregarded	45
Section 8.05	Revocation of Consents; Future Holders Bound	45
ARTICLE IX SATISFACTION AND DISCHARGE OF INDENTURE		
Section 9.01	Discharge of Indenture	45
Section 9.02	Deposited Monies to be Held in Trust by Trustee	46
Section 9.03	Paying Agent to Repay Monies Held	46
Section 9.04	Return of Unclaimed Monies	46
Section 9.05	Reinstatement	46
ARTICLE X AMENDMENTS		
Section 10.01	Without Consent of Holders	47
Section 10.02	With Consent of Holders	47
Section 10.03	Compliance With Trust Indenture Act	48
Section 10.04	Revocation and Effect of Consents	48
Section 10.05	Notation on or Exchange of Securities	48
Section 10.06	Trustee to Sign Supplemental Indentures	49
Section 10.07	Effect of Supplemental Indentures	49
ARTICLE XI CONVERSION OF THE SECURITIES		
iii		
Section 11.01	Right to Convert	49
Section 11.02	Exercise of Conversion Right; No Adjustment for Interest or Dividends	52
Section 11.03	Cash Payments in Lieu of Fractional Shares	54
Section 11.04	Conversion Rate	54
Section 11.05	Adjustments to Conversion Rate	54
Section 11.06	Effect of Reclassification, Consolidation, Merger or Sale on Conversion Privilege	60
Section 11.07	Additional Shares Upon the Occurrence of a Fundamental Change	61
Section 11.08	Rights Issued in Respect of Common Stock Issued Upon Conversion	62
Section 11.09	Notice Of Certain Transactions	62
Section 11.10	Taxes on Shares Issued	63
Section 11.11	Reservation of Shares, Shares to be Fully Paid; Compliance with Governmental Requirements; Listing of Common Stock	63
Section 11.12	Settlement Upon Conversion	64
Section 11.13	Trustee's Disclaimer	66
Section 11.14	Ownership Limit	66
ARTICLE XII GUARANTEE		
Section 12.01	Guarantee	66
Section 12.02	Execution and Delivery of Guarantee	68
Section 12.03	Consolidation, Merger or Transfer of Assets	68
Section 12.04	Limitation of Guarantor's Liability; Certain Bankruptcy Events; Termination on Conversion	69
Section 12.05	Application of Certain Terms and Provisions of the Guarantor	69
ARTICLE XIII MISCELLANEOUS		
Section 13.01	Trust Indenture Act Controls	70
Section 13.02	Notices	70
Section 13.03	Communication by Holders With Other Holders	71

Section 13.04	Certificate and Opinion as to Conditions Precedent	71
Section 13.05	Statements Required in Certificate or Opinion	71
Section 13.06	Severability Clause	72
Section 13.07	Rules by Trustee, Paying Agent, Conversion Agent and Note Registrar	72
Section 13.08	Legal Holiday	72
Section 13.09	Governing Law.	72
Section 13.10	No Recourse Against Others	72
Section 13.11	Successors	72
Section 13.12	Multiple Originals	72
Section 13.13	Table of Contents and Headings	73
Section 13.14	USA Patriot Act	73

SCHEDULES AND EXHIBITS:

SCHEDULE A	Additional Share Table
EXHIBIT A	Form of Note
EXHIBIT B	Form of Restrictive Legend for Common Stock Issued Upon Conversion

INDENTURE dated as of March 16, 2007, among THE MACERICH COMPANY, a Maryland corporation (the “**Company**”), THE MACERICH PARTNERSHIP, L.P., a Delaware limited partnership (the “**Guarantor**”), and DEUTSCHE BANK TRUST COMPANY AMERICAS, a New York corporation (the “**Trustee**”).

Each party agrees as follows for the benefit of the other party and for the equal and ratable benefit of the holders of the Company’s 3.25% Convertible Senior Notes due 2012:

**ARTICLE I
DEFINITIONS AND INCORPORATION BY REFERENCE**

Section 1.01 Definitions.

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

“**Agent**” means any Note Registrar, Paying Agent, Conversion Agent or co-registrar.

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

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

“**beneficial owner**” shall be determined in accordance with Rules 13d-3 and 13d-5 promulgated by the SEC under the Exchange Act, or any successor provision, except that: (i) a person shall be deemed to have “beneficial ownership” of all shares of Common Stock that the Person has the right to acquire, whether exercisable immediately or only after the passage of time, and (ii) any percentage of “beneficial ownership” shall be determined using the definition in clause (i) in both the numerator and the denominator.

“**Board of Directors**” means either the board of directors of the Company or any duly authorized committee of such board of directors authorized to act for it with respect to this Indenture.

“**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.

“**Capitalized Lease**” of a Person means any lease of property by such Person as lessee which would be capitalized on a balance sheet of such Person prepared in accordance with GAAP.

“**Capitalized Lease Obligations**” of a Person means the amount of the obligations of such Person under Capitalized Leases which would be shown as a liability on a balance sheet of such Person prepared in accordance with GAAP.

“**Capital Stock**” for any corporation means any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) stock issued

by that corporation, but excluding from all of the foregoing any debt securities convertible into Capital Stock, whether or not such debt securities include any right of participation with Capital Stock.

“**Cash Equivalents**” means, with respect to any Person: (a) securities issued, guaranteed or insured by the United States of America or any of its agencies with maturities of not more than one year from the date acquired; (b) certificates of deposit with maturities of not more than one year from the date acquired by a United States federal or state chartered commercial bank of recognized standing, which has capital and unimpaired surplus in excess of \$500,000,000 and which bank or its holding company has a short-term commercial paper rating of at least A-2 or the equivalent by S&P or at least P-2 or equivalent by Moody’s; (c) reverse repurchase agreements with terms of not more than seven days from the date acquired, for securities of the type described in clause (a) above and entered into only with commercial banks having the qualifications described in clause (b) above; (d) commercial paper issued by any Person incorporated under the laws of the United States of America or any State thereof and rated at least A-2 or the equivalent thereof by S&P or at least P-2 or the equivalent thereof of Moody’s, in each case with maturities of not more than one year from the date acquired; and (e) investments in money market funds registered under the Investment Company Act of 1940, as amended, which have net assets of at least \$500,000,000 and at least 85% of whose assets consist of securities and other obligations of the type described in clauses (a) through (d) above.

“**Charter**” means the Articles of Amendment and Restatement of the Company dated as of March 15, 1994, as amended or supplemented from time to time in accordance with the terms thereof and applicable law.

“**Closing Sale Price**” of the Common Stock or other Capital Stock or similar equity interests of the Company on any date means the closing sale price per share (or if no closing sale price is reported, the average of the closing bid and ask prices or, if more than one in either case, the average of the average closing bid and the average closing ask prices) on such date as reported on the New York Stock Exchange or such other national or regional exchange or market on which the Common Stock or such other Capital Stock or equity interests of the Company are then listed or quoted. In the absence of such a quotation, the Company will determine the closing sale price on the basis the Company considers appropriate. The closing sale price shall be determined without reference to any extended or after-hours trading.

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

“**Common Stock**” means shares of the Company’s Common Stock, \$.01 par value per share, as they exist on the date of this Indenture or any other shares of Capital Stock into which the Common Stock may be reclassified or changed, or which the holders may receive, pursuant to any reclassification, consolidation, merger, combination, sale or conveyance, including pursuant to Section 11.06.

“**Company**” means the party named as the “**Company**” in the first paragraph of this Indenture until a successor replaces it pursuant to the applicable provisions of this Indenture and, thereafter, shall mean such successor. The foregoing sentence shall likewise apply to any subsequent successor or successors.

“**Contingent Obligation**” as to any Person means, without duplication, (a) any contingent obligation of such Person required to be shown on such Person’s balance sheet in accordance with GAAP, and (b) any obligation required to be disclosed in the footnotes to such Person’s financial statements in accordance with GAAP, guaranteeing partially or in whole any non-recourse Indebtedness, lease, dividend or other obligation, exclusive of contractual indemnities (including, without limitation, any indemnity or price-adjustment provision relating to the purchase or sale of securities or other assets), of such Person or of any other Person. The amount of any Contingent Obligation described in clause (b)

shall be deemed to be (i) with respect to a guaranty of interest or interest and principal, or operating income guaranty, the sum of all payments required to be made thereunder (which in the case of an operating income guaranty shall be deemed to be equal to the debt service for the note secured thereby), calculated at the interest rate applicable to such Indebtedness, through (1) in the case of an interest or interest and principal guaranty, the stated date of maturity of the obligation (and commencing on the date interest could first be payable thereunder), or (2) in the case of an operating income guaranty, the date through which such guaranty will remain in effect, and (ii) with respect to all guarantees not covered by the preceding clause (i) an amount equal to the stated or determinable amount of the primary obligation in respect of which such guaranty is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as recorded on the balance sheet and on the footnotes to the most recent financial statements of the applicable Person required to be delivered pursuant hereto. Notwithstanding anything contained herein to the contrary, guarantees of completion and non-recourse carve outs in secured loans shall not be deemed to be Contingent Obligations unless and until a claim for payment has been made thereunder, at which time any such guaranty of completion shall be deemed to be a Contingent Obligation in an amount equal to any such claim. Subject to the preceding sentence, (i) in the case of a joint and several guaranty given by such Person and another Person (but only to the extent such guaranty is recourse, directly or indirectly to the Company or its Subsidiaries), the amount of the guaranty shall be deemed to be 100% thereof unless and only to the extent that (X) such other Person has delivered cash or Cash Equivalents to secure all or any part of such Person’s guaranteed obligations or (Y) such other Person holds an Investment Grade Credit Rating from either Moody’s of S&P, and (ii) in the case of a guaranty (whether or not joint and several) of an obligation otherwise constituting Indebtedness of such Person, the amount of such guaranty shall be deemed to be only that amount in excess of the amount of the obligation constituting Indebtedness of such Person. Notwithstanding anything contained herein to the contrary, “**Contingent Obligations**” shall not be deemed to include guarantees of loan commitments or of construction loans to the extent the same have not been drawn.

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

“**Corporate Trust Office**” means the office of the Trustee at which at any time the trust created by this Indenture shall be administered, which office at the date hereof is located at 60 Wall Street, 27th Floor, New York, New York 10005, or such other address as the Trustee may designate from time to time by notice to the holders and the Company, or the principal corporate trust office of any successor Trustee (or such other address as a successor Trustee may designate from time to time by notice to the holders and the Company).

“**Credit Agreement**” means any of:

(a) the \$450,000,000 Term Loan Facility Credit Agreement, dated as of April 25, 2005, as amended by the First Amendment thereto, dated as of July 20, 2006, by and among the Guarantor, as the Borrower; the Company, Macerich WRLP Corp., Macerich WRLP LLC, Macerich WRLP II Corp., Macerich WRLP II LP, Macerich TWC II Corp., Macerich TWC II LLC, Macerich Walleye LLC, IMI Walleye LLC, and Walleye Retail Investments LLC, as Guarantors (the “**Credit Agreement Guarantors**”); Deutsche Bank Trust Company Americas, and the institutions from time to time party thereto, as Lenders; Deutsche Bank Trust Company Americas, as Administrative Agent for the Lenders and as Collateral Agent for the Benefited Creditors; Deutsche Bank Securities Inc., as the Sole Lead Arranger and Sole Bookrunner; Keybank National Association and Commerzbank AG, New York Branch, as the Co-

National Association and U.S. Bank National Association, as the Co-Documentation Agents for the Term Loan Facility;

(b) the \$1,500,000,000 Second Amended and Restated Revolving Loan Facility Credit Agreement, dated as of July 20, 2006, by and among the Guarantor, as the Borrower; the Credit Agreement Guarantors, as Guarantors; Deutsche Bank Trust Company Americas, JPMorgan Chase Bank, and the institutions from time to time party thereto, as Lenders; Deutsche Bank Trust Company Americas, as the Administrative Agent for the Lenders and as the Collateral Agent for the Benefited Creditors; Deutsche Bank Securities Inc. and J.P. Morgan Securities Inc., as the Joint Lead Arrangers and Joint Bookrunning Managers; JPMorgan Chase Bank, as the Syndication Agent; Commerzbank AG, New York, Eurohypo AG, New York Branch and Wells Fargo Bank, National Association, as the Co-Documentation Agents; and Key Bank, National Association and U.S. Bank National Association, as the Senior Managing Agents; and

(c) the Amended and Restated \$250,000,000 Term Loan Facility Credit Agreement, dated as of April 25, 2005, as amended by the First Amendment thereto, dated as of July 20, 2006, by and among the Guarantor, as the Borrower; the Credit Agreement Guarantors, as Guarantors; Deutsche Bank Trust Company Americas, JPMorgan Chase Bank, and the institutions from time to time party thereto, as Lenders; Deutsche Bank Trust Company Americas, as the Administrative Agent for the Lenders and as the Collateral Agent for the Benefited Creditors; Deutsche Bank Securities Inc. and J.P. Morgan Securities Inc., as the Joint Lead Arrangers And Joint Bookrunners; JPMorgan Chase Bank and Bank One, N.A., as the Co-Syndication Agents; and Eurohypo Ag, New York Branch and Wells Fargo Bank, National Association, as the Co-Documentation Agents,

in the case of each of clauses (a), (b) and (c), giving effect to any and all amendments, supplements, modifications, renewals, replacements, consolidations, severances, substitutions and extensions thereof from time to time.

“**Credit Agreement Cross-Default Provisions**” means any cross-default event of default provisions in the Credit Agreement, which provisions are currently set forth in Sections 9.5 (in the case of recourse indebtedness) and 9.6 (in the case of nonrecourse indebtedness) of each Credit Agreement, in each case as such section may be amended, supplemented, superseded, replaced, substituted or otherwise modified from time to time.

“**Credit Agreement Dollar Threshold**” means (a) in the case of recourse indebtedness, \$15.0 million and (b) in the case of non-recourse indebtedness, \$100.0 million; *provided*, that if any of the Credit Agreement Cross-Default Provisions are amended, supplemented, superseded, replaced, substituted or otherwise modified such that the dollar threshold or thresholds in such applicable Credit Agreement Cross-Default Provision do not correspond to the dollar thresholds set forth in the preceding clauses (a) and (b), respectively, then the dollar thresholds set forth in the preceding clauses (a) and (b) shall be the corresponding dollar threshold or thresholds set forth in such applicable Credit Agreement Cross-Default Provision; *provided, however*, that if all Credit Agreements then in effect do not have the same dollar thresholds in the respective Credit Agreement Cross-Default Provisions, then the dollar thresholds set forth in the preceding clauses (a) and (b) shall be the most restrictive of the corresponding dollar threshold or thresholds set forth in such applicable Credit Agreement Cross-Default Provision.

“**Current Market Price**” of the Common Stock on any day means the average of the Closing Sale Price of the Common Stock for each of the ten consecutive Trading Days ending on the earlier of the day in question and the day before the “**Ex-Date**” with respect to the issuance or distribution requiring such computation. For purposes of this paragraph, “**Ex-Date**” means the first date on which the shares of

Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive such issuance or distribution.

“**Custodian**” means Deutsche Bank Trust Company Americas, as custodian with respect to the Notes in global form, or any successor entity thereto.

“**Default**” means any event which is, or after notice or passage of time or both would be, an Event of Default.

“**Defaulted Interest**” has the meaning specified in Section 2.03.

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

“**DTC**” means The Depository Trust Company.

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

“**Fair Market Value**” shall mean the amount that a willing buyer would pay a willing seller in an arm’s-length transaction.

“**Fundamental Change**” is any transaction or event (whether by means of an exchange offer, liquidation, tender offer, consolidation, merger, combination, reclassification, recapitalization or otherwise) in connection with which 50% or more of the then outstanding shares of Common Stock are exchanged for, converted into or constitute solely the right to receive, consideration that is not at least 90% shares of common stock that: (a) are listed on, or immediately after the transaction or event will be listed on, a United States national securities exchange; or (b) are approved, or immediately after the transaction or event will be approved, for quotation on a United States national securities exchange or in an inter-dealer quotation system of any registered United States national securities association.

“GAAP” shall mean generally accepted accounting principles in the United States of America in effect from time to time.

“Guarantor” means the party named as the “Guarantor” in the first paragraph of this Indenture until a successor replaces it pursuant to the applicable provisions of this Indenture and, thereafter, shall mean such successor. The foregoing sentence shall likewise apply to any subsequent successor or successors.

“Hedging Obligations” of a Person means any and all obligations of such Person or any of its Subsidiaries, whether absolute or contingent and howsoever and whenever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor), under (a) any and all agreements, devices or arrangements designed to protect at least one of the parties thereto from the fluctuations of interest rates, commodity prices, exchange rates or forward rates applicable to such party’s assets, liabilities or exchange transactions, including, but not limited to, dollar-denominated or cross-currency interest rate exchange agreements, forward currency exchange agreements, interest rate cap or collar protection agreements, forward rate currency or interest rate options, puts and warrants, and (b) any and all cancellations, buy backs, reversals, terminations or assignments of any of the foregoing.

5

“Indebtedness” of any Person shall mean without duplication, (a) all liabilities and obligations of such Person, whether consolidated or representing the proportionate interest in any other Person, (i) in respect of borrowed money (whether or not the recourse of the lender is to the whole of the assets of such Person or only to a portion thereof, and including construction loans), (ii) evidenced by bonds, notes, debentures or similar instruments, (iii) representing the balance deferred and unpaid of the purchase price of any property or services, except those incurred in the ordinary course of its business that would constitute a trade payable to trade creditors (but specifically excluding from such exception the deferred purchase price of real property), (iv) evidenced by bankers’ acceptances, (v) consisting of obligations, whether or not assumed, secured by liens or payable out of the proceeds or production from property now or hereafter owned or acquired by such Person (in an amount equal to the lesser of the obligation so secured and the fair market value of such property), (vi) consisting of Capitalized Lease Obligations (including any Capitalized Leases entered into as a part of a sale/leaseback transaction), (vii) consisting of liabilities and obligations under any receivable sales transactions, (viii) consisting of a letter of credit or a reimbursement obligation of such Person with respect to any letter of credit, or (ix) consisting of Net Hedging Obligations; or (b) all Contingent Obligations and liabilities and obligations of others of the kind described in the preceding clause (a) that such Person has guaranteed or that is otherwise its legal liability and all obligations to purchase, redeem or acquire for cash or non-cash consideration any Capital Stock or other equity interests and (c) obligations of such Person to purchase for cash or non-cash consideration Securities or other property arising out of or in connection with the sale of the same or substantially similar securities or property. For the avoidance of doubt, Indebtedness of any water, sewer, or other improvement district that is payable from assessments or taxes on property located within such district shall not be deemed to be Indebtedness of any Person owning property located within such district; *provided* that such Person has not otherwise obligated itself in respect of the repayment of such Indebtedness. Notwithstanding the foregoing, if the definition of “Indebtedness” in any of the Credit Agreements then in effect is amended, supplemented, superseded, replaced, substituted or otherwise modified such that the such definition does not correspond to the definition of Indebtedness set forth in the preceding sentence, then the definition of Indebtedness for purposes of this Indenture and the Notes shall be the definition of Indebtedness set forth in the Credit Agreements then in effect; *provided, however*, that if all Credit Agreements then in effect do not have the same definition of Indebtedness, then the definition of Indebtedness for purposes of this Indenture shall be the most expansive of the definitions set forth in the Credit Agreements then in effect.

“Indenture” means this Indenture, as amended or supplemented from time to time in accordance with the terms hereof, including the provisions of the TIA that are deemed to be a part hereof.

“Initial Purchasers” shall mean J.P. Morgan Securities Inc. and Deutsche Bank Securities Inc.

“Liquidated Damages” has the meaning set forth in the Registration Rights Agreement.

“Market Disruption Event” means (1) a failure by the primary United States national security exchange or market on which the Common Stock is listed or admitted for trading to open for trading during its regular trading session or (2) the occurrence or existence prior to 1:00 p.m., New York City time, on any Trading Day for the Common Stock of an aggregate one half hour period, of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the stock exchange or otherwise) in the Common Stock or in any options, contracts or future contracts relating to the Common Stock.

“Moody’s” means Moody’s Investors Service, Inc. or any successor thereto.

“Net Hedging Obligations” shall mean, as of any date of determination, the excess (if any) of all “unrealized losses” over all “unrealized profits” of such Person arising from Hedging Obligations.

6

“Unrealized losses” means the fair market value of the cost to such Person of replacing such Hedging Obligation as of the date of determination (assuming the Hedging Obligation were to be terminated as of that date), and “unrealized profits” means the fair market value of the gain to such Person of replacing such Hedging Obligation as of the date of determination (assuming such Hedging Obligation were to be terminated as of that date).

“Note” or “Notes” means any of the Company’s 3.25% Convertible Senior Notes due 2012 issued under this Indenture.

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

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

“**Obligations**” means all obligations for principal, premium, interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities payable under the documentation under which any indebtedness is created, evidenced or secured, including, in the case of the Notes, Liquidated Damages, if any, and Additional Interest, if any.

“**Offering Memorandum**” means the offering memorandum of the Company dated March 12, 2007 relating to the offering of the Notes.

“**Officer**” means, with respect to any Person, the Chairman of the Board, the Chief Executive Officer, the President, any Vice President (whether or not such title is preceded by any modifier such as “**Executive**,” “**Senior**” or the like), the Chief Financial Officer, the Treasurer, the Controller or the Secretary of such Person or any other officer designated by the board of directors of such Person serving in a similar capacity.

“**Officers’ Certificate**” means a written certificate containing the information specified in Sections 13.04 and 13.05, signed in the name of the Company by any two Officers, and delivered to the Trustee. An Officers’ Certificate given pursuant to Section 4.03 shall be signed by the principal executive officer, principal financial officer or the principal accounting officer of the Company but need not contain the information specified in Sections 13.04 and 13.05.

“**Opinion of Counsel**” means a written opinion containing the information specified in Sections 13.04 and 13.05, from legal counsel who is acceptable to the Trustee in its reasonable discretion. The counsel may be an employee of, or counsel to, the Company or the Trustee.

“**Paying Agent**” has the meaning specified in Section 2.08.

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

“**PORTAL Market**” means The PORTAL Market operated by the Nasdaq Global Market or any successor thereto.

“**Record Date**” has the meaning specified in Section 2.03.

“**Registration Rights Agreement**” means the Registration Rights Agreement dated as of March 16, 2007 among the Company and the Initial Purchasers relating to the Common Stock issuable upon conversion of the Notes.

7

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

“**Restricted Securities**” has the meaning specified in Section 2.05(c).

“**Rule 144A**” means Rule 144A under the Securities Act (or any successor provision), as it may be amended from time to time.

“**S&P**” means Standard & Poor’s Rating Services, a division of the McGraw-Hill Companies, Inc., or any successor thereto.

“**SEC**” means the Securities and Exchange Commission.

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

“**Significant Subsidiary**” has the meaning ascribed to such term in Regulation S-X (17 CFR Part 210).

“**Stated Maturity**,” when used with respect to any Note, means the date specified in such Note as the fixed date on which an amount equal to the principal amount of such Note is due and payable.

“**Subsidiary**” means, with respect to any Person, (a) any corporation of which the outstanding Capital Stock having at least a majority of the votes entitled to be cast in the election of directors under ordinary circumstances (determined without regard to any classification of directors) shall at the time be owned, directly or indirectly, by such Person, (b) any other Person (other than a partnership) of which at least a majority of the voting interests under ordinary circumstances is at the time, directly or indirectly, owned by such Person or (c) any partnership (i) the sole general partner or the managing general partner of which is such Person or a Subsidiary of such Person or (ii) the only general partners of which are such Person or one or more Subsidiaries of such Person (or any combination thereof).

“**TIA**” means the Trust Indenture Act of 1939 as in effect on the date of this Indenture, *provided* that in the event the TIA is amended after such date, TIA means, to the extent required by any such amendment, the TIA as so amended.

“**Trading Day**” means a day during which trading in the Common Stock generally occurs on the New York Stock Exchange or, if the Common Stock is not listed on the New York Stock Exchange, on the principal other national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not listed on a national or regional securities exchange, on the Nasdaq Global Market or, if the Common Stock is not quoted on the Nasdaq Global Market, on the principal other U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock is then traded. However, when used in Section 11.12 or elsewhere in this Indenture with respect to the terms defined in Section 11.12(c), “**Trading Day**” shall mean a Trading Day (as defined in the immediately preceding sentence) during which there is no Market Disruption Event.

8

“**Trading Price**” of the Notes on any date of determination means the average of the secondary market bid quotations per Note obtained by the Trustee for \$5,000,000 principal amount of the Notes at approximately 3:30 p.m., New York City time, on such determination date from two independent nationally recognized securities dealers the Company selects, which may include one or more of the Initial Purchasers, *provided* that if at least two such bids cannot reasonably be obtained by the Trustee, but one such bid can reasonably be obtained by the Trustee, this one bid will be used. If the Trustee cannot reasonably obtain at least one bid for \$5,000,000 principal amount of the Notes from a nationally recognized securities dealer or, in the Company’s reasonable judgment, the bid quotations are not indicative of the secondary market value of the Notes, then the Trading Price of the Notes will be deemed to be less than 95% of the applicable Conversion Rate multiplied by the Closing Sale Price on such determination date.

“**Trustee**” means the party named as the “**Trustee**” in the first paragraph of this Indenture until a successor replaces it pursuant to the applicable provisions of this Indenture and, thereafter, shall mean such successor. The foregoing sentence shall likewise apply to any subsequent such successor or successors.

Section 1.02 Other Definitions.

Term	Defined in Section
Acceleration Notice	6.02(a)
Additional Interest	6.02(c)
Additional Shares	11.07(a)
Benefited Party	12.01
Cash Percentage	11.12(d)
Cash Settlement Averaging Period	11.12(c)
Company Fundamental Change Repurchase Notice	3.05(b)
Conversion Agent	2.08
Conversion Date	11.02
Conversion Notice	11.02
Conversion Rate	11.04
Daily Conversion Value	11.12(c)
Daily Excess Amount	11.12(c)
Daily Measurement Value	11.12(c)
Daily Settlement Amount	11.12(c)
Daily VWAP	11.12(c)
Distributed Property	11.05(d)
Dividend Threshold Amount	11.05(e)
Effective Date	11.07(b)
Event of Default	6.01
Ex-Dividend Date	11.05(g)
Expiration Time	11.05(f)
Fundamental Change Repurchase Date	3.05(a)
Fundamental Change Repurchase Notice	3.05(c)
Fundamental Change Repurchase Price	3.05(a)
Global Note	2.02
Guarantee Obligations	12.01
Interest Payment Date	Exhibit A
Legal Holiday	13.08
Paying Agent	2.08
Payment Default	6.01(e)
Purchased Shares	11.05(f)
Quarter	11.01(a)
Redemption Date	3.01(a)
Redemption Price	3.01(a)
Rights	11.08
Rights Plan	11.08
Rule 144A Information	4.10
Scheduled Trading Day	11.12(c)
Settlement Amount	11.12(a)
Stock Price	11.07(b)
Trigger Event	11.05(d)

Section 1.03 Incorporation By Reference of Trust Indenture Act.

Whenever this Indenture refers to a provision of the TIA, the provision is incorporated by reference in and made a part of this Indenture. The following TIA terms incorporated by reference in this Indenture have the following meanings:

“**Commission**” means the SEC.

“**Indenture Notes**” means the Notes.

“**Indenture Note Holder**” means a holder.

“**Indenture to be Qualified**” means this Indenture.

“**Indenture Trustee**” or “**Institutional Trustee**” means the Trustee.

“**Obligor**” on the indenture securities means the Company.

All other TIA terms incorporated by reference in this Indenture that are defined by the TIA, defined by a TIA reference to another statute or defined by an SEC rule have the meanings assigned to them by such definitions.

Section 1.04 Rules of Construction.

Unless the context otherwise requires:

- (a) a term has the meaning assigned to it;
- (b) references to “interest” with respect to the Notes shall be deemed to include Liquidated Damages, if any, and Additional Interest, if any;
- (c) any reference to “day” means a calendar day unless a Business Day, Trading Day, Scheduled Trading Day or other day is specified;
- (d) “or” is not exclusive;

10

-
- (e) “including” means including, without limitation; and
 - (f) words in the singular include the plural, and words in the plural include the singular.

ARTICLE II
THE SECURITIES

Section 2.01 Designation Amount and Issue of Notes.

The Notes shall be designated as “**3.25% Convertible Senior Notes due 2012.**” Upon the execution of this Indenture, or from time to time thereafter, Notes may be executed by the Company as provided in Section 2.04 and delivered to the Trustee for authentication, and the Trustee shall thereupon authenticate and deliver Notes upon a written order of the Company, such order signed by two Officers of the Company, or by an Officer of the Company and by any Assistant Treasurer of the Company or any Assistant Secretary of the Company, without any further action by the Company hereunder.

The aggregate principal amount of Notes which may be authenticated and delivered under this Indenture is unlimited. The Company may, without the consent of the holders of Notes, issue additional Notes (the “**Additional Notes**”) from time to time in the future with the same terms and the same CUSIP number as the Notes originally issued under this Indenture (the “**Initial Notes**”) in an unlimited principal amount, *provided* that such Additional Notes must be part of the same issue as the Initial Notes for United States federal income tax purposes. The Initial Notes and any such Additional Notes will constitute a single series of debt securities, and in circumstances in which this Indenture provides for the holders of Notes to vote or take any action, the holders of Initial Notes and the holders of any such Additional Notes will vote or take that action as a single class.

Section 2.02 Form of Notes.

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

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

So long as the Notes are eligible for book-entry settlement with the Depository, or unless otherwise required by law, or otherwise contemplated by Section 2.05(b), all of the Notes will be represented by one or more Notes in global form registered in the name of the Depository or the nominee of the Depository (a “**Global Note**”). The transfer and exchange of beneficial interests in any such Global Note shall be effected through the Depository in accordance with this Indenture and the applicable procedures of the Depository. Except as provided in Section 2.05(b), beneficial owners of a Global Note

11

shall not be entitled to have certificates registered in their names, will not receive or be entitled to receive physical delivery of certificates in definitive form and will not be considered holders of such Global Note.

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

Section 2.03 Date and Denomination of Notes; Payments of Interest.

(a) The Notes shall be issuable in registered form without coupons in denominations of \$1,000 principal amount and integral multiples thereof. Each Note shall be dated the date of its authentication and shall bear interest from the date specified on the face of the form of Note attached as Exhibit A. Interest on the Notes shall be computed on the basis of a 360-day year comprised of twelve 30-day months.

(b) The Person in whose name any Note is registered on the Note Register at 5:00 p.m., New York City time, on any Record Date with respect to any Interest Payment Date shall be entitled to receive the interest (including Liquidated Damages, if any, and Additional Interest, if any) payable on such Interest Payment Date. Notwithstanding the foregoing, interest (including Liquidated Damages, if any, and Additional Interest, if any) payable upon redemption or repurchase will be payable to the Person to whom the Redemption Price or Fundamental Change Repurchase Price, as the case may be, is payable, unless the Redemption Date or the Fundamental Change Repurchase Date, as the case may be, is after 5:00 p.m., New York City time, on a Record Date and prior to 9:00 a.m., New York City time, on the corresponding Interest Payment Date, in which case the semi-annual payment of interest (including Liquidated Damages, if any, and Additional Interest, if any) becoming due on such Interest Payment Date shall be payable to the holder of such Note registered as such on the applicable Record Date.

Notwithstanding the foregoing, any Note or portion thereof surrendered for conversion during the period after 5:00 p.m., New York City time, on the Record Date and prior to 9:00 a.m., New York City time, on the corresponding Interest Payment Date shall be accompanied by payment, in immediately available funds or other funds acceptable to the Company, of an amount equal to the interest (including Liquidated Damages, if any, and Additional Interest, if any) otherwise payable on such Interest Payment Date on the principal amount being converted; *provided* that no such payment need be made (1) if a holder converts its Notes in connection with a redemption and the Company has specified a Redemption Date that is after a Record Date and on or prior to the next Interest Payment Date, (2) if a holder converts its Notes in connection with a Fundamental Change and the Company has specified a Fundamental Change Repurchase Date that is after a Record Date and on or prior to the next Interest Payment Date, (3) with respect to Notes surrendered for conversion on the Interest Payment Date, (4) if a holder converts its Notes after the Record Date immediately preceding the Stated Maturity, or (5) to the extent of any overdue interest, if any exists at the time of conversion with respect to such Note. Interest shall be payable at the office of the Company maintained by the Company for such purposes in the Borough of Manhattan, City of New York, which shall initially be an office or agency of the Trustee.

The Company shall pay interest (including Liquidated Damages, if any, and Additional Interest, if any) (i) on any Notes in certificated form (x) by check mailed to the address of the Person entitled thereto as it appears in the Note Register or (y) if a holder of such Notes with an aggregate principal amount in excess of \$1,000,000 so requests to the Note Registrar not later than the relevant Record Date, by wire transfer in immediately available funds to such holder's account in North America, which request shall remain in effect until such holder notifies, in writing, the Note Registrar to the contrary, or (ii) on any Global Note by wire transfer of immediately available funds to the account of the Depository or its nominee.

If a payment date is not a Business Day, payment shall be made on the next succeeding Business Day, and no additional interest (including Liquidated Damages, if any, and Additional Interest, if any) shall accrue thereon. The term "**Record Date**" with respect to any Interest Payment Date shall mean the March 1 or September 1 preceding the applicable March 15 or September 15 Interest Payment Date, respectively.

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

(1) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names the Notes are registered at 5:00 p.m., New York City time, on a special record date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Note and the date of the proposed payment (which shall be not less than 25 days after the receipt by the Trustee of such notice, unless the Trustee shall consent to an earlier date), and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit on or prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this clause provided. Thereupon the Trustee shall fix a special record date for the payment of such Defaulted Interest which shall be not more than 15 days and not less than ten days prior to the date of the proposed payment, and not less than ten days after the receipt by the Trustee of the notice of the proposed payment (unless, the Trustee shall consent to an earlier date). The Trustee shall promptly notify the Company of such special record date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the special record date therefor to be mailed, first-class postage prepaid, to each holder at such holder's address as it appears in the Note Register, not less than ten days prior to such special record date (unless, the Trustee shall consent to an earlier date). Notice of the proposed payment of such Defaulted Interest and the special record date therefor having been so mailed, such Defaulted Interest shall be paid to the Persons in whose names the Notes are registered at 5:00 p.m., New York City time, on such special record date and shall no longer be payable pursuant to the following clause (2) of this Section 2.03(c).

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

(d) If the Paying Agent holds, in accordance with this Indenture, prior to 11:00 a.m., New York City time, on a Redemption Date, on a Fundamental Change Repurchase Date, or on the Stated

Maturity, money sufficient to pay amounts owed with respect to Notes payable on that date, then (i) immediately after such Redemption Date, Fundamental Change Repurchase Date or Stated Maturity, as the case may be: (x) such Notes shall cease to be outstanding, (y) interest (including Liquidated Damages, if any, and Additional Interest, if any) on such Notes shall cease to accrue, and (z) except as provided in Section 7.05 and Section 9.02, such Notes shall cease to be entitled to any benefit or security under this Indenture, and the holders thereof shall have no right in respect of such Notes except the right to receive the Redemption Price, Fundamental Change Repurchase Price or principal amount thereof, as the case may be, plus accrued and unpaid interest (including Liquidated Damages, if any, and Additional Interest, if any) up to but not including such Redemption Date, Fundamental Change Repurchase Date or Stated Maturity, as the case may be, and (ii) after 5:00 p.m., New York City time, on the Business Day immediately preceding such Redemption Date, Fundamental Change Repurchase Date or Stated Maturity, as the case may be, such Notes shall cease to be convertible pursuant to this Indenture.

Section 2.04 Execution of Notes.

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

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

Section 2.05 Exchange and Registration of Transfer of Notes; Restrictions on Transfer.

(a) The Company shall cause to be kept at the Corporate Trust Office a register (the register maintained in such office and in any other office or agency of the Company designated pursuant to Section 4.05 being herein sometimes collectively referred to as the “**Note Register**”) in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Notes and of transfers of Notes. The Note Register shall be in written form or in any form capable of being converted into written form within a reasonably prompt period of time. The Trustee is hereby appointed “**Note Registrar**” for the purpose of registering Notes and transfers of Notes as herein provided. The Company may appoint one or more co-registrars in accordance with Section 4.05.

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

Notes may be exchanged for other Notes of any authorized denominations and of a like aggregate principal amount, upon surrender of the Notes to be exchanged at any such office or agency maintained by the Company pursuant to Section 4.05. Whenever any Notes are so surrendered for exchange, the

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

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

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

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

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

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

(ii) Notwithstanding any other provision in this Indenture, no Global Note may be exchanged in whole or in part for Notes registered, and no transfer of a Global Note in whole or in part may be registered, in the name of any Person other than the Depository or a nominee thereof unless

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

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

15

authenticate and make available for delivery the Note issuable on such exchange to or upon the written order of the Depositary or an authorized representative thereof.

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

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

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

(c) Every Note (and all securities issued in exchange therefor or in substitution thereof) that bears or is required under this Section 2.05(c) to bear the legend set forth in this Section 2.05(c) (together with any Common Stock issued upon conversion of the Notes and required to bear the legend set forth in Exhibit B, collectively, the “**Restricted Securities**”) shall be subject to the restrictions on transfer set forth in this Section 2.05(c) (including those set forth in the legend below and the legend set forth in Exhibit B) 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 2.05(c), the term “**transfer**” means any sale, pledge, loan, transfer or other disposition whatsoever of any Restricted Security or any interest therein.

Until the 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 (or as set forth in Exhibit B, in the case of Common Stock issued upon conversion of the Notes), 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:

THE SECURITY EVIDENCED BY THIS CERTIFICATE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT OF 1933”), OR

16

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 OF 1933;

(2) AGREES THAT IT WILL NOT, PRIOR TO THE DATE (THE “RESALE RESTRICTION TERMINATION DATE”) THAT IS TWO YEARS AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF AND THE LAST DATE ON WHICH THE COMPANY OR ANY AFFILIATE OF THE COMPANY WAS THE OWNER OF THIS SECURITY (OR ANY PREDECESSOR OF SUCH SECURITY), RESELL OR OTHERWISE TRANSFER THE SECURITY EVIDENCED HEREBY OR THE COMMON STOCK

ISSUABLE UPON CONVERSION OF SUCH SECURITY EXCEPT (A) TO THE MACERICH COMPANY OR ANY SUBSIDIARY THEREOF, (B) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT OF 1933, (C) PURSUANT TO THE EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT OF 1933 (IF AVAILABLE), OR (D) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT OF 1933 AND WHICH CONTINUES TO BE EFFECTIVE AT THE TIME OF SUCH TRANSFER; AND

(3) AGREES THAT IT WILL DELIVER TO EACH PERSON TO WHOM THE SECURITY EVIDENCED HEREBY IS TRANSFERRED (OTHER THAN A TRANSFER PURSUANT TO CLAUSE 2(C) OR 2(D) ABOVE) A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND.

The foregoing legend shall be removed as to any Note upon the earlier of (i) the Resale Restriction Termination Date and (ii) the transfer of such Note pursuant to clause 2(C) or 2(D) of the foregoing legend. In such case, upon surrender of such Note for exchange to the Note Registrar in accordance with the provisions of this Section 2.05, and, in the case of clause (ii) of this paragraph, delivery to the Note Registrar of documentation reasonably satisfactory to the Note Registrar of such transfer, such Note may 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 2.05(c). If such Restricted Security surrendered for exchange is represented by a Global Note bearing the legend set forth in this Section 2.05(c), the principal amount of the legended Global Note shall be reduced (subject to, in the case of clause (ii) of this paragraph, delivery to the Note Registrar of documentation reasonably satisfactory to the Note Registrar as described in the immediately preceding sentence) by the appropriate principal amount and the principal amount of a Global Note without the legend set forth in this Section 2.05(c) shall be increased by an equal principal amount. If a Global Note without the legend set forth in this Section 2.05(c) is not then outstanding, the Company shall execute and the Trustee shall authenticate and deliver an unlegended Global Note to the Depository.

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

17

Note shall be exercised only through the Depository subject to the customary procedures of the Depository. The Trustee may rely and shall be fully protected in relying upon information furnished by the Depository with respect to its Agent Members.

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

Section 2.06 Mutilated, Destroyed, Lost or Stolen Notes.

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

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

Every substitute Note issued pursuant to the provisions of this Section 2.06 by virtue of the fact that any Note is destroyed, lost or stolen shall constitute an additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Note shall be found at any time, and shall be entitled to all the benefits of (but shall be subject to all the limitations set forth in) this Indenture equally and proportionately with any and all other Notes duly issued hereunder. To the extent permitted by law, all Notes shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the replacement or payment or conversion or redemption or repurchase of mutilated, destroyed, lost or stolen Notes and shall preclude any and all other rights or remedies notwithstanding any

18

law or statute existing or hereafter enacted to the contrary with respect to the replacement or payment or conversion or redemption or repurchase of negotiable instruments or other securities without their surrender.

Section 2.07 Temporary Notes.

Pending the preparation of Notes in certificated form, the Company may execute and the Trustee or an authenticating agent appointed by the Trustee shall, upon the written request of the Company, authenticate and deliver temporary Notes (printed or lithographed). Temporary Notes shall be issuable in any authorized denomination, and substantially in the form of the Notes in certificated form, but with such omissions, insertions and variations as may be appropriate for temporary Notes, all as may be determined by the Company. Every such temporary Note shall be executed by the Company and authenticated by the Trustee or such authenticating agent upon the same conditions and in substantially the same manner, and with the same effect, as the Notes in certificated form. Without unreasonable delay, the Company will execute and deliver to the Trustee or such authenticating agent Notes in certificated form and thereupon any or all temporary Notes may be surrendered in exchange therefor, at each office or agency maintained by the Company pursuant to Section 4.05 and the Trustee or such authenticating agent shall authenticate and make available for delivery in exchange for such temporary Notes an equal aggregate principal amount of Notes in certificated form. Such exchange shall be made by the Company at its own expense and without any charge therefor. Until so exchanged, the temporary Notes shall in all respects be entitled to the same benefits and subject to the same limitations under this Indenture as Notes in certificated form authenticated and delivered hereunder.

Section 2.08 Cancellation of Notes.

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

Section 2.09 CUSIP Numbers.

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

Section 2.10 Noteholders’ Lists and Reports by the Trustee.

(a) The Company shall furnish or cause to be furnished to the Trustee, semi-annually, not more than 15 days after each March 1 and September 1 in each year beginning with September 1, 2007, and at such other times as the Trustee may reasonably request in writing, within 30 days after receipt by

the Company of any such request (or such lesser time as the Trustee may reasonably request in order to enable it to timely provide any notice to be provided by it hereunder), a list in such form as the Trustee may reasonably require of the names and addresses of the holders of Notes as of a date not more than 15 days (or such other date as the Trustee may reasonably request in order to so provide any such notices) prior to the time such information is furnished, except that no such list need be furnished by the Company to the Trustee so long as the Trustee is acting as the sole Note Registrar.

(b) The Trustee shall preserve, in as current a form as is reasonably practicable, all information as to the names and addresses of the holders of Notes contained in the most recent list furnished to it as provided in Section 2.10(a) or maintained by the Trustee in its capacity as Note Registrar or co-registrar in respect of the Notes, if so acting. The Trustee may destroy any list furnished to it as provided in Section 2.10(a) upon receipt of a new list so furnished. The rights of holders to communicate with other holders of Notes with respect to their rights under this Indenture or under the Notes, and the corresponding rights and duties of the Trustee, shall be as provided by the TIA. Every holder agrees with the Company and the Trustee that neither the Company nor the Trustee nor any agent of either of them shall be held accountable by reason of any disclosure of information as to names and addresses of holders of Notes made pursuant to the TIA.

(c) Within 60 days after May 15 of each year commencing with the year 2007, the Trustee shall transmit to holders of Notes such reports dated as of May 15 of the year in which such reports are made concerning the Trustee and its actions under this Indenture as may be required pursuant to the TIA at the times and in the manner provided pursuant thereto. In the event that no events have occurred under the applicable sections of the TIA the Trustee shall be under no duty or obligation to provide such reports.

ARTICLE III REDEMPTION AND REPURCHASES

Section 3.01 Redemption to Preserve REIT Status.

(a) The Company may redeem all the Notes then outstanding, in whole but not in part, at any time the Company determines it is necessary to do so in order to preserve the Company’s status as a real estate investment trust under the Code (the date of any such redemption, the “**Redemption Date**”), for cash at a price equal to 100% of the principal amount of the Notes to be redeemed (the “**Redemption Price**”), together with accrued but unpaid interest (including Liquidated Damages, if any, and Additional Interest, if any) thereon, up to but not including the Redemption Date; *provided* that, in accordance with Section 2.03(b), if the Redemption Date is after 5:00 p.m., New York City time, on a Record Date and prior to 9:00 a.m., New York City time, on the related Interest Payment Date, accrued but unpaid interest (including Liquidated Damages, if any, and Additional Interest, if any) will be payable to the holders in whose names the Notes are registered at 5:00 p.m., New York City time, on the relevant Record Date.

(b) Except as set forth in Section 3.01(a), the Notes will not otherwise be redeemable at the Company's option prior to the Stated Maturity.

Section 3.02 Notice of Redemption.

(a) In case the Company shall desire to exercise the right to redeem all of the Notes pursuant to Section 3.01, it shall fix the Redemption Date and it (or, at its written request received by the Trustee not fewer than five Business Days prior (or such shorter period of time as may be acceptable to the Trustee) to the date the notice of redemption is to be mailed, the Trustee in the name of and at the expense of the Company) shall mail or cause to be mailed a notice of such redemption not fewer than 45 Scheduled Trading Days nor more than 60 Scheduled Trading Days prior to the Redemption Date to each

20

holder of Notes so to be redeemed in whole or in part at its last address as the same appears on the Note Register; *provided* that if the Company makes such request of the Trustee, it shall, together with such request, also given written notice of the Redemption Date to the Trustee, *provided* that the text of the notice shall be prepared by the Company. Such mailing shall be by first class mail. The notice, if mailed in the manner herein provided, shall be conclusively presumed to have been duly given, whether or not the holder receives such notice. In any case, failure to give such notice by mail or any defect in the notice to the holder of any Note shall not affect the validity of the proceedings for the redemption of any other Note. Concurrently with the mailing of any such notice of redemption, the Company shall issue a press release announcing such redemption, the form and content of which press release shall be determined by the Company in its sole discretion, and publish such notice of redemption on its web site. The failure to issue any such press release or any defect therein shall not affect the validity of the redemption notice or any of the proceedings for the redemption of any Note called for redemption.

(b) Such notice of redemption shall specify: (i) that all of the Notes are being redeemed and the aggregate principal amount thereof, (ii) the CUSIP number or numbers of the Notes, (iii) the Redemption Date (which shall be a Business Day), (iv) the redemption price at which Notes are to be redeemed, (v) the place or places of payment and that payment will be made upon presentation and surrender of such Notes, (vi) that interest accrued and unpaid (including Liquidated Damages, if any, and Additional Interest, if any) up to but not including the Redemption Date will be paid as specified in said notice, and that on and after the Redemption Date interest (including Liquidated Damages, if any, and Additional Interest, if any) will cease to accrue, (vii) that the holder has a right to convert the Notes called for redemption, (viii) the Conversion Rate on the date of such notice and (ix) the time and date on which the right to convert such Notes pursuant to this Indenture will expire.

(c) Prior to 11:00 a.m., New York City time, on the Redemption Date, the Company shall deposit with the Paying Agent (or if the Company or a Subsidiary thereof or an Affiliate of either of them is the Paying Agent, shall segregate and hold in trust as provided in Section 4.05), an amount of money (in immediately available funds if deposited on such Business Day) sufficient to pay the aggregate Redemption Price, together with accrued but unpaid interest (including Liquidated Damages, if any, and Additional Interest, if any) thereon, to but not including the Redemption Date, of all Notes (other than Notes called for redemption that on or prior thereto have been delivered by the Company to the Trustee for cancellation or have been converted pursuant to Article XI). The Paying Agent shall as promptly as practicable return to the Company any money not required for making payments on the Redemption Date because of the conversion of Notes pursuant to Article XI. If such money is then held by the Company in trust and is not required for making payments on the Redemption Date, it shall be discharged from such trust.

Section 3.03 Payment of Notes Called for Redemption by the Company.

If notice of redemption has been given as provided in Section 3.02, the Notes shall, unless converted pursuant to the terms hereof, become due and payable on the Redemption Date and at the place or places stated in such notice at the Redemption Price, together with accrued but unpaid interest (including Liquidated Damages, if any, and Additional Interest, if any) up to but not including the Redemption Date. On presentation and surrender of the Notes at a place of payment in said notice specified, the Notes shall be paid and redeemed by the Company at the Redemption Price, together with accrued but unpaid interest (including Liquidated Damages, if any, and Additional Interest, if any) up to but not including the Redemption Date; *provided* that if the Redemption Date is after 5:00 p.m., New York City time, on a Record Date and prior to 9:00 a.m., New York City time, on the related Interest Payment Date, accrued and unpaid interest (including Liquidated Damages, if any, and Additional Interest, if any) will be payable to the holders in whose names the Notes are registered at 5:00 p.m., New

21

York City time, on the relevant Record Date instead of the holders surrendering such Notes for redemption on the Redemption Date.

Notwithstanding the foregoing, the Trustee shall not redeem any Notes or mail any notice of redemption during the continuance of a default in payment of interest (including Liquidated Damages, if any, and Additional Interest, if any) on the Notes. If any Note called for redemption shall not be so paid upon surrender thereof for redemption on the Redemption Date, as provided in this Section 3.03, the principal shall, until paid or duly provided for, bear interest from and including the Redemption Date at a rate equal to the rate borne by the Notes and such Note shall remain convertible pursuant to this Indenture until the Redemption Price and interest (including Liquidated Damages, if any, and Additional Interest, if any) shall have been paid or duly provided for.

Notes that are to be redeemed pursuant to this Article III shall be convertible by the holder thereof until 5:00 p.m., New York City time, on the Business Day immediately preceding the Redemption Date, as provided in Section 11.01(a)(iii).

Section 3.04 Sinking Fund.

There shall be no sinking fund provided for the Notes.

Section 3.05 Repurchase of Notes at Option of the Holder Upon a Fundamental Change.

(a) If a Fundamental Change occurs, each holder shall have the right, at such holder's option, to require the Company to repurchase all or a portion of the Notes held by such holder at a price in cash (the "**Fundamental Change Repurchase Price**") equal to 100% of the aggregate principal amount of such Notes, together with accrued but unpaid interest (including Liquidated Damages, if any, and Additional Interest, if any) thereon, up to but not including the date (the "**Fundamental Change Repurchase Date**") specified by the Company that is not more than 30 days after the date the Fundamental Change Repurchase Notice (as defined below) is given; *provided* that if such 30th day is not a Business Day, the Fundamental Change Repurchase Date shall be the next succeeding Business Day; *provided, further* that, in accordance with Section 2.03(b), if the Fundamental Change Repurchase Date is after 5:00 p.m., New York City time, on a Record Date and prior to 9:00 a.m., New York City time, on the related Interest Payment Date, accrued but unpaid interest (including Liquidated Damages, if any, and Additional Interest, if any) will be payable to the holders in whose names the Notes are registered at 5:00 p.m., New York City time, on the relevant Record Date instead of the holders surrendering Notes for repurchase on the Fundamental Change Repurchase Date.

(b) Within 30 days after the occurrence of a Fundamental Change, the Company shall (x) (i) mail a written notice of the Fundamental Change (the "**Company Fundamental Change Repurchase Notice**") to each holder at the address of such holder as it appears in the Note Register and to beneficial owners (as required by applicable law) or (ii) cause DTC to send the Company Fundamental Change Repurchase Notice to its participants that own Notes and (y) issue a press release containing such notice and publish such Company Fundamental Change Repurchase Notice on its web site. The Company shall also deliver a copy of the Company Fundamental Change Repurchase Notice to the Trustee and the Paying Agent at such time as it is mailed to holders. The Company Fundamental Change Repurchase Notice shall include the form of a Fundamental Change Repurchase Notice (as defined in Section 3.05(c) below) to be completed by the holder and shall state:

- (i) the event(s) causing such Fundamental Change;
- (ii) the date of such Fundamental Change;

22

(iii) the time and date by which the Fundamental Change Repurchase Notice pursuant to this Section 3.05 must be given;

(iv) the Fundamental Change Repurchase Price;

(v) the Fundamental Change Repurchase Date;

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

(vii) the Conversion Rate and any adjustments thereto;

(viii) that Notes as to which a Fundamental Change Repurchase Notice has been given may be converted into Common Stock pursuant to this Indenture only to the extent that the Fundamental Change Repurchase Notice has been withdrawn in accordance with the terms of this Indenture;

(ix) the procedures that the holder of Notes must follow to exercise rights under this Section 3.05; and

(x) the procedures for withdrawing a Fundamental Change Repurchase Notice, including a form of notice of withdrawal (as specified in Section 3.06).

At the Company's request, which shall be made at least three Business Days prior to the date by which the Company Fundamental Change Repurchase Notice is to be given to the holders in accordance with this Section 3.05, and at the Company's expense, the Trustee shall give the Company Fundamental Change Repurchase Notice in the Company's name; *provided* that, in all cases, the text of the Company Fundamental Change Repurchase Notice shall be prepared by the Company.

If any of the Notes is in the form of a Global Note, then the Company shall modify such notice to the extent necessary to accord with the applicable procedures of the Depository that apply to the repurchase of Global Notes.

(c) For a Note to be so repurchased at the option of the holder upon a Fundamental Change, the holder must deliver to the Paying Agent prior to 5:00 p.m., New York City time, on the Business Day immediately preceding the Fundamental Change Repurchase Date, (i) a written notice of repurchase (the "**Fundamental Change Repurchase Notice**") in the form set forth on the reverse of the Note duly completed (if the Note is certificated) or stating the following: (A) if certificated, the certificate number of the Note which the holder will deliver to be repurchased or, if such Note is a Global Note, such information as may be required under applicable Depository procedures, (B) the portion of the principal amount of the Note which the holder will deliver to be repurchased, which portion must be in principal amounts of \$1,000 or an integral multiple of \$1,000 and (C) that such Note shall be repurchased as of the Fundamental Change Repurchase Date pursuant to the terms and conditions specified in the Note and in this Indenture; and (ii) such Notes duly endorsed for transfer (if the Note is certificated) or book-entry transfer of such Note (if such Note is represented by a Global Note). The delivery of such Note to the Paying Agent with, or at any time after delivery of, the Fundamental Change Repurchase Notice (together with all necessary endorsements) at the office of the Paying Agent shall be a condition to the receipt by the holder of the Fundamental Change Repurchase Price therefore; *provided, however*, that such Fundamental Change Repurchase Price shall be so paid pursuant to this Section 3.05 only if the Notes so delivered to the Paying Agent shall conform in all respects to the description thereof in the Fundamental Change Repurchase Notice. All questions as to the validity, eligibility (including time of receipt) and

23

acceptance of any Note for repurchase shall be determined by the Company, whose determination shall be final and binding absent manifest error.

The Company shall repurchase from the holder thereof, pursuant to this Section 3.05, a portion of a Note, if the principal amount of such portion is \$1,000 or an integral multiple of \$1,000. Provisions of this Indenture that apply to the repurchase of all of a Note also apply to the repurchase of a portion of a Note.

Any repurchase by the Company contemplated pursuant to the provisions of this Section 3.05 shall be consummated by the delivery by the Company to the Paying Agent of the Fundamental Change Repurchase Price, together with accrued but unpaid interest (including Liquidated Damages, if any, and Additional Interest, if any) thereon, up to but not including the Fundamental Change Repurchase Date, to be received by the holder promptly following the later of the Fundamental Change Repurchase Date and the time of delivery or book-entry transfer of the Note to the Paying Agent in accordance with this Section 3.05.

Notwithstanding anything herein to the contrary, any holder delivering to the Paying Agent the Fundamental Change Repurchase Notice contemplated by this Section 3.05(c) shall have the right to withdraw such Fundamental Change Repurchase Notice at any time prior to 5:00 p.m., New York City time, on the Business Day immediately preceding the Fundamental Change Repurchase Date by delivery of a written notice of withdrawal to the Paying Agent at the principal office of the Paying Agent in accordance with Section 3.06(b).

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

(d) If a holder has delivered a Fundamental Change Repurchase Notice with respect to any of such holder's Notes, such holder may convert its Notes with respect to which the Fundamental Change Repurchase Notice was delivered only if such holder withdraws, in accordance with Section 3.06(b), its Fundamental Change Repurchase Notice with respect to the Notes such holder wishes to convert and converts such Notes before 5:00 p.m., New York City time, on the Business Day immediately preceding the Fundamental Change Repurchase Date.

Section 3.06 Effect of Fundamental Change Repurchase Notice; Withdrawal.

(a) Upon receipt by the Paying Agent of a Fundamental Change Repurchase Notice, the holder of the Note in respect of which such Fundamental Change Repurchase Notice was given shall (unless such Fundamental Change Repurchase Notice is withdrawn as specified in Section 3.06(b)) thereafter be entitled to receive solely the Fundamental Change Repurchase Price, together with accrued but unpaid interest (including Liquidated Damages, if any, and Additional Interest, if any) thereon, to but not including the Fundamental Change Repurchase Date with respect to such Note. Such Fundamental Change Repurchase Price, together with accrued but unpaid interest (including Liquidated Damages, if any, and Additional Interest, if any) thereon, to but not including the Fundamental Change Repurchase Date, shall be paid to such holder, subject to receipt of funds by the Paying Agent, promptly following the later of (x) the Fundamental Change Repurchase Date with respect to such Note (*provided* that the conditions in Section 3.05 have been satisfied) and (y) the time of delivery or book-entry transfer of such Note to the Paying Agent by the holder thereof in the manner required by Section 3.05. Notes in respect of which a Fundamental Change Repurchase Notice has been given by the holder thereof may not be converted pursuant to Article XI on or after the date of the delivery of such Fundamental Change Repurchase Notice, unless such Fundamental Change Repurchase Notice has first been validly withdrawn as specified in Section 3.06(b).

(b) A Fundamental Change Repurchase Notice may be withdrawn by means of a written notice of withdrawal delivered to the office of the Paying Agent in accordance with the Fundamental Change Repurchase Notice at any time prior to 5:00 p.m., New York City time, on the Business Day immediately preceding the Fundamental Change Repurchase Date specifying:

- (i) if the Note with respect to which such notice of withdrawal is being submitted is a Note in definitive form, the certificate number of such Note, or if such Note is a Global Note, such information as may be required under applicable Depository procedures;
- (ii) the principal amount of the Note with respect to which such notice of withdrawal is being submitted; and
- (iii) the principal amount, if any, of such Note which remains subject to the original Fundamental Change Repurchase Notice and which has been or will be delivered for repurchase by the Company.

The Paying Agent will promptly return to the respective holders thereof any Notes with respect to which a Fundamental Change Repurchase Notice has been withdrawn in compliance with this Indenture.

Section 3.07 Deposit of Fundamental Change Repurchase Price.

Prior to 11:00 a.m., New York City time, on the Fundamental Change Repurchase Date the Company shall deposit with the Trustee or with the Paying Agent (or, if the Company or a Subsidiary thereof or an Affiliate of either of them is acting as the Paying Agent, shall segregate and hold in trust as provided in Section 4.05) an amount of money (in immediately available funds if deposited on such Business Day) sufficient to pay the aggregate Fundamental Change Repurchase Price, together with accrued but unpaid interest (including Liquidated Damages, if any, and Additional Interest, if any) thereon, to but not including the Fundamental Change Repurchase Date of all the Notes or portions thereof which are to be repurchased as of the Fundamental Change Repurchase Date.

Section 3.08 Notes Repurchased in Part.

Any Note in definitive form that is to be repurchased only in part shall be surrendered at the office of the Paying Agent and the Company shall execute and the Trustee shall authenticate and deliver to the holder of such Note, without service charge, one or more new Notes in definitive form, of any authorized denomination as requested by such holder in aggregate principal amount equal to, and in exchange for, the portion of the principal amount of the Note in definitive form so surrendered which is not repurchased.

Section 3.09 Covenant to Comply With Securities Laws Upon Repurchase of Notes.

When complying with the provisions of Section 3.05 (so long as such offer or repurchase constitutes an “issuer tender offer” for purposes of Rule 13e-4 (which term, as used herein, includes any successor provision thereto) under the Exchange Act at the time of such offer or repurchase), the Company shall (i) comply in all material respects with Rule 13e-4 and Rule 14e-1 under the Exchange Act, (ii) file the related Schedule TO (or any successor schedule, form or report) under the Exchange Act and (iii) otherwise comply in all material respects with all federal and state securities laws so as to permit the rights and obligations under Section 3.05 to be exercised in the time and in the manner specified in Section 3.05.

Section 3.10 Repayment to the Company.

To the extent that the aggregate amount of cash deposited by the Company pursuant to Section 3.07 exceeds the aggregate Fundamental Change Repurchase Price of the Notes or portions thereof which the Company is obligated to repurchase as of the Fundamental Change Repurchase Date, together with accrued but unpaid interest (including Liquidated Damages, if any, and Additional Interest, if any) thereon, then, unless otherwise agreed in writing with the Company, promptly after the Business Day immediately after the Fundamental Change Repurchase Date the Trustee shall return any such excess to the Company together with interest, if any, thereon.

**ARTICLE IV
COVENANTS**

Section 4.01 Payment of Notes.

The Company shall promptly make all payments and deliveries in respect of the Notes on the dates and in the manner provided in the Notes or pursuant to this Indenture. Any amounts to be given to the Trustee or Paying Agent, as the case may be, shall be deposited with the Trustee or Paying Agent, as the case may be, by 11:00 a.m., New York City time, on the dates required pursuant to the Notes. Interest installments (including Liquidated Damages, if any, and Additional Interest, if any), principal amount, Redemption Price, Fundamental Change Repurchase Price and interest, if any, due on overdue amounts shall be considered paid on the applicable date due if at 11:00 a.m., New York City time, on such date, the Trustee or the Paying Agent, as the case may be, holds, in accordance with this Indenture, money sufficient to pay all such amounts then due.

The Company shall, to the extent permitted by law, pay interest on overdue amounts at the rate per annum set forth in paragraph 1 of the Notes, compounded semi-annually, which interest shall accrue from the date such overdue amount was originally due to the date payment of such amount, including interest thereon, has been made or duly provided for. All such interest shall be payable on demand. The accrual of such interest on overdue amounts shall be in addition to the continued accrual of interest on the Notes.

Section 4.02 SEC and Other Reports.

The Company shall file with the Trustee, within 15 days after it files such annual and quarterly reports, information, documents and other reports with the SEC, copies of its annual report and the information, documents and other reports (or copies of such portions of any of the foregoing as the SEC may by rules and regulations prescribe) which the Company is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act, *provided* that such information shall be deemed to be filed with the Trustee to the extent it has been filed on the SEC’s EDGAR System and such information is publicly available. In the event the Company is at any time no longer subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, it shall continue to provide the Trustee with reports containing substantially the same information as would have been required to be filed with the SEC had the Company continued to have been subject to such reporting requirements. In such event, such reports shall be provided to the Trustee at the times the Company would have been required to provide reports had it continued to have been subject to such reporting requirements. In addition, the Company shall comply with the other provisions of TIA Section 314(a).

Section 4.03 Compliance Certificate; Notice of Default.

(a) The Company shall deliver to the Trustee within 120 days after the end of each fiscal year of the Company an Officers’ Certificate, stating whether or not to the best knowledge of the signers thereof the Company is in default in the performance and observance of any of the terms, provisions and conditions of this Indenture (without regard to any period of grace or requirement of notice provided hereunder), and if the Company shall be in default, specifying all such defaults and the nature and status thereof of which the signers thereof may have knowledge.

(b) The Company shall, so long as any of the Notes are outstanding, deliver to the Trustee promptly, and in any event within 15 days, after becoming aware of any Default or Event of Default under this Indenture, an Officers’ Certificate specifying such Default or Event of Default and what action the Company is taking or proposes to take with respect thereto. The Trustee shall not be deemed to have knowledge of a Default or Event of Default unless one of its Responsible Officers receives written notice of the Default or Event of Default from the Company or any of the holders.

Section 4.04 Further Instruments and Acts.

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

Section 4.05 Maintenance of Office or Agency.

The Company will maintain in the Borough of Manhattan, City of New York, an office or agency of the Trustee, Note Registrar, Paying Agent and Conversion Agent where Notes may be presented or surrendered for payment, where Notes may be surrendered for registration of transfer, exchange, repurchase, redemption or conversion and where notices and demands to or upon the Company in respect of the Notes and this Indenture may be served. The Trustee's Corporate Trust Office shall initially be such office or agency where Notes may be surrendered for payment, and shall initially be such office or agency for all of the other aforesaid purposes. The Company shall give prompt written notice to the Trustee of the location, and of any change in the location, of any such office or agency (other than a change in the location of the office or agency of the Trustee). If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the address of the Trustee set forth in Section 13.02. The Company may also from time to time designate co-registrars and one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes, and may from time to time rescind such designations; *provided* that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain at least one Paying Agent having an office or agency in the Borough of Manhattan, City of New York.

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

Section 4.06 Provisions as to Paying Agent.

(a) If the Company shall appoint a Paying Agent other than the Trustee, or if the Trustee shall appoint such a Paying Agent, the Company will cause such Paying Agent to execute and deliver to the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provisions of this Section 4.06:

27

(1) that it will hold all sums held by it as such agent for the payment of the principal of and premium, if any, or interest (including Liquidated Damages, if any, and Additional Interest, if any) on the Notes (whether such sums have been paid to it by the Company or by any other obligor on the Notes) in trust for the benefit of the holders of the Notes;

(2) that it will give the Trustee notice of any failure by the Company (or by any other obligor on the Notes) to make any payment of the principal of and premium, if any, or interest (including Liquidated Damages, if any, and Additional Interest, if any) on the Notes when the same shall be due and payable; and

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

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

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

(c) Anything in this Section 4.06 to the contrary notwithstanding, the Company may, at any time, for the purpose of obtaining a satisfaction and discharge of this Indenture, or for any other reason, pay or cause to be paid to the Trustee all sums held in trust by the Company or any Paying Agent hereunder as required by this Section 4.06, such sums to be held by the Trustee upon the trusts herein contained and upon such payment by the Company or any Paying Agent to the Trustee, the Company or such Paying Agent shall be released from all further liability with respect to such sums.

(d) Anything in this Section 4.06 to the contrary notwithstanding, the agreement to hold sums in trust as provided in this Section 4.06 is subject to Sections 9.02 and 9.03.

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

Section 4.07 Appointments to Fill Vacancies in Trustee's Office.

The Company, whenever necessary to avoid or fill a vacancy in the office of Trustee, will appoint, upon the terms and conditions and otherwise as provided in Section 7.10, a Trustee, so that there shall at all times be a Trustee hereunder.

28

Section 4.08 Existence.

Subject to Article V and Section 12.03, respectively, each of the Company and the Guarantor shall do or cause to be done all things necessary to preserve and keep in full force and effect its existence and rights (charter and statutory); *provided* that the Company and the Guarantor shall not be required to preserve any such right if the Company or the Guarantor, as the case may be, shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company or the Guarantor, as the case may be, and that the loss thereof is not disadvantageous in any material respect to the holders.

Section 4.09 Taxes on Notes.

Subject to Sections 2.05(a) and 11.10, the Company will pay or discharge, or cause to be paid or discharged, before the same may become delinquent, all stamp taxes and other duties, if any, which may be imposed by the United States or any political subdivision thereof or therein in connection with the issuance, transfer, exchange, conversion, redemption or repurchase of any Notes or with respect to this Indenture.

Section 4.10 Rule 144A Information Requirement.

At any time when the Company is not subject to Section 13 or 15(d) of the Exchange Act, upon the request of a holder or any beneficial owner of Notes or holder or beneficial owner of Common Stock delivered upon conversion thereof, the Company will promptly furnish or cause to be furnished Rule 144A Information (as defined below) to such holder or any beneficial owner of Notes or holder or beneficial owner of Common Stock delivered upon conversion thereof or to a prospective purchaser of any such security designated by any such holder, as the case may be, to the extent required to permit compliance by such holder with Rule 144A under the Securities Act in connection with the resale of any such security. “**Rule 144A Information**” shall be such information as is specified pursuant to Rule 144A(d)(4) under the Securities Act or any successor provisions. Whether a Person is a beneficial owner shall be determined by the Company to the Company’s reasonable satisfaction.

Section 4.11 Stay, Extension and Usury Laws.

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

Section 4.12 Liquidated Damages.

If at any time Liquidated Damages become payable by the Company pursuant to the Registration Rights Agreement, the Company shall promptly deliver to the Trustee a certificate to that effect and stating (i) the amount of such Liquidated Damages that are payable and (ii) the date on which such Liquidated Damages are payable pursuant to the terms of the Registration Rights Agreement. Unless and

until a Responsible Officer of the Trustee receives such a certificate, the Trustee may assume without inquiry that no Liquidated Damages are payable.

**ARTICLE V
SUCCESSOR CORPORATION**

Section 5.01 When the Company May Consolidate, Merge or Transfer Assets.

The Company shall not consolidate with or merge with or into any other Person or sell, lease exchange or otherwise transfer (in one transaction or a series of related transactions) all or substantially all of its properties and assets to any other Person, unless:

(a) (i) the Company shall be the resulting or surviving corporation or (ii) the Person (if other than the Company) formed by such consolidation or with or into which the Company is merged or the Person which acquires by sale, lease, exchange or other transfer all or substantially all of the properties and assets of the Company (A) shall be a corporation organized and validly existing under the laws of the United States or any State thereof or the District of Columbia, and (B) shall expressly assume, by means of a supplemental indenture, executed and delivered to the Trustee, in form satisfactory to the Trustee, all of the obligations of the Company under the Notes, this Indenture and the Registration Rights Agreement;

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

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

For purposes of the foregoing, the transfer (by sale, lease, assignment, exchange or otherwise) of the properties and assets of one or more Subsidiaries (other than to the Company or another Subsidiary of the Company), which, if such assets were owned by the Company would constitute all or substantially all of the properties and assets of the Company, shall be deemed to be the transfer of all or substantially all of the properties and assets of the Company. The successor Person formed by such consolidation or with or into which the Company is merged or the successor Person to which such sale, lease, exchange or other transfer is made shall succeed to, and (except in the case of a lease) be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor had been named as the Company herein; and thereafter, except in the case of a lease of all or substantially all of the Company’s properties and assets and except for obligations the Company may have under a supplemental indenture pursuant to Section 10.06, the Company shall be discharged from all obligations and covenants under this Indenture and the Notes. Subject to Section 10.06, the

Company, the Trustee and the successor Person shall enter into a supplemental indenture to evidence the succession and substitution of such successor Person and such discharge and release of the Company, as applicable.

ARTICLE VI DEFAULTS AND REMEDIES

Section 6.01 Events Of Default.

An “**Event of Default,**” wherever used herein, means any one of the following events (whatever the reason for such Event of Default and whether or not it shall be caused voluntarily or involuntarily or

30

effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) the failure to pay interest (including Liquidated Damages, if any, and Additional Interest, if any) on any Notes when the same becomes due and payable and the continuation of such default for a period of 30 days;

(b) the failure to pay the principal of any Note, when such principal becomes due and payable, at Stated Maturity, upon acceleration, upon redemption or otherwise (including the failure to pay the Settlement Amount upon conversion or make a payment to repurchase Notes tendered pursuant to a Fundamental Change Repurchase Notice);

(c) the failure to provide a Company Fundamental Change Repurchase Notice in accordance with the terms of Section 3.05(b), and such failure continues for a period of two days;

(d) a default in the observance or performance of any other covenant or agreement contained in this Indenture which default continues for a period of 90 days after the Company receives written notice specifying the default (and demanding that such default be remedied) from the Trustee or the beneficial holders of at least 25% of the outstanding principal amount of the Notes (except in the case of a default with respect to Section 5.01, which will constitute an Event of Default with such notice requirement but without such passage of time requirement);

(e) a default under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness of the Company or any of its Subsidiaries, whether such Indebtedness now exists or is created after the issuance of the Notes, which default (i) is caused by a failure to pay principal of or premium, if any, or interest on such Indebtedness after any applicable grace periods provided in such Indebtedness on the date of such default (unless, prior to our receipt of an Acceleration Notice (as defined below) with respect to the Notes, such principal, premium, if any, or interest on such Indebtedness is paid or payment thereof is waived or cured) (a “**Payment Default**”) or (ii) results in the acceleration of such Indebtedness prior to its express maturity (unless, prior to our receipt of an Acceleration Notice with respect to the Notes, the acceleration of such Indebtedness is waived, cured, rescinded or annulled) and, in either such case, the principal amount of such Indebtedness, together with the principal amount of any other such Indebtedness under which there has been a Payment Default or the maturity of which has been so accelerated, aggregates at least the applicable Credit Agreement Dollar Threshold; *provided* that at such time, if any, as the Credit Agreement Cross-Default Provisions are no longer in effect, then this clause (e) shall cease to be of further force and effect until such time as such Credit Agreement Cross-Default Provisions or any similar provisions in any Credit Agreement are in effect, in which case this clause (e) shall be reinstated;

(f) one or more judgments in an uninsured aggregate amount in excess of \$10,000,000 shall have been rendered against the Company or any of its Subsidiaries and remain undischarged, unpaid or unstayed for a period of 60 days after such judgment or judgments become final and nonappealable;

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

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

31

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

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

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

(v) shall generally not pay its debts when such debts become due or shall admit in writing its inability to pay its debts generally;

(h) an involuntary case or other proceeding shall be commenced against the Company or a Significant Subsidiary of the Company seeking liquidation, reorganization or other relief with respect to the Company or a Significant Subsidiary of the Company or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the

Company or a Significant Subsidiary of the Company or any substantial part of the property of the Company or a Significant Subsidiary of the Company, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of 60 consecutive days;

- (i) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:
 - (I) is for relief against the Company or any Significant Subsidiary of the Company in an involuntary case or proceeding;
 - (II) appoints a trustee, receiver, liquidator, custodian or other similar official of the Company or any Significant Subsidiary of the Company or any substantial part of its properties; or
 - (III) orders the liquidation of the Company or any Significant Subsidiary of Company;

and, in each case in this clause (i), the order or decree remains unstayed and in effect for 60 consecutive days; or

(j) except as permitted by this Indenture, the Guarantee shall be held in any judicial proceeding to be unenforceable or invalid or shall cease for any reason to be in full force and effect, or the Guarantor, or any Person acting on its behalf, shall deny or disaffirm the Guarantor's obligation under the Guarantee.

Section 6.02 Acceleration.

(a) Subject to Section 6.02(c), if an Event of Default (other than an Event of Default specified in clause (g), (h) or (i) of Section 6.01) shall occur and be continuing, the Trustee may, and at the written request of the holders of at least 25% in aggregate principal amount of outstanding Notes shall, by notice in writing to the Company (the "**Acceleration Notice**"), declare the principal of and accrued but unpaid interest (including Liquidated Damages, if any, and Additional Interest, if any) on all the Notes to be immediately due and payable. Such notice shall specify the respective Event of Default and that it is an "Acceleration Notice." Upon the giving of an Acceleration Notice, all Obligations on all the Notes shall become immediately due and payable.

32

If an Event of Default specified in clause (g), (h) or (i) of Section 6.01 occurs and is continuing, then all unpaid Obligations on all of the outstanding Notes shall become and be immediately due and payable without any declaration or other act on the part of the Trustee or any holder.

(b) At any time after a declaration of acceleration with respect to the Notes as described in Section 6.02(a), the holders of a majority in aggregate principal amount of the outstanding Notes may rescind and cancel such declaration and its consequences (i) if the rescission would not conflict with any judgment or decree, (ii) if all existing Events of Default have been cured or waived except nonpayment of principal or interest (including Liquidated Damages, if any, and Additional Interest, if any) that has become due solely because of such acceleration, (iii) if interest on overdue installments of interest (to the extent the payment of such interest is lawful) and on overdue principal, which has become due otherwise than by such declaration of acceleration, has been paid and (iv) if the Company has paid the Trustee its reasonable compensation and reimbursed the Trustee for its expenses, disbursements and advances. No such rescission shall affect any subsequent Default or Event of Default or impair any rights arising therefrom.

(c) Notwithstanding the foregoing, the sole remedy for an Event of Default relating to the failure to comply with Section 4.02 or the requirements of Section 314(a)(1) of the TIA, will, for the 365 days after the occurrence of such an Event of Default, consist exclusively of the right to receive additional interest ("**Additional Interest**") on the Notes at an annual rate equal to 0.25% of the principal amount of the Notes to, and including, the 90th day following the occurrence of such Event of Default and at an annual rate equal to 0.50% of the aggregate principal amount of the Notes from and after the 91st day following the occurrence of such Event of Default. In no event will Additional Interest accrue at a rate exceeding 0.50% per annum. Any such Additional Interest will be payable in the same manner and on the same dates as the stated interest payable on the Notes. Additional Interest will accrue on all outstanding Notes from and including the date on which an Event of Default relating to a failure to comply with Section 4.02 or Section 314(a)(1) of the TIA first occurs to, but not including, the 365th day thereafter (or such earlier date on which such Event of Default shall have been cured or waived). On such 365th day (or earlier, if such Event of Default is cured or waived prior to such 365th day), such Additional Interest will cease to accrue and the Notes will be subject to acceleration as provided above if the Event of Default is continuing. The provisions of this Section 6.02(c) shall not affect the rights of holders of Notes in the event of the occurrence of any other Event of Default.

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

Section 6.03 Payments of Notes on Default; Suit Therefor.

The Company covenants that in the case of an Event of Default pursuant to Section 6.01(a) or 6.01(b), upon demand of the Trustee, the Company will pay to the Trustee, for the benefit of the holders of the Notes, (i) the whole amount that then shall be due and payable on all such Notes for principal and premium, if any, or interest (including Liquidated Damages, if any, and Additional Interest, if any), as the case may be, with interest upon the overdue principal and premium, if any, and (to the extent that payment of such interest is enforceable under applicable law) upon the overdue installments of accrued and unpaid interest (including Liquidated Damages, if any, and Additional Interest, if any) at the rate borne by the Notes, from the required payment date and, (ii) in addition thereto, any amounts due the Trustee under Section 7.06. Until such demand by the Trustee, the Company may pay the principal of

33

and premium, if any, and interest (including Liquidated Damages, if any, and Additional Interest, if any) on the Notes to the registered holders, whether or not the Notes are overdue.

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

In case there shall be pending proceedings for the bankruptcy or for the reorganization of the Company or any other obligor on the Notes under any Bankruptcy Law, or any other applicable law, or in case a receiver, assignee or trustee in bankruptcy or reorganization, liquidator, sequestrator or similar official shall have been appointed for or taken possession of the Company or such other obligor, the property of the Company or such other obligor, or in the case of any other judicial proceedings relative to the Company or such other obligor upon the Notes, or to the creditors or property of the Company or such other obligor, the Trustee, irrespective of whether the principal of the Notes shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand pursuant to the provisions of this Section 6.03, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount of principal, premium, if any, accrued and unpaid interest (including Liquidated Damages, if any, and Additional Interest, if any) in respect of the Notes, and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee and of the holders allowed in such judicial proceedings relative to the Company or any other obligor on the Notes, its or their creditors, or its or their property, and to collect and receive any monies or other property payable or deliverable on any such claims, and to distribute the same after the deduction of any amounts due the Trustee under Section 7.06, and to take any other action with respect to such claims, including participating as a member of any official committee of creditors, as it reasonably deems necessary or advisable, unless prohibited by law or applicable regulations, and any receiver, assignee or trustee in bankruptcy or reorganization, liquidator, custodian or similar official is hereby authorized by each of the holders to make such payments to the Trustee, and, in the event that the Trustee shall consent to the making of such payments directly to the holders, to pay to the Trustee any amount due it for reasonable compensation, expenses, advances and disbursements, including counsel fees and expenses incurred by it up to the date of such distribution. To the extent that such payment of reasonable compensation, expenses, advances and disbursements out of the estate in any such proceedings shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, monies, securities and other property which the holders of the Notes may be entitled to receive in such proceedings, whether in liquidation or under any plan of reorganization or arrangement or otherwise.

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

In any proceedings brought by the Trustee (and in any proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party) the Trustee shall be held to represent

all the holders of the Notes, and it shall not be necessary to make any holders of the Notes parties to any such proceedings.

Section 6.04 Application of Monies Collected by Trustee.

Any monies collected by the Trustee pursuant to this Section 6.04, shall be applied in the following order, at the date or dates fixed by the Trustee for the distribution of such monies, upon presentation of the several Notes, and stamping thereon the payment, if only partially paid, and upon surrender thereof, if fully paid:

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

SECOND: In case the principal of the outstanding Notes shall not have become due and be unpaid, to the payment of accrued and unpaid interest, if any (including Liquidated Damages, if any, and Additional Interest, if any), on the Notes in default in the order of the maturity of the installments of such interest (including Liquidated Damages, if any, and Additional Interest, if any), with interest (to the extent that such interest has been collected by the Trustee) as provided in Section 6.03 upon the overdue installments of interest (including Liquidated Damages, if any, and Additional Interest, if any) at the then applicable interest rate, such payments to be made ratably to the Persons entitled thereto;

THIRD: In case the principal of the outstanding Notes shall have become due, by declaration or otherwise, and be unpaid, to the payment of the whole amount then owing and unpaid upon the Notes for principal and premium, if any, and interest (including Liquidated Damages, if any, and Additional Interest, if any), with interest on the overdue principal and premium, if any, and (to the extent that such interest (including Liquidated Damages, if any, and Additional Interest, if any) has been collected by the Trustee) upon overdue installments of accrued and unpaid interest, as provided in Section 6.03, and in case such monies shall be insufficient to pay in full the whole amounts so due and unpaid upon the Notes, then to the payment of such principal and premium, if any, and interest (including Liquidated Damages, if any, and Additional Interest, if any) without preference or priority of principal and premium, if any, over interest (including Liquidated Damages, if any, and Additional Interest, if any), or of interest (including Liquidated Damages, if any, and Additional Interest, if any) over any other installment of interest (including Liquidated Damages, if any, and Additional Interest, if any), or of any Note over any other Note, ratably to the aggregate of such principal and premium, if any, and accrued and unpaid interest (including Liquidated Damages, if any, and Additional Interest, if any); and

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

Section 6.05 Proceedings by Holder.

(a) No holder of any Note shall have any right by virtue of or by reference to any provision of this Indenture to institute any suit, action or proceeding in equity or at law upon or under or with respect to this Indenture, or for the appointment of a receiver, trustee, liquidator, custodian or other

similar official, or for any other remedy hereunder, except in the case of a default in the payment of principal, premium, if any, or interest (including Liquidated Damages, if any, and Additional Interest, if any) on the Notes, unless (a) such holder previously shall have given to the Trustee written notice of an Event of Default and of the continuance thereof, as hereinbefore provided, (b) the holders of at least 25% in aggregate principal amount of the Notes then outstanding shall have made written request upon the Trustee to institute such action, suit or proceeding in its own name as Trustee hereunder and shall have offered to the Trustee such reasonable security or indemnity as it may require against the costs, liabilities

or expenses to be incurred therein or thereby, (c) the Trustee for 60 days after its receipt of such notice, request and offer of indemnity, shall have neglected or refused to institute any such action, suit or proceeding and (d) no direction inconsistent with such written request shall have been given to the Trustee pursuant to Section 6.08; it being understood and intended, and being expressly covenanted by the taker and holder of every Note with every other taker and holder and the Trustee, that no one or more holders of Notes shall have any right in any manner whatever by virtue of or by reference to any provision of this Indenture to affect, disturb or prejudice the rights of any other holder of Notes, or to obtain or seek to obtain priority over or preference to any other such holder, or to enforce any right under this Indenture, except in the manner herein provided and for the equal, ratable and common benefit of all holders of Notes (except as otherwise provided herein). For the protection and enforcement of this Section 6.05, each and every holder and the Trustee shall be entitled to such relief as can be given either at law or in equity.

(b) Notwithstanding any other provision of this Indenture and any provision of any Note, the right of any holder of any Note to receive payment of the principal of (including the Redemption Price or Fundamental Change Repurchase Price upon redemption or repurchase pursuant to Article III) and premium, if any, and accrued interest (including Liquidated Damages, if any, and Additional Interest, if any) on such Note, on or after the respective due dates expressed in such Note or in the event of redemption or repurchase, or to convert the Notes in accordance with Article XI, or to institute suit for the enforcement of any such payment on or after such respective dates or the enforcement of the right to convert against the Company shall not be impaired or affected without the consent of such holder.

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

Section 6.06 Proceedings by Trustee.

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

Section 6.07 Remedies Cumulative and Continuing.

All powers and remedies given by this Article VI to the Trustee or to the holders shall, to the extent permitted by law, be deemed cumulative and not exclusive of any thereof or of any other powers and remedies available to the Trustee or the holders of the Notes, by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements contained in this Indenture, and no delay or omission of the Trustee or of any holder of any of the Notes to exercise any right or power accruing upon any default or Event of Default occurring and continuing as aforesaid shall impair any such right or power, or shall be construed to be a waiver of any such default or any acquiescence therein, and, subject to the provisions of Section 6.05, every power and remedy given by this Article VI or by law to the Trustee or to the holders may be exercised from time to time, and as often as shall be deemed expedient, by the Trustee or by the holders.

Section 6.08 Direction of Proceedings and Waiver of Defaults by Majority of Holders.

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

The holders of a majority in aggregate principal amount of the outstanding Notes may, on behalf of the holders of all of the Notes, waive any past Default or Event of Default hereunder and its consequences except (i) a default in the payment of the principal of, premium, if any, or interest (including Liquidated Damages, if any, and Additional Interest, if any) on the Notes, (ii) a failure by the Company to convert any Notes as required by this Indenture, (iii) a default in the payment of the Fundamental Change Repurchase Price on the Fundamental Change Repurchase Date pursuant to Article III or (iv) a default in respect of a covenant or provisions hereof which under Article X cannot be modified or amended without the consent of the holders of all Notes then outstanding or each Note affected thereby. Upon any such waiver, the Company, the Trustee and the holders of the Notes shall be restored to their former positions and rights hereunder; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon. Whenever any Default or Event of Default hereunder shall have been waived as permitted by this Section 6.08, said Default or Event of Default shall for all purposes of the Notes and this Indenture be deemed to have been cured and to be not continuing; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any rights arising therefrom.

Section 6.09 Notice of Defaults.

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

Section 6.10 Undertaking to Pay Costs.

All parties to this Indenture agree, and each holder of any Note by such holder's acceptance thereof shall be deemed to have agreed, that any court may, in its discretion, require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; *provided* that the provisions of this Section 6.10 (to the extent permitted by law) shall not apply to any suit instituted by the Trustee, to any suit instituted by any holder, or group of holders, holding in the aggregate more than ten percent in principal amount of the outstanding Notes determined in accordance with Section 8.04, or to any suit instituted by any holder for the enforcement of the payment of the principal of, or premium, if any, or interest (including Liquidated Damages, if any, and Additional Interest, if any) on any Note on or after the

due date expressed in such Note or to any suit for the enforcement of the right to convert any Note in accordance with the provisions of Article XI.

**ARTICLE VII
THE TRUSTEE**

Section 7.01 Duties and Responsibilities of Trustee.

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

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

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

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

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

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

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

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

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

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

Trustee has actual knowledge thereof or unless the Trustee has otherwise received written notice thereof; and

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

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

Section 7.02 Reliance on Documents, Opinions, etc.

Except as otherwise provided in Section 7.01:

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

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

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

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

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

39

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

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

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

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

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

Section 7.03 No Responsibility for Recitals, etc.

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

Section 7.04 Trustee, Paying Agents, Conversion Agents or Note Registrar May Own Notes.

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

Section 7.05 Monies to be Held in Trust.

Subject to the provisions of Section 9.02, all monies received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received. Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. Except as otherwise provided herein, the Trustee shall be under no liability for interest on any money received by it hereunder except as may be agreed in writing from time to time by the Company and the Trustee.

The Company covenants and agrees to pay to the Trustee from time to time, and the Trustee shall be entitled to, such compensation for all services rendered by it hereunder in any capacity (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) as

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

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

Section 7.07 Officers' Certificate as Evidence.

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

Section 7.08 Conflicting Interests of Trustee.

If the Trustee has or shall acquire a conflicting interest within the meaning of the TIA, the Trustee shall either eliminate such interest or resign, to the extent and in the manner provided by, and subject to the provisions of, the TIA and this Indenture.

Section 7.09 Eligibility of Trustee.

There shall at all times be a Trustee hereunder which shall be a Person that is eligible pursuant to the TIA to act as such and has a combined capital and surplus of at least \$50,000,000 (or if such Person is a member of a bank holding company system, its bank holding company shall have a combined capital and surplus of at least \$50,000,000). If such Person publishes reports of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority, then for the purposes of this Section the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall

cease to be eligible in accordance with the provisions of this Section 7.09, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

Section 7.10 Resignation or Removal of Trustee.

(a) The Trustee may at any time resign by giving written notice of such resignation to the Company and to the holders of Notes. Upon receiving such notice of resignation, the Company shall promptly appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the resigning Trustee and one copy to the successor trustee. If no successor trustee shall have been so appointed and have accepted appointment 60 days after the mailing of such notice of resignation to the holders, the resigning Trustee may, upon ten Business Days' notice to the Company and the holders, appoint a successor identified in such notice or may petition, at the expense of the Company, any court of competent jurisdiction for the appointment of a successor trustee, or, if any holder who has been a bona fide holder of a Note or Notes for at least six months may, subject to the provisions of Section 6.10, on behalf of itself and all others similarly situated, petition any such court for the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

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

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

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

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

then, in any such case, the Company may remove the Trustee and appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee, or, subject to the provisions of Section 6.10, any holder who has been a bona fide holder of a Note or Notes for at least six months may, on behalf of itself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee; *provided* that if no successor Trustee shall have been appointed and have accepted appointment 60 days after either the Company or the holders has removed the Trustee, or the Trustee resigns, the Trustee so removed may petition, at the expense of the Company, any court of competent jurisdiction for an appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee.

(c) The holders of a majority in aggregate principal amount of the outstanding Notes may at any time remove the Trustee and nominate a successor trustee which shall be deemed appointed as successor trustee unless, within ten days after notice to the Company of such nomination, the Company objects thereto, in which case the Trustee so removed or any holder, or if such Trustee so removed or any holder fails to act, the Company, upon the terms and conditions and otherwise as in Section 7.10(a) provided, may petition any court of competent jurisdiction for an appointment of a successor trustee.

42

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

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

Section 7.11 Acceptance by Successor Trustee.

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

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

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

Section 7.12 Succession by Merger.

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

In case at the time such successor to the Trustee shall succeed to the trusts created by this Indenture, any of the Notes shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor trustee or authenticating agent appointed by such predecessor trustee, and deliver such Notes so authenticated; and in case at that time any of the Notes shall not have been authenticated, any successor to the Trustee or any authenticating agent appointed by such successor trustee may authenticate such Notes in the name of the successor

43

trustee; and in all such cases such certificates shall have the full force that is provided in the Notes or in this Indenture; *provided* that the right to adopt the certificate of authentication of any predecessor Trustee or authenticate Notes in the name of any predecessor Trustee shall apply only to its successor or successors by merger, conversion or consolidation.

Section 7.13 Preferential Collection of Claims.

If and when the Trustee shall be or become a creditor of the Company (or any other obligor upon the Notes), the Trustee shall be subject to the provisions of the TIA regarding the collection of the claims against the Company (or any such other obligor).

ARTICLE VIII THE NOTEHOLDERS

Section 8.01 Action by Noteholders.

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

Section 8.02 Proof of Execution by Holders.

Subject to the provisions of Sections 7.01 and 7.02, proof of the execution of any instrument by a holder or its agent or proxy shall be sufficient if made in accordance with such reasonable rules and regulations as may be prescribed by the Trustee or in such manner as shall be satisfactory to the Trustee. The holding of Notes shall be proved by the registry of such Notes or by a certificate of the Note Registrar.

Section 8.03 Absolute Owners.

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

44

Section 8.04 Company-Owned Notes Disregarded.

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

Section 8.05 Revocation of Consents; Future Holders Bound.

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

ARTICLE IX SATISFACTION AND DISCHARGE OF INDENTURE

Section 9.01 Discharge of Indenture.

When (a) the Company shall deliver to the Trustee for cancellation all outstanding Notes (other than any Notes that have been replaced pursuant to Section 2.06), or (b) all outstanding Notes shall have become due and payable (whether at Stated Maturity, on any Redemption Date, on any Fundamental Change Repurchase Date, upon conversion or otherwise), and the Company shall deposit with the Trustee, in trust, cash and shares of Common Stock (as applicable under the terms of this Indenture) sufficient to pay all of the outstanding Notes (other than any Notes that have been replaced pursuant to Section 2.06), including principal and premium, if any, and interest (including Liquidated Damages, if any, and Additional Interest, if any) due or to become due at such Stated Maturity, on such Redemption Date, on such Fundamental Change Repurchase Date, upon such conversion or otherwise, as the case may be, accompanied by a verification report, as to the sufficiency of the deposited amount, from an independent certified accountant or other financial professional

satisfactory to the Trustee, and if the Company shall also pay or cause to be paid all other sums payable hereunder by the Company, then this Indenture shall cease to be of further effect (except as to (i) remaining rights of registration of transfer, substitution and exchange and conversion of Notes, (ii) rights hereunder of holders to receive payments of

principal of and premium, if any, and interest (including Liquidated Damages, if any, and, Additional Interest, if any, and on the Notes and the other rights, duties and obligations of holders, as beneficiaries hereof with respect to the amounts, if any, so deposited with the Trustee and (iii) the rights, obligations and immunities of the Trustee hereunder), and the Trustee, on written demand of the Company accompanied by an Officers' Certificate and an Opinion of Counsel as required by Section 13.04 and at the cost and expense of the Company, shall execute proper instruments acknowledging satisfaction of and discharging this Indenture. The Company, however, hereby agrees to reimburse the Trustee for any costs or expenses thereafter reasonably and properly incurred by the Trustee and to compensate the Trustee for any services thereafter reasonably and properly rendered by the Trustee in connection with this Indenture or the Notes.

Section 9.02 Deposited Monies to be Held in Trust by Trustee.

Subject to Section 9.04, all monies deposited with the Trustee pursuant to Section 7.05, shall be held in trust for the sole benefit of the holders, and such monies shall be applied by the Trustee to the payment, either directly or through any Paying Agent (including the Company if acting as its own Paying Agent), to the holders of the particular Notes for the payment or redemption of which such monies have been deposited with the Trustee, of all sums due and to become due thereon for principal, premium, if any, and interest (including Liquidated Damages, if any and Additional Interest, if any). All moneys deposited with the Trustee pursuant to Section 7.05 (and held by it or any Paying Agent) for the payment of Notes subsequently converted shall be returned to the Company upon request. The Trustee is not responsible to anyone for interest on any deposited funds except as agreed in writing.

Section 9.03 Paying Agent to Repay Monies Held.

Upon the satisfaction and discharge of this Indenture, all monies then held by any Paying Agent (other than the Trustee) shall, upon written request of the Company, be repaid to it or paid to the Trustee, and thereupon such Paying Agent shall be released from all further liability with respect to such monies.

Section 9.04 Return of Unclaimed Monies.

Subject to the requirements of applicable law, any monies deposited with or paid to the Trustee for payment of the principal of, premium, if any, or interest (including Liquidated Damages, if any, and Additional Interest, if any) on Notes and not applied but remaining unclaimed by the holders of Notes for two years after the date upon which the principal of, premium, if any, or interest (including Liquidated Damages, if any, and Additional Interest, if any) on such Notes, as the case may be, shall have become due and payable, shall be repaid to the Company by the Trustee on demand and all liability of the Trustee shall thereupon cease with respect to such monies; and the holder of any of the Notes shall thereafter look only to the Company for any payment that such holder may be entitled to collect unless an applicable abandoned property law designates another Person.

Section 9.05 Reinstatement.

If the Trustee or the Paying Agent is unable to apply any money in accordance with Section 9.02 by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's obligations under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 9.01 until such time as the Trustee or the Paying Agent is permitted to apply all such money in accordance with Section 9.02; *provided* that if the Company makes any payment of principal of or premium, if any, or interest (including Liquidated Damages, if any, and Additional Interest, if any) on any Note following the

reinstatement of its obligations, the Company shall be subrogated to the rights of the holders of such Notes to receive such payment from the money held by the Trustee or Paying Agent.

**ARTICLE X
AMENDMENTS**

Section 10.01 Without Consent of Holders.

The Company and the Trustee may amend or supplement this Indenture or the Notes without notice to or consent of any holder of the Notes:

- (a) to cure any ambiguity, omission, defect or inconsistency in this Indenture;
- (b) to evidence the succession of another Person to the Company, or successive successions, and the assumption by the successor Person of the covenants, agreements and obligations of the Company pursuant to Article V;
- (c) to make any other change that does not adversely affect the rights of any holder of the Notes in any material respect; *provided* that any change to conform this Indenture to the Offering Memorandum shall be deemed not to adversely affect the rights of any holder of the Notes;
- (d) to comply with the provisions of the TIA (other than the qualification requirements);
- (e) to evidence and provide for the acceptance of appointment under this Indenture by a successor Trustee with respect to the Notes;

- (f) to make provisions with respect to the conversion right of the holders of the Notes pursuant to the requirements of this Indenture; or
- (g) to add additional guarantors of the Notes.

Section 10.02 With Consent of Holders.

The Company and the Trustee may amend or supplement this Indenture or the Notes without notice to any holder but with the consent of the holders of not less than a majority in aggregate principal amount of the outstanding Notes; *provided, however*, that without the consent of each holder affected an amendment, supplement or waiver, including a waiver pursuant to Section 6.08, may not:

- (a) change the Stated Maturity of, or any payment date of any installment of interest (including Liquidated Damages or Additional Interest) on, any Note;
- (b) reduce the principal amount or Redemption Price of, or the rate of interest (including Liquidated Damages or Additional Interest) on, any Note, whether upon acceleration, redemption or otherwise, or alter the manner of calculation of interest (including Liquidated Damages or Additional Interest) or the rate of accrual thereof on any Note;
- (c) change the currency for payment of principal of, or interest (including Liquidated Damages or Additional Interest) on, any Note;
- (d) impair the right to institute suit for the enforcement of any payment of any amount with respect to any Note when due;

47

-
- (e) adversely affect the conversion rights provided in Article XI, including reducing the total consideration receivable upon such conversion;
 - (f) modify in any material respect the provisions (including the definitions used therein) of this Indenture requiring the Company to make an offer to repurchase Notes upon a Fundamental Change pursuant to Section 3.05;
 - (g) reduce the percentage of principal amount of the outstanding Notes necessary to modify or amend this Indenture or to consent to any waiver provided for in this Indenture;
 - (h) modify the ranking or priority of the Notes or the Guarantee in a manner adverse to the holders of the notes in any material respect;
 - (i) waive a default in the payment of any amount or shares of Common Stock due in connection with any Note;
 - (j) make any changes to Section 6.05(b), Section 6.08 or this Section 10.02; or
 - (k) eliminate the Guarantee, except on the terms set forth in this Indenture.

It shall not be necessary for the consent of the holders under this Section 10.02 to approve the particular form of any proposed amendment, supplement or waiver, but it shall be sufficient if such consent approves the substance thereof.

After an amendment under this Section 10.02 becomes effective, the Company shall mail to each holder a notice briefly describing the amendment. Failure to mail the notice or a defect in the notice shall not affect the validity of the amendment.

Section 10.03 Compliance With Trust Indenture Act.

Every supplemental indenture executed pursuant to this Article X shall comply with the TIA; *provided, however*, that this provision shall not require any such supplemental Indenture or this Indenture to be qualified under the TIA.

Section 10.04 Revocation and Effect of Consents.

Until an amendment, waiver or other action by holders becomes effective, a consent thereto by a holder of a Note hereunder is a continuing consent by such holder and every subsequent holder of such Note or portion of such Note that evidences the same obligation as the consenting holder's Note, even if notation of the consent, waiver or action is not made on such Note. However, unless otherwise agreed by such holder or a predecessor holder, any such holder or subsequent holder may revoke the consent, waiver or action as to such holder's Note or portion of the Note if the Trustee receives the notice of revocation before the date the amendment, waiver or action becomes effective. After an amendment, waiver or action becomes effective, it shall bind every holder.

Section 10.05 Notation on or Exchange of Securities.

Notes authenticated and delivered after the execution of any supplemental indenture pursuant to this Article X may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company or the Trustee shall so determine, new Notes so modified as to conform, in the opinion of the Trustee and the Board of Directors,

48

to any modification of this Indenture contained in any such supplemental indenture may, at the Company's expense, be prepared and executed by the Company, and such new Notes may be authenticated and delivered by the Trustee in exchange for outstanding Notes.

Upon the written request of the Company, accompanied by a copy of the resolutions of the Board of Directors certified by the Company's Secretary or Assistant Secretary authorizing the execution of any such supplemental indenture, and upon the filing with the Trustee of evidence of the consent of holders as aforesaid, the Trustee shall join with the Company in the execution of such supplemental indenture unless such supplemental indenture affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such supplemental indenture. In signing any supplemental indenture the Trustee shall be entitled to receive, and (subject to the provisions of Section 7.01) shall be fully protected in relying upon, an Officers' Certificate and an Opinion of Counsel stating that such amendment is authorized or permitted by this Indenture.

Upon the execution of any supplemental indenture under this Article X, 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 Notes theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

ARTICLE XI CONVERSION OF THE SECURITIES

(a) Subject to and upon compliance with the provisions of this Indenture, prior to 5:00 p.m., New York City time, on the second Business Day immediately preceding the Stated Maturity, the holder of any Note not previously redeemed or repurchased shall have the right, at such holder's option, to convert the principal amount of the Note, or any portion of such principal amount which is a multiple of \$1,000, into cash and/or Common Stock as provided in Section 11.12 at the Conversion Rate in effect at such time (the "**Conversion Obligation**"), by surrender of the Note so to be converted in whole or in part, together with any required funds, under the circumstances and in the manner described in this Article XI; *provided, however*, that at any time prior to 5:00 p.m., New York City time, on the Business Day prior to December 15, 2011, holders may convert their Notes only if any of the conditions described below is satisfied:

(i) *Conversion Upon Satisfaction of Closing Sale Price Condition.* During any calendar quarter (and only during such calendar quarter) (each, a "**Quarter**") commencing after the date of this Indenture, if the Closing Sale Price of the Common Stock for at least 20 Trading Days in the period of 30 consecutive Trading Days ending on the last Trading Day of the Quarter immediately preceding such Quarter is more than 125% of the Conversion Price (appropriately adjusted to take into account the occurrence, during such 30 consecutive Trading Day period, of any event requiring adjustment of the Conversion Rate under this Indenture) on such 30th Trading Day;

(ii) *Conversion Upon Satisfaction of Trading Price Condition:* During the five consecutive Business Day period after any five consecutive Trading Day period in which the

Trading Price per \$1,000 principal amount of Notes, as determined following a request by a holder of Notes in accordance with the procedures described below in Section 11.01(d), for each Trading Day of such five Trading Day period was less than 95% of the product of the average of the Closing Sale Price of the Common Stock for such five Trading Day period and the then current Conversion Rate;

(iii) *Conversion Upon Notice of Redemption:* Such Note has been called for redemption by the Company pursuant to Section 3.01 and the redemption has not yet occurred, so long as the holder surrenders such Note for conversion prior to 5:00 p.m., New York City time, on the Business Day immediately preceding the applicable Redemption Date, even if the Note is not otherwise convertible at such time;

(iv) *Conversion Upon Specified Distributions:* The Company elects to:

(A) distribute to all holders of Common Stock rights or warrants entitling them to subscribe for or purchase, for a period expiring not more than 45 days after the date of distribution, shares of Common Stock (or securities convertible into Common Stock) at a price (or having a conversion price) per share less than the Current Market Price of the Common Stock, *provided* that no holder shall have the right to convert any Note pursuant to this Section 11.01(a)(iv)(A) as a result of the rights of holders of the Common Stock to participate in any dividend reinvestment plan made available all holders of the Common Stock; or

(B) distribute to all holders of Common Stock cash, other assets, debt securities or rights or warrants to purchase or subscribe for Capital Stock or other securities of the Company, which distribution has a Fair Market Value per share of Common Stock (as determined by the Board of Directors, whose determination shall be conclusive evidence of such Fair Market Value) exceeding 10% of the Closing Sale Price of the Common Stock on the Trading Day immediately preceding the declaration date for such distribution;

provided that the holder shall have no right to convert any Note pursuant to this Section 11.01(a)(iv) if the holder of a Note otherwise participates in the distribution described in this Section 11.01(a)(iv) on an as-converted basis (assuming conversion solely into shares of Common Stock at the then applicable Conversion Price) without conversion of such holder's Notes; or

(v) *Conversion Upon a Fundamental Change.* If the Company is party to a Fundamental Change, from and after the date that is 15 days prior to the anticipated effective date of such Fundamental Change until and including the date that is 15 days after the actual Effective Date (or, if such Fundamental Change also results in holders having the right to require us to repurchase their notes, until the Business Day immediately preceding the Fundamental Change Repurchase Date).

Whenever the Notes shall become convertible pursuant to this Section 11.01, the Company, or, at the Company's request, the Trustee in the name and at the expense of the Company, shall notify the holders of the event triggering such convertibility in the manner provided in Section 13.02 and, in the cases of clauses (iv) and (v) of this Section 11.01(a), in the manner provided in Sections 11.01(b) and (c), respectively, and the Company shall also publicly announce

(b) In the case of the foregoing clause (iv) of Section 11.01(a), the Company shall cause a notice of such distribution to be filed with the Trustee and the Conversion Agent and to be mailed to each holder of Notes no later than 45 days prior to the Ex-Dividend Date for such distribution. Once the Company has given such notice, holders may surrender their Notes for conversion at any time thereafter until the earlier of 5:00 p.m., New York City time, on the Business Day immediately preceding the Ex-Dividend Date or the Company's announcement that such distribution will not take place.

(c) In the case of the foregoing clause (v) of Section 11.01(a), the Company shall give notice to all holders of the Notes and to the Conversion Agent, at least 15 Trading Days prior to the anticipated effective date of such Fundamental Change, of such anticipated effective date. The Company shall also give notice, within four Trading Days after the Effective Date of such Fundamental Change, to all holders of the Notes and to the Conversion Agent that such Fundamental Change has become effective. Holders surrendering Notes for conversion at any time from and after the date that is 15 days prior to the anticipated effective date of such Fundamental Change until and including the date that is 15 days after the actual Effective Date (or, if such Fundamental Change also results in holders having a right to require the Company to repurchase their Notes in accordance with Section 3.05, until the Business Day immediately preceding the Fundamental Change Repurchase Date) shall be entitled to receive the Additional Shares in accordance with Section 11.07.

(d) For each Quarter of the Company commencing after the date of this Indenture and ending on the Quarter immediately prior to December 15, 2011, the Conversion Agent, on behalf of the Company, shall determine, on the first Business Day immediately after the last Trading Day of the prior Quarter, whether the Notes are convertible pursuant to clause (i) of Section 11.01(a), and, if so, shall notify the Trustee and the Company in writing.

(e) The Trustee shall have no obligation to determine the Trading Price of the Notes and whether the Notes are convertible pursuant to clause (ii) of Section 11.01(a) unless the Company has requested such determination; and the Company shall have no obligation to make such request unless a holder of Notes requests that the Company do so. If a holder provides such request, 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 for ten consecutive Trading Days to determine whether the Trading Prices for the Notes for each Trading Day in any five consecutive Trading Day period within such ten Trading Day period is less than 95% of the product of the average of the Closing Sale Price of the Common Stock for such five Trading Day Period and the then current Conversion Rate, and to notify the Company accordingly.

(f) A holder may convert a portion of a Note equal to \$1,000 or any integral multiple thereof. Provisions of this Indenture that apply to conversion of all of a Note also apply to conversion of a portion of a Note.

(g) If a Note is called for redemption pursuant to Section 3.01, in order to convert such Note, the holder must follow the procedures for conversion set forth in Section 11.02 at any time prior to 5:00 p.m., New York City time, on the Business Day immediately preceding the applicable Redemption Date (unless the Company shall default in paying the Redemption Price when due, in which case the conversion right shall terminate on the date such default is cured and such Note is redeemed).

(h) A Note in respect of which a holder has delivered a Fundamental Change Repurchase Notice pursuant to Section 3.05 exercising the option of such holder to require the Company to repurchase such Note may be converted only if such Fundamental Change Repurchase Notice is withdrawn by a written notice of withdrawal delivered to the Paying Agent prior to 5:00 p.m., New York

City time, on the Business Day immediately preceding the Fundamental Change Repurchase Date in accordance with Section 3.06(b).

(i) A holder of Notes is not entitled to any rights of a holder of Common Stock until such holder has converted its Notes into Common Stock.

Section 11.02 Exercise of Conversion Right; No Adjustment for Interest or Dividends.

To exercise the conversion right with respect to any Note in certificated form, the Company must receive at the office or agency of the Company maintained for that purpose in the City of New York or, at the option of such holder, the Corporate Trust Office, such Note with the original or facsimile of the form entitled "**Conversion Notice**" on the reverse thereof, duly completed and manually signed, together with such Notes duly endorsed for transfer, accompanied by the funds, if any, required by this Section 11.02. Such notice shall also state the name or names (with address or addresses) in which the certificate or certificates for shares of Common Stock which shall be issuable on such conversion shall be issued, and shall be accompanied by transfer or similar taxes, if required pursuant to Section 11.10.

To exercise the conversion right with respect to any interest in a Global Note, the beneficial holder must complete, or cause to be completed, the appropriate instruction form for conversion pursuant to the Depository's book-entry conversion program; deliver, or cause to be delivered, by book-entry delivery an interest in such Global Note; furnish appropriate endorsements and transfer documents if required by the Company or the Trustee or Conversion Agent; and pay the funds, if any, required by this Section 11.02 and any transfer taxes if required by Section 11.10.

If the Company will issue shares of Common Stock upon settlement of its conversion obligations in accordance with Section 11.12, after satisfaction of the requirements for conversion set forth above, subject to compliance with any restrictions on transfer if shares issuable on conversion are to be issued in a name other than that of the holder (as if such transfer were a transfer of the Note or Notes (or portion thereof) so converted), and in accordance with the time periods set forth in this Article XI, the Company shall issue and shall deliver to such holder at the office or agency maintained by the Company for such purpose pursuant to Section 4.05:

(i) a certificate or certificates for the number of full shares of Common Stock (if any) issuable upon the conversion of such Note or portion thereof as determined by the Company in accordance with the provisions of Sections 11.07 (if applicable) and 11.12 (or in the case of Notes submitted for conversion in connection with a Fundamental Change on or after the record date for receiving distributions in connection with the Fundamental Change, or if earlier, the Effective Date, the Settlement Amount pursuant to Section 11.12 shall be determined based on the kind and amount of cash, securities and other assets or property that a holder of Notes would have owned or been entitled to receive in such transaction in accordance with Sections 11.06 and 11.07; and *provided further* that if the determination date is the record date, the holder shall receive the Settlement Amount on the Effective Date), and

(ii) a check or cash in respect of any fractional interest in respect of a share of Common Stock arising upon such conversion, calculated by the Company as provided in Section 11.03.

The certificate or certificates for the number of full shares of Common Stock into which the Notes are converted (and cash in lieu of fractional shares) will be delivered to a converting holder after satisfaction of the requirements for conversion set forth above, in accordance with this Section 11.02 and Sections 11.03, 11.07 and 11.12.

52

Each conversion shall be deemed to have been effected as to any such Note (or portion thereof) on the date on which the requirements set forth above in this Section 11.02 have been satisfied as to such Note (or portion thereof) (the “**Conversion Date**”). The Person in whose name any shares of Common Stock shall be issuable upon such conversion, if any, shall become on the date such shares are issued to such Person (whether physically or in book-entry form) in accordance with the provisions of this Article XI, the holder of record of such shares.

No payment or other adjustment shall be made for interest (including Liquidated Damages, if any, and Additional Interest, if any) accrued on any Note converted or for dividends on any shares issued upon the conversion of such Note as provided in this Article XI. Notwithstanding the foregoing, in the case of Notes submitted for conversion in connection with a Fundamental Change, such Notes shall continue to represent the right to receive the Additional Shares, if any, payable pursuant to Section 11.07, until such Additional Shares are so paid.

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

Upon the conversion of a Note, the accrued but unpaid interest (including Liquidated Damages, if any, and Additional Interest, if any) attributable to the period from the issue date of the Note to the Conversion Date, with respect to the converted Note, shall not be cancelled, extinguished or forfeited, but rather shall be deemed to be paid in full to the holder thereof through delivery of cash and/or shares of Common Stock, as applicable, pursuant to Section 11.12 (together with the cash payment, if any in lieu of fractional shares), in exchange for the Note being converted pursuant to the provisions hereof; and the cash, if any, and Fair Market Value of the shares of Common Stock, if any (together with any such cash payment in lieu of fractional shares), shall be treated as delivered, to the extent thereof, first in exchange for and in satisfaction of our obligation to pay the principal amount of the converted Note, the accrued but unpaid interest (including Liquidated Damages, if any, and Additional Interest, if any) through the Conversion Date from the issue date, and the balance, if any, of the cash, if any, and the Fair Market Value of the shares of Common Stock, if any (and any such cash payment), shall be treated as issued in exchange for and in satisfaction of the right to convert the Note being converted pursuant to the provisions hereof.

Notwithstanding the foregoing, if Notes are converted after 5:00 p.m., New York City time, on a Record Date, and prior to 9:00 a.m., New York City time, on the corresponding Interest Payment Date, holders of such Notes at 5:00 p.m., New York City time, on the Record Date will receive the interest (including Liquidated Damages, if any, and Additional Interest, if any) payable on such Notes on the corresponding Interest Payment Date notwithstanding the conversion. Notes, upon surrender for conversion during the period from 5:00 p.m., New York City time, on a Record Date to 9:00 a.m., New York City time, on the corresponding Interest Payment Date, must be accompanied by payment, in immediately available funds or other funds acceptable to the Company, of an amount equal to the amount of interest (including Liquidated Damages, if any and Additional Interest, if any) payable on the principal amount of the Notes so converted; *provided* that no such payment need be made (1) if a holder converts its Notes in connection with a redemption and the Company has specified a Redemption Date that is after a Record Date and on or prior to the corresponding Interest Payment Date, (2) if a holder converts its Notes in connection with a Fundamental Change and the Company has specified a Fundamental Change Repurchase Date that is after a Record Date and on or prior to the corresponding Interest Payment Date, (3) with respect to Notes surrendered for conversion on the Interest Payment Date, (4) if a holder converts

53

its Notes after the Record Date immediately preceding the Stated Maturity, or (5) to the extent of any overdue interest, if any overdue interest exists at the time of conversion with respect to such Note.

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

Section 11.03 Cash Payments in Lieu of Fractional Shares.

(a) The Company shall not issue any fractional share of Common Stock upon conversion of a Note.

(b) The Company shall pay cash for fractional shares of Common Stock (calculated on an aggregate basis for the Notes surrendered by a holder for conversion) based on the daily VWAP of the Common Stock on the final Trading Day of the applicable Cash Settlement Averaging Period.

The initial Conversion Rate for the Notes (the “**Conversion Rate**”) is 8.9702 shares of Common Stock per each \$1,000 principal amount of the Notes, subject to adjustment as provided in Sections 11.05 and 11.07, and subject to the right of the Company to settle all or a portion of its conversion obligations in cash in accordance with Section 11.12.

Section 11.05 Adjustments to Conversion Rate.

The Conversion Rate shall be adjusted from time to time by the Company as follows (and as provided in Section 11.07):

(a) If the Company shall hereafter pay a dividend or make a distribution to all holders of the outstanding Common Stock in shares of Common Stock, the Conversion Rate shall be increased so that the same shall equal the rate determined by multiplying the Conversion Rate in effect at 9:00 a.m., New York City time, on the day immediately following the record date by a fraction,

(i) the numerator of which shall be the sum of the number of shares of Common Stock outstanding at 5:00 p.m., New York City time, on such record date and the total number of shares of Common Stock constituting such dividend or other distribution; and

(ii) the denominator of which shall be the number of shares of Common Stock outstanding at 5:00 p.m., New York City time, on such record date.

Such increase shall become effective immediately after 9:00 a.m., New York City time, on the day immediately following such record date. If any dividend or distribution of the type described in this Section 11.05(a) is declared but not so paid or made, the Conversion Rate shall again be adjusted to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

(b) If the Company shall issue rights or warrants to all holders of Common Stock entitling them to subscribe for or purchase, for a period expiring not more than 45 days after the date of distribution, shares of Common Stock (or securities convertible into Common Stock) at a price (or having a conversion price) per share less than the Current Market Price on the record date, the Conversion Rate

shall be increased so that the same shall equal the rate determined by multiplying the Conversion Rate in effect immediately prior to such record date by a fraction,

(i) the numerator of which shall be the number of shares of Common Stock outstanding at 5:00 p.m., New York City time, on such record date plus the total number of shares of Common Stock so offered for subscription or purchase (or into which the convertible securities so offered are convertible); and

(ii) the denominator of which shall be the number of shares of Common Stock outstanding at 5:00 p.m., New York City time, on such record date plus the number of shares which the aggregate offering price of the total number of shares so offered for subscription or purchase (or the aggregate conversion price of the convertible securities so offered) would purchase at such Current Market Price.

Such adjustment shall be successively made whenever any such rights or warrants are issued, and shall become effective immediately after 9:00 a.m., New York City time, on the day immediately following such record date. To the extent that shares of Common Stock (or securities convertible into Common Stock) are not delivered pursuant to such rights or warrants, upon the expiration or termination of such rights or warrants, the Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect had the adjustment made upon the issuance of such rights or warrants been made on the basis of delivery of only the number of shares of Common Stock (or securities convertible into Common Stock) actually delivered. If such rights or warrants are not so issued, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such record date had not been fixed. In determining whether any rights or warrants entitle the holders to subscribe for or purchase shares of Common Stock (or securities convertible into Common Stock) at a price (or having a conversion price) per share less than such Current Market Price, and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account any consideration received by the Company for such rights or warrants and any amount payable on exercise or conversion thereof, the Fair Market Value of such consideration, if other than cash, to be determined by the Board of Directors, whose determination shall be conclusive. Notwithstanding the foregoing, no adjustment shall be made to the Conversion Rate pursuant to this Section 11.05(b) for the rights of holders of Common Stock to participate in any dividend reinvestment plan made available to all holders of Common Stock.

(c) If the outstanding shares of Common Stock shall be subdivided into a greater number of shares of Common Stock, the Conversion Rate in effect at 9:00 a.m., New York City time, on the day immediately following the day upon which such subdivision becomes effective shall be proportionately increased, and conversely, in the event outstanding shares of Common Stock shall be combined into a smaller number of shares of Common Stock, the Conversion Rate in effect at 9:00 a.m., New York City time, on the day immediately following the day upon which such combination becomes effective shall be proportionately reduced, such increase or reduction, as the case may be, to become effective immediately after 9:00 a.m., New York City time, on the day immediately following the day upon which such subdivision or combination becomes effective.

(d) If the Company shall, by dividend or otherwise, distribute to all holders of Common Stock shares of any class of Capital Stock of the Company (other than any dividends or distributions to which Section 11.05(a) applies) or evidences of its indebtedness or assets (including securities, but excluding (i) any rights or warrants referred to in Section 11.05(b), (ii) any dividend or distribution paid exclusively in cash or (iii) any dividends and distributions in connection with a reclassification, consolidation, merger, combination or sale or conveyance to which Section 11.06 applies) (any of the foregoing hereinafter referred to in this Section 11.05(d) as the “**Distributed Property**”), then, in each such case, the Conversion Rate shall be increased so that the same shall be equal to the rate determined by

multiplying the Conversion Rate in effect on the record date with respect to such distribution by a fraction,

(i) the numerator of which shall be the Current Market Price on such record date; and

(ii) the denominator of which shall be the Current Market Price on such record date less the Fair Market Value (as determined by the Board of Directors, whose determination shall be conclusive, and described in a resolution of the Board of Directors) on such record date of the portion of the Distributed Property applicable to one share of Common Stock (determined on the basis of the number of shares of the Common Stock outstanding on such record date).

Such adjustment shall become effective immediately prior to 9:00 a.m., New York City time, on the day immediately following such record date; *provided* that if the then Fair Market Value (as so determined by the Board of Directors) of the portion of the Distributed Property applicable to one share of Common Stock is equal to or greater than the Current Market Price on the record date, in lieu of the foregoing adjustment, adequate provision shall be made so that each holder of Notes shall have the right to receive upon conversion the amount of Distributed Property such holder would have received had such holder converted its Notes on the record date (assuming conversion solely into shares of Common Stock). To the extent that any of the Distributed Property is not distributed, the Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect had the adjustment made been made on the basis of only the Distributed Property actually distributed. If such dividend or distribution is not so paid or made, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared. If the Board of Directors determines the Fair Market Value of any distribution for purposes of this Section 11.05(d) by reference to the trading market for any securities, it must in doing so consider the prices in such market over the same period used in computing the Current Market Price on the applicable record date.

Subject to the provisions of Section 11.08, rights or warrants (including rights under any Rights Plan) distributed by the Company to all holders of Common Stock entitling the holders thereof to subscribe for or purchase shares of the Company's Capital Stock (either initially or under certain circumstances), which rights or warrants, until the occurrence of a specified event or events ("**Trigger Event**"): (i) are deemed to be transferred with such shares of Common Stock; (ii) are not exercisable; and (iii) are also issued in respect of future issuances of Common Stock, shall be deemed not to have been distributed for purposes of this Section 11.05(d) (and no adjustment to the Conversion Rate under this Section 11.05(d) will be required) until the occurrence of the earliest Trigger Event, whereupon such rights and warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Rate shall be made under this Section 11.05(d). If any such right or warrant, including any such existing rights or warrants distributed prior to the date of this Indenture, are subject to events, upon the occurrence of which such rights or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and record date with respect to new rights or warrants with such rights (and a termination or expiration of the existing rights or warrants without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of rights or warrants, or any Trigger Event or other event (of the type described in the preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under this Section 11.05(d) was made, (1) in the case of any such rights or warrants that shall all have been redeemed or repurchased without exercise by any holders thereof, the Conversion Rate shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or repurchase price received by a holder or holders of Common Stock with respect to such rights or warrants (assuming such holder had retained such rights or warrants), made to all holders of

Common Stock as of the date of such redemption or repurchase, and (2) in the case of such rights or warrants that shall have expired or been terminated without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such expired or terminated rights and warrants had not been issued.

For purposes of this Section 11.05(d), Section 11.05(a) and Section 11.05(b), any dividend or distribution to which this Section 11.05(d) is applicable that also includes shares of Common Stock, or rights or warrants to subscribe for or purchase shares of Common Stock (or both), shall be deemed instead to be (1) a dividend or distribution of the evidences of indebtedness, assets or shares of Capital Stock other than such shares of Common Stock or rights or warrants (and any Conversion Rate adjustment required by this Section 11.05(d) with respect to such dividend or distribution shall then be made), immediately followed by (2) a dividend or distribution of such shares of Common Stock or such rights or warrants (and any further Conversion Rate adjustment required by Sections 11.05(a) and 11.05(b) with respect to such dividend or distribution shall then be made), except any shares of Common Stock included in such dividend or distribution shall not be deemed "outstanding at 5:00 p.m., New York City time, on such record date" within the meaning of Sections 11.05(a) and 11.05(b).

(e) If the Company shall, by dividend or otherwise, distribute to all holders of its Common Stock cash (excluding (i) any dividend or distribution in connection with the liquidation, dissolution or winding up of the Company, whether voluntary or involuntary, (ii) any quarterly cash dividend on its Common Stock to the extent that the aggregate amount of cash distributions per share of Common Stock in any quarter does not exceed \$0.71 (the "**Dividend Threshold Amount**") and (iii) any dividends and distributions in connection with a reclassification, consolidation, merger, combination or sale or conveyance to which Section 11.06 applies), then, in such case, the Conversion Rate shall be increased so that the same shall equal the rate determined by multiplying the Conversion Rate in effect immediately prior to 5:00 p.m., New York City time, on such record date by a fraction,

(i) the numerator of which shall be the Current Market Price on such record date less the Dividend Threshold Amount (as such Dividend Threshold Amount may be adjusted pursuant to this Section 11.05(e)); and

(ii) the denominator of which shall be the Current Market Price on such record date less the amount of cash so distributed applicable to one share of Common Stock.

Such adjustment shall be effective immediately prior to 9:00 a.m., New York City time, on the day immediately following the record date; *provided* that if the portion of the cash so distributed applicable to one share of Common Stock is equal to or greater than the Current Market Price on the record date, in lieu of the foregoing adjustment, adequate provision shall be made so that each holder of Notes shall have the right to receive upon conversion the amount of cash such holder would have received had such holder converted Notes on the record date (assuming conversion solely into shares of Common Stock). To the extent that not all of such dividend or distribution is made, the Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect had the adjustment made been made on the basis of only the dividend or distribution actually made. If none of such dividend or distribution is so paid or made, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared. If an adjustment is required to be made as set forth in this Section 11.05(e) as a result of a distribution that is not a quarterly dividend, the Dividend Threshold

Amount shall be deemed to be zero for purposes of calculating the adjustment to the Conversion Rate under this Section 11.05(e). The Dividend Threshold Amount shall be adjusted inversely proportional to the adjustments to the Conversion Rate made pursuant to Sections 11.05(a), (b), (c), (d), (f) and (g).

(f) If a tender or exchange offer made by the Company or any Subsidiary for all or any portion of the Common Stock shall require the payment (other than payments made under an “odd-lot”

57

stock sale program) to stockholders of consideration per share of Common Stock having a Fair Market Value (as determined by the Board of Directors, whose determination shall be conclusive and described in a resolution of the Board of Directors) that, as of the last time (the “**Expiration Time**”) tenders or exchanges may be made pursuant to such tender or exchange offer, exceeds the Closing Sale Price of a share of Common Stock on the Trading Day next succeeding the Expiration Time, the Conversion Rate shall be increased so that the same shall equal the rate determined by multiplying the Conversion Rate in effect immediately prior to the Expiration Time by a fraction,

(i) the numerator of which shall be the sum of (x) the Fair Market Value (determined as aforesaid) of the aggregate consideration payable to stockholders based on the acceptance (up to any maximum specified in the terms of the tender or exchange offer) of all shares validly tendered or exchanged and not withdrawn as of the Expiration Time (the shares deemed so accepted up to any such maximum, being referred to as the “**Purchased Shares**”) and (y) the product of the number of shares of Common Stock outstanding (less any Purchased Shares) at the Expiration Time and the Closing Sale Price of a share of Common Stock on the Trading Day next succeeding the Expiration Time; and

(ii) the denominator of which shall be the number of shares of Common Stock outstanding (including any Purchased Shares) at the Expiration Time multiplied by the Closing Sale Price of a share of Common Stock on the Trading Day next succeeding the Expiration Time.

Such adjustment shall become effective immediately prior to 9:00 a.m., New York City time, on the day immediately following the Expiration Time. In the event that the Company or any such Subsidiary, as the case may be, is obligated to purchase shares pursuant to any such tender or exchange offer, but the Company or any such Subsidiary, as the case may be, is permanently prevented by applicable law from effecting any such purchases or all such purchases are rescinded, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such tender or exchange offer had not been made.

(g) If the Company pays a dividend or makes a distribution to all or substantially all holders of Common Stock consisting of Capital Stock of, or similar equity interests in, a Subsidiary or other business unit of the Company, unless the Company distributes such Capital Stock or equity interests to holders of the Notes in such distribution on the same basis as they would have received had such holders converted their Notes into shares of Common Stock immediately prior to such distributions, the Conversion Rate shall be increased so that the same shall be equal to the rate determined by multiplying the Conversion Rate in effect on the record date with respect to such distribution by a fraction,

(i) the numerator of which shall be the sum of (A) the average of the Closing Sale Prices of the Common Stock for the ten Trading Days commencing on and including the fifth Trading Day after the date on which “ex-dividend trading” commences for such dividend or distribution on The New York Stock Exchange or such other national or regional exchange or market on which such securities are then listed or quoted (the “**Ex-Dividend Date**”) plus (B) the Fair Market Value of the securities distributed in respect of each share of Common Stock, which shall equal the number of securities distributed in respect of each share of Common Stock multiplied by the average of the Closing Sale Prices of those distributed securities for the ten Trading Days commencing on and including the fifth Trading Day after the Ex-Dividend Date; and

(ii) the denominator of which shall be the average of the Closing Sale Prices of the Common Stock for the ten Trading Days commencing on and including the fifth Trading Day after the Ex-Dividend Date.

58

Such adjustment shall become effective immediately prior to 9:00 a.m., New York City time, on the day immediately following the 15th Trading Day after the Ex-Dividend Date.

(h) To the fullest extent permitted by applicable law, the Company from time to time may increase the Conversion Rate by any amount for any period of time if the period is at least 20 Business Days and the increase is irrevocable during the period and the Board of Directors determines in good faith that such increase would be in the best interests of the Company, which determination shall be conclusive. Whenever the Conversion Rate is increased pursuant to the preceding sentence, the Company shall mail to each holder of the Notes at the address of such holder as it appears in the stock register a notice of the increase at least 15 days prior to the date the increased Conversion Rate takes effect, and such notice shall state the increased Conversion Rate and the period during which it will be in effect.

(i) No adjustment need be made, except as set forth in this Section 11.05, for any issuance of Common Stock or securities convertible, exercisable or exchangeable into Common Stock. Interest will not accrue on any cash into which the Notes may be convertible.

(j) No adjustment in the Conversion Rate need be made: (a) upon the issuance of Common Stock under any present or future employee benefits plan or program of the Company or in connection with an acquisition made by the Company; (b) upon the issuance of Common Stock pursuant to (i) the exercise of any options, warrants or rights to purchase such Common Stock, (ii) the exchange of any exchangeable securities for such Common Stock or (iii) the conversion of any convertible securities into such Common Stock (except as expressly set forth herein); or (c) for a change in the par value or a change to no par value of the Common Stock.

(k) If, as a result of an adjustment made pursuant to Section 11.05(a) through (g) above, the holder of any Note thereafter surrendered for conversion shall become entitled to receive any shares of Capital Stock of the Company other than shares of Common Stock, thereafter the Conversion Rate of such other shares so receivable upon conversion of any Notes shall be subject to adjustment from time to time in a manner and on terms as nearly equivalent as practicable to the provisions with respect to Common Stock contained in this Article XI.

(l) Whenever the Conversion Rate is adjusted as herein provided, the Company shall promptly file with the Conversion Agent an Officers' Certificate setting forth the Conversion Rate after such adjustment and setting forth a brief statement of the facts requiring such adjustment. Unless and until a Responsible Officer of the Conversion Agent shall have received such Officers' Certificate, the Conversion Agent shall not be deemed to have knowledge of any adjustment of the Conversion Rate and may assume that the last Conversion Rate of which it has knowledge is still in effect. Promptly after delivery of such certificate, the Company shall prepare a notice of such adjustment of the Conversion Rate setting forth the adjusted Conversion Rate and the date on which each adjustment becomes effective and shall mail such notice of such adjustment of the Conversion Rate to each holder of Notes at its last address appearing in the Note Register within 20 days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of any such adjustment.

(m) For purposes of this Section 11.05, the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Company, unless such treasury shares participate in any distribution or dividend that requires an adjustment pursuant to this Section 11.05, but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock.

(n) For purposes of this Section 11.05, "record date" means with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock have the right to receive any cash, securities or other property or in which the Common Stock (or other applicable security) is

exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of stockholders entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors or by statute, contract or otherwise).

Section 11.06 Effect of Reclassification, Consolidation, Merger or Sale on Conversion Privilege.

(a) If any of the following events occur (including as a result of a Fundamental Change), namely (i) any reclassification or change of the outstanding shares of Common Stock (other than a subdivision or combination to which Section 11.05(c) applies), (ii) any consolidation, merger or combination of the Company with another Person as a result of which holders of Common Stock shall be entitled to receive stock, other securities or other property or assets (including cash) with respect to or in exchange for such Common Stock, or (iii) any sale or conveyance of all or substantially all of the properties and assets of the Company to any other Person as a result of which holders of Common Stock shall be entitled to receive stock, other securities or other property or assets (including cash) with respect to or in exchange for such Common Stock, then each Note outstanding immediately prior to such transaction shall be, and 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 TIA as in force at the date of execution of such supplemental indenture) providing that each such Note shall be, convertible into the kind and amount of shares of stock, other securities or other property or assets (including cash), and in the same proportion, receivable upon such reclassification, change, consolidation, merger, combination, sale or conveyance by a holder of a number of shares of Common Stock issuable upon conversion of such Note (assuming conversion solely into shares of Common Stock and assuming, for such purposes, a sufficient number of authorized shares of Common Stock would have been available to convert all such Notes) immediately prior to such reclassification, change, consolidation, merger, combination, sale or conveyance, subject to the Company's (or the successor's) right to deliver cash, shares of Common Stock or a combination of cash or Common Stock, as described under Section 11.12. In the event holders of Common Stock have the opportunity to elect the form of consideration to be received in such reclassification, change, consolidation, merger, combination, sale or conveyance, the Company shall make adequate provision whereby the holders of the Notes shall have the opportunity, on a timely basis, to determine the form of consideration into which all of the Notes, treated as a single class, shall be convertible. Such determination shall be based on the blended, weighted average of elections made by holders of the Notes who participate in such determination and shall be subject to any limitations to which all of the holders of the Common Stock are subject, such as pro rata reductions applicable to any portion of the consideration payable.

Such supplemental indenture shall provide for provisions and adjustments which shall be as nearly equivalent as may be practicable to the provisions and adjustments provided for in this Article XI and Article III and the definition of Fundamental Change, as appropriate, as determined in good faith by the Company (which determination shall be conclusive and binding), to make such provisions apply to such other Person if different from the original issuer of the Notes.

(b) Any issuer of securities included in the consideration referred to in Section 11.06(a) shall execute an amendment to the Registration Rights Agreement (to the extent any Registrable Securities (as defined therein) remain outstanding) to make the provisions thereof applicable to such securities.

(c) The Company shall cause notice of the application of this Section 11.06 and the execution of any supplemental indenture required by this Section 11.06 to be delivered to each holder of the Notes at the address of such holder as it appears in the Note Register within 20 days after the execution thereof and shall issue a press release containing such information and publish such information on its web site. Failure to deliver such notice shall not affect the legality or validity of any conversion right pursuant to this Section 11.06 or of the supplemental indenture.

(d) The above provisions of this Section 11.06 shall similarly apply to successive reclassifications, changes, consolidations, mergers, combinations, sales and conveyances, and the provisions of Section 11.05 shall apply to any shares of Capital Stock received by the holders of Common Stock in any such reclassification, change, consolidation, merger, combination, sale or conveyance. In addition, if this Section 11.06 applies to any event or occurrence, Section 11.05 shall not apply to such event or occurrence.

Section 11.07 Additional Shares Upon the Occurrence of a Fundamental Change.

(a) Subject to the provisions hereof, if a holder elects to convert its Notes pursuant to Section 11.01(a)(v) in connection with a Fundamental Change that occurs on or prior to the Stated Maturity, the Company will increase the applicable Conversion Rate for Notes so surrendered for conversion at any time during the period that is 15 days prior to the date announced by the Company as the anticipated effective date for the Fundamental Change and until and including the date that is 15 days after the Effective Date such that the holder will be entitled to receive, in addition to the Settlement Amount it is entitled to receive pursuant to Section 11.12, a number of shares of Common Stock as set forth in Section 11.07(b) (the "Additional Shares"), subject to the Company's right to settle all or a portion of its conversion obligations in cash in accordance with Section 11.12.

(b) The number of Additional Shares will be determined by reference to the table attached as Schedule A hereto and is based on the date on which the Fundamental Change becomes effective (the "Effective Date") and the stock price calculated as follows (the "Stock Price"): if holders of the Common Stock receive only cash in the transaction constituting the Fundamental Change, the Stock Price will equal the cash amount paid per share; otherwise, the Stock Price will equal the average of the Closing Sale Price of the Common Stock over the five Trading Days prior to but not including the Effective Date. No Additional Shares will be issuable until consummation of the Fundamental Change transaction.

(c) The Stock Prices set forth in the first row of the table attached as Schedule A hereto (i.e. column headers) shall be adjusted as of any date on which the Conversion Rate is adjusted pursuant to Section 11.05 (and other than any increase to the Conversion Rate for a Fundamental Change as set forth in this Section 11.07). The adjusted Stock Prices will equal the Stock Prices applicable immediately prior to such adjustment, multiplied by a fraction, (i) the numerator of which is the Conversion Rate immediately prior to the adjustment giving rise to the Stock Price adjustment and (ii) the denominator of which is the Conversion Rate as so adjusted.

If the conversion date is after the effective date for the Fundamental Change and on or prior to the date that is 15 days after the effective date for the Fundamental Change, the Conversion Rate will be based on the applicable Conversion Rate, increased to include the Additional Shares, determined by reference to the Stock Price as described above. If a holder surrenders notes for conversion after the effective date of the Fundamental Change, the Conversion Rate will be determined by the Company based on the kind and amount of cash, securities and other assets or property that a holder of a number of shares of Common Stock into which such Notes were convertible at the then applicable Conversion Rate (assuming conversion solely into shares of Common Stock) would have owned or been entitled to receive in such Fundamental Change.

(d) The number of Additional Shares will be adjusted in the same manner and for the same events as the Conversion Rate is adjusted pursuant to Section 11.05.

(e) If the exact Stock Price and Effective Date are not set forth in the table attached as Schedule A hereto, then:

61

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

(ii) If the Stock Price is in excess of \$175.00 per share, subject to adjustment, no Additional Shares shall be issued upon conversion.

(iii) If the Stock Price is less than \$92.90 per share, subject to adjustment, no Additional Shares shall be issued upon conversion.

(f) Notwithstanding the foregoing, in no event will the Conversion Rate exceed 10.7643 shares of Common Stock per \$1,000 principal amount of Notes, subject to adjustment in the same manner and for the same events as the Conversion Rate may be adjusted pursuant to Section 11.05.

Section 11.08 Rights Issued in Respect of Common Stock Issued Upon Conversion.

Each share of Common Stock issued upon conversion of the Notes shall be entitled to receive the appropriate number of Common Stock or preferred stock purchase rights, as the case may be, including without limitation, the rights under any Rights Plan (defined below) (collectively, the "Rights"), if any, that shares of Common Stock are entitled to receive thereunder, and the certificates representing the Common Stock issued upon such conversion shall bear such legends, if any, in each case as may be provided by the terms of the Agreement, dated as of November 10, 1998, between the Company and Computershare Investor Services, as successor to Equiserve Trust Company, N.A., as successor to First Chicago Trust Company of New York, as Rights Agent, or any future stockholder rights agreement adopted by the Company, as each may be amended from time to time (in each case, a "Rights Plan"). If such Rights Plan requires that each share of Common Stock issued upon conversion of the Notes at any time prior to the distribution of separate certificates representing the Rights be entitled to receive such Rights, then, notwithstanding anything else to the contrary in this Indenture, there shall not be any adjustment to the conversion privilege or Conversion Rate as a result of the issuance of Rights, but an adjustment to the Conversion Rate shall be made pursuant to Section 11.05(d) upon the separation of the Rights from the Common Stock (provided that no adjustment to the Conversion Rate shall be made pursuant to Section 11.05(d) upon such separation if at the time of separation the Company sets aside for issuance upon conversion of the Notes a number of Rights equal to and with the same terms as the Rights the holders of Notes would have received if the conversion (assuming conversion solely into shares of Common Stock) had occurred immediately prior such separation) subject to readjustment in the event of the expiration, termination or redemption of such Rights.

Section 11.09 Notice Of Certain Transactions.

In case:

(a) the Company shall declare a dividend (or any other distribution) on the Common Stock; or

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

62

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

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

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

Section 11.10 Taxes on Shares Issued.

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

Section 11.11 Reservation of Shares, Shares to be Fully Paid; Compliance with Governmental Requirements; Listing of Common Stock.

The Company shall provide, free from preemptive rights, out of its authorized but unissued shares or shares held in treasury, sufficient shares of Common Stock to provide for the conversion of the Notes as required by this Indenture from time to time as such Notes are presented for conversion.

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

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

The Company further covenants that, if at any time the Common Stock shall be listed on The New York Stock Exchange or any other national securities exchange or automated quotation system, the

Company will, if permitted by the rules of such exchange or automated quotation system, list and keep listed, so long as the Common Stock shall be so listed on such exchange or automated quotation system, all Common Stock issuable upon conversion of the Notes; *provided* that if the rules of such exchange or automated quotation system permit the Company to defer the listing of such Common Stock until the first conversion of the Notes in accordance with the provisions of this Indenture, the Company covenants to list such Common Stock issuable upon conversion of the Notes in accordance with the requirements of such exchange or automated quotation system at such time.

Section 11.12 Settlement Upon Conversion.

(a) The Company shall settle its conversion obligations as described in Section 11.12(c), unless, within the applicable time period specified in Section 11.12(b), the Company elects to settle its conversion obligations as described in Section 11.12(d) or Section 11.12(e). The cash and/or shares of Common Stock which the Company is required to deliver in accordance with this Section 11.12 in settlement of its conversion obligations is referred to herein as the "Settlement Amount."

(b) If the Company desires to settle its conversion obligations as described in Section 11.12(d) or 11.12(e), the Company shall notify each converting holder through the Trustee of the method the Company will choose to satisfy its Conversion Obligations no later than the second Trading Day immediately following the Company's receipt of a Notice of Conversion from such holder, and such notice shall specify the section of this Indenture pursuant to which the Company is electing to satisfy its conversion obligations; *provided, however*, that the Company shall have the right to irrevocably elect, in its sole discretion and without the consent of the holders of the Notes, by notice to the holders of the Notes through the Trustee, on or prior to December 15, 2011, to settle all of its future conversion obligations entirely in shares of Common Stock as described in Section 11.12(e) (which notice shall specifically reference such section); and, *provided further*, that the Company is required to settle all conversions with a Conversion Date occurring on or after December 15, 2011 in the same manner, and the Company shall notify holders through the Trustee of the manner of settlement (including specifying the applicable section of this Indenture that describes such manner of settlement) on or before such date. The Company shall treat all holders converting on the same Trading Day in the same manner; *however*, the Company shall not have any obligation to settle Conversion Obligations arising on different Trading Days in the same manner, except for conversions with a Conversion Date occurring on or after December 15, 2011, which shall all be satisfied in the same manner.

(c) If the Company does not elect, within the applicable time periods specified in Section 11.12(b), to settle its conversion obligations as described in Section 11.12(d) or 11.12(e), the Company shall settle its conversion obligations as described in this Section 11.12(c). The Company shall deliver in respect of each \$1,000 principal amount of Notes being converted a Settlement Amount equal to the sum of the Daily Settlement Amounts for each

of the 40 consecutive Trading Days during the Cash Settlement Averaging Period, on the third Trading Day immediately following the last day of the related Cash Settlement Averaging Period.

For purposes of this Section 11.12(c), the following terms have the following respective meanings:

(i) “Cash Settlement Averaging Period” with respect to any Note means: (i) prior to December 15, 2011, the 40 consecutive Trading Day period beginning on and including the third Trading Day after the Conversion Date; (ii) with respect to any Notice of Conversion received after the date of issuance of a notice of redemption pursuant to Section 3.02, the 40 consecutive Trading Day period beginning on and including the 42nd Scheduled Trading Day prior to the applicable Redemption Date; and (iii) on or after December 15, 2011, the 40 consecutive Trading

64

Days beginning on and including the 42nd Scheduled Trading Day immediately preceding the Stated Maturity.

(ii) “Daily Settlement Amount” for each of the 40 Trading Days during the Cash Settlement Averaging Period, shall consist of:

(A) cash equal to the lesser of (1) \$25 (the “Daily Measurement Value”) and (2) the Daily Conversion Value relating to such Trading Day; and

(B) to the extent the Daily Conversion Value exceeds the Daily Measurement Value, a number of shares of Common Stock equal to (1) the difference between such Daily Conversion Value and the Daily Measurement Value (such difference being referred to as the “Daily Excess Amount”) divided by (2) the Daily VWAP of the Common Stock for such Trading Day,

in each case, subject to the Company’s right to deliver cash in lieu of all or a portion of such shares pursuant to Section 11.12(d).

(iii) “Daily Conversion Value” means, for each of the 40 consecutive Trading Days during the Cash Settlement Averaging Period, one-fortieth (1/40) of the product of (1) the applicable Conversion Rate and (2) the Daily VWAP of the Common Stock on such Trading Day.

(iv) “Daily VWAP” for the Common Stock means, for each of the 40 consecutive Trading Days during the Cash Settlement Averaging Period, the per share volume-weighted average price on the New York Stock Exchange as displayed under the heading “Bloomberg VWAP” on Bloomberg page “MAC.N <equity> AQR” (or its equivalent successor if such page is not available) in respect of the period from scheduled open of trading until the scheduled close of trading of the primary trading session on such Trading Day (or if such volume-weighted average price is unavailable, the market value of one share of the Common Stock on such Trading Day determined by the Board of Directors in a commercially reasonable manner in consultation with a nationally recognized independent investment banking firm, using a volume-weighted method). The daily VWAP will be determined without regard to after hours trading or any other trading outside of the regular trading session hours.

(v) “Scheduled Trading Day” means a day that is scheduled to be a Trading Day.

(d) If the Company has elected, within the applicable time periods specified in Section 11.12(b), to settle its conversion obligations as described in this Section 11.12(d), Company shall have the right to settle all or a portion of the Daily Excess Amount in cash in accordance with this Section 11.12(d). In such case, the Company shall specify a percentage of the Daily Excess Amount that will be settled in cash (the “Cash Percentage”), and shall notify each converting holder of the Cash Percentage in accordance with Section 11.12(b). If the Company elects to specify a Cash Percentage, the amount of cash that the Company shall deliver in respect of each Trading Day in the applicable Cash Settlement Averaging Period shall equal the product of (1) the Cash Percentage and (2) the Daily Excess Amount for such Trading Day. The number of shares of Common Stock deliverable in respect of each Trading Day in the applicable Cash Settlement Averaging Period shall equal (i) the product of (a) 100% minus the Cash Percentage and (b) the Daily Excess Amount for such Trading Day, divided by (ii) the Daily VWAP of the Common Stock for such Trading Day. If the Company does not specify a Cash Percentage within the applicable time periods set forth in Section 11.12(b), the Company must settle the entire Daily Excess Amount for each Trading Day in the applicable Cash Settlement Averaging Period with shares of Common Stock in accordance with Section 11.12(c); *provided, however*, that in accordance with Section

65

11.03, the Company will deliver cash in lieu of any fractional shares of Common Stock issuable in connection with payment of the settlement amount as described above.

(e) If the Company has elected, within the applicable time periods specified in Section 11.12(b), to settle its conversion obligations as described in this Section 11.12(e), the Company shall have the right to settle its conversion obligations entirely in shares of Common Stock (and cash in lieu of fractional shares in accordance with Section 11.03). If the Company elects to satisfy its conversion obligations entirely in shares of Common Stock, the Company shall deliver to the converting holder a number of shares equal to (i) the aggregate principal amount of Notes to be converted divided by \$1,000, multiplied by (ii) the applicable Conversion Rate. The Company shall deliver such shares as soon as practicable after the Company has informed the converting holder that it has elected to satisfy its conversion obligations entirely in shares of Common Stock in accordance with this Section 11.12(e).

(f) For the avoidance of doubt, for purposes of this Section 11.12, the applicable Conversion Rate will reflect any increases for any Additional Shares to which holders of Notes are entitled pursuant to Section 11.07.

Section 11.13 Trustee’s Disclaimer.

The Trustee has no duty to determine when an adjustment under this Article XI should be made, how it should be made or what such adjustment should be made, but may accept as conclusive evidence of the correctness of any such adjustment, and shall be fully protected in relying upon, the Officers’ Certificate with respect thereto which the Company is obligated to file with the Trustee pursuant to Section 11.05(l). The Trustee shall not be accountable for

and makes no representation as to the validity or value of any securities or assets issued upon conversion of Notes, and the Trustee shall not be responsible for the Company's failure to comply with any provisions of this Article XI. Each Conversion Agent (other than the Company or an Affiliate of the Company) shall have the same protection under this Section 11.13 as the Trustee.

The Trustee shall not be under any responsibility to determine the correctness of any provisions contained in any supplemental indenture executed pursuant to Section 11.06, but may accept as conclusive evidence of the correctness thereof, and shall be protected in relying upon, the Officers' Certificate with respect thereto which the Company is obligated to file with the Trustee pursuant to Section 11.06.

Section 11.14 Ownership Limit.

Notwithstanding any other provision of the Notes, no holder of Notes shall be entitled, unless agreed to by the Board of Directors, to convert such Notes for shares of Common Stock to the extent that receipt of such shares would cause such holder (together with such holder's affiliates) to exceed the ownership limits as determined in accordance with the Charter.

ARTICLE XII
GUARANTEE

Section 12.01 Guarantee.

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

66

authenticated and delivered by the Trustee and its successors and assigns that: (i) the principal of, premium, if any, and interest, Liquidated Damages, if any, and Additional Interest, if any, on the Notes shall be duly and punctually paid in full when due, whether at maturity, by acceleration, call for redemption, upon repurchase due to a Fundamental Change or otherwise, and interest on overdue principal, premium, if any, Liquidated Damages, if any, Additional Interest, if any, and (to the extent permitted by law) interest on any interest, if any, on the Notes and all other obligations of the Company to the holders or the Trustee hereunder or under the Notes (including fees, expenses or other) shall be promptly paid in full or performed, all in accordance with the terms hereof; and (ii) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, the same shall be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at Stated Maturity, by acceleration, call for redemption, upon repurchase due to a Fundamental Change or otherwise, subject, however, in the case of clauses (i) and (ii) above, to the limitations set forth in Section 12.04 (collectively, the "Guarantee Obligations").

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

If any holder or the Trustee is required by any court or otherwise to return to either the Company or the Guarantor, or any trustee or similar official acting in relation to either the Company or the Guarantor, any amount paid by the Company or the Guarantor to the Trustee or such holder, the Guarantee, to the extent theretofore discharged, shall be reinstated in full force and effect. The Guarantor agrees that it shall not be entitled to any right of subrogation in relation to the Holders in respect of any Guarantee Obligations hereby until payment in full of all such obligations guaranteed hereby. The Guarantor agrees that, as between it, on the one hand, and the holders of Notes and the Trustee, on the other hand, to the fullest extent permitted by applicable law, (x) the maturity of the obligations guaranteed

67

hereby may be accelerated as provided in Article VI for the purposes hereof, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the Guarantee Obligations, and (y) in the event of any acceleration of such obligations as provided in Article VI, such Guarantee Obligations (whether or not due and payable) shall forthwith become due and payable by the Guarantor for the purpose of the Guarantee.

Section 12.02 Execution and Delivery of Guarantee.

To evidence the Guarantee set forth in Section 12.01, the Guarantor agrees that a notation of the Guarantee substantially in the form included in Exhibit A hereto shall be endorsed on each Note authenticated and delivered by the Trustee and that this Indenture shall be executed on behalf of the Guarantor by an officer of the Guarantor.

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

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

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

Section 12.03 Consolidation, Merger or Transfer of Assets.

The Guarantor shall not consolidate with or merge with or into any other Person or sell, lease exchange or otherwise transfer (in one transaction or a series of related transactions) all or substantially all of its properties and assets to any other Person, unless:

(a) (i) the Guarantor shall be the resulting or surviving corporation or (ii) the Person (if other than the Guarantor) formed by such consolidation or into which the Guarantor is merged or the Person which acquires by sale, lease, exchange or other transfer all or substantially all of the properties and assets of the Guarantor (A) shall be an entity organized and validly existing under the laws of the United States or any State thereof or the District of Columbia, and (B) shall expressly assume, by means of a supplemental indenture, executed and delivered to the Trustee, in form satisfactory to the Trustee, all of the obligations of the Guarantor under the Notes, the Guarantee and this Indenture;

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

(c) the Guarantor shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, sale, lease, exchange or other transfer and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture, comply with this Section 12.03 and that all conditions precedent herein provided for relating to such transaction have been satisfied.

The successor Person formed by such consolidation or into which the Guarantor is merged or the successor Person to which such sale, lease, exchange or other transfer is made shall succeed to, and (except in the case of a lease) be substituted for, and may exercise every right and power of, the Guarantor under this Indenture with the same effect as if such successor had been named as the Guarantor

herein; and thereafter, except in the case of a lease of all or substantially all of the Guarantor's properties and assets, the Guarantor shall be discharged from all obligations and covenants under this Indenture and the Notes. Subject to Section 10.06, the Guarantor, the Trustee and the successor Person shall enter into a supplemental indenture to evidence the succession and substitution of such successor Person and such discharge and release of the Guarantor, as applicable.

Section 12.04 Limitation of Guarantor's Liability; Certain Bankruptcy Events; Termination on Conversion.

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

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

(c) The Guarantor shall be deemed released from all its obligations under this Indenture and the Guarantee and the Guarantee shall terminate upon the discharge of the Notes pursuant to the provisions of Article IX. The Guarantee will automatically terminate in connection with the conversion of a Note.

Section 12.05 Application of Certain Terms and Provisions of the Guarantor

(a) For purposes of any provision of this Indenture which provides for the delivery by the Guarantor of an Officers' Certificate and/or an Opinion of Counsel, the definitions of such terms in Section 1.01 hereof shall apply to the Guarantor as if references therein to the Company were references to the Guarantor.

(b) Any request, direction, order or demand which by any provision of this Indenture is to be made by the Guarantor, shall be sufficient if evidenced as described in Section 13.02 as if references therein to the Company were references to the Guarantor.

(c) Any notice or demand which by any provision of this Indenture is required or permitted to be given or served by the Trustee or by the holders of Notes to or on the Guarantor may be given or served as described in Section 13.02 as if references therein to the Company were references to the Guarantor.

(d) Upon any demand, request or application by the Guarantor to the Trustee to take any action under this Indenture, the Guarantor shall furnish to the Trustee such certificates and opinions as are required in Section 13.04 as if all references therein to the Company were references to the Guarantor.

ARTICLE XIII
MISCELLANEOUS

Section 13.01 Trust Indenture Act Controls.

If any provision of this Indenture limits, qualifies, or conflicts with another provision which is required to be included in this Indenture by the TIA, the required provision shall control.

Section 13.02 Notices.

Any request, demand, authorization, notice, waiver, consent or communication shall be in writing, in the English language and delivered in person or mailed by first-class mail, postage prepaid, addressed as follows, or transmitted by facsimile transmission (confirmed verbally) to the following facsimile numbers:

if to the Company or the Guarantor, to:

The Macerich Company
401 Wilshire Boulevard
Suite 700
Santa Monica, CA 90401
Facsimile No.: (310) 451-4746
Attention: Chief Financial Officer

if to the Trustee, to:

Deutsche Bank Trust Company Americas
60 Wall Street, 27th Floor
New York, NY 10005
Facsimile No.: (732) 380-2345
Attention: Trust and Securities Services

with a copy to:

Deutsche Bank National Trust Company
for Deutsche Bank Trust Company Americas
25 DeForest Avenue, 2nd Floor
Summit, NJ 07901
Facsimile No.: (732) 578-4635
Attention: Trust and Securities Services

The Company or the Trustee by notice given to the other in the manner provided above may designate additional or different addresses for subsequent notices or communications.

Any notice or communication given to a holder shall be mailed to the holder, by first-class mail, postage prepaid, at the holder's address as it appears on the registration books of the Note Registrar and shall be sufficiently given if so mailed within the time prescribed.

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

If the Company mails a notice or communication to the holders, it shall mail a copy to the Trustee and each Note Registrar, Paying Agent, Conversion Agent or co-registrar.

Section 13.03 Communication by Holders With Other Holders.

Holders may communicate pursuant to TIA Section 312(b) with other holders with respect to their rights under this Indenture or the Notes. The Company, the Trustee, the Note Registrar, the Paying Agent, the Conversion Agent and anyone else shall have the protection of TIA Section 312(c).

Section 13.04 Certificate and Opinion as to Conditions Precedent.

Upon any request or application by the Company to the Trustee to take or refrain from taking any action under this Indenture, the Company shall furnish to the Trustee:

(a) an Officers' Certificate stating that, in the opinion of the signers, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and

(b) an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

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 eligible and qualified 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 Company may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to the matters upon which such officer's certificate or opinion is based are erroneous. Any such certificate or Opinion of Counsel 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 Company stating the information on which counsel is relying 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 13.05 Statements Required in Certificate or Opinion.

Each Officers' Certificate or Opinion of Counsel with respect to compliance with a covenant or condition provided for in this Indenture shall include:

(a) a statement that each person making such Officers' Certificate or Opinion of Counsel has read such covenant or condition;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such Officers' Certificate or Opinion of Counsel are based;

71

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

(d) a statement that, in the opinion of such person, such covenant or condition has been complied with.

Section 13.06 Severability Clause.

In case any provision in this Indenture or in the Notes 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 13.07 Rules by Trustee, Paying Agent, Conversion Agent and Note Registrar.

The Trustee may make reasonable rules for action by or a meeting of holders. The Note Registrar, the Conversion Agent and the Paying Agent may make reasonable rules for their functions.

Section 13.08 Legal Holidays.

A "**Legal Holiday**" is any day other than a Business Day. If any specified date (including a date for giving notice) is a Legal Holiday, the action shall be taken on the next succeeding day that is not a Legal Holiday, and, if the action to be taken on such date is a payment in respect of the Notes, no interest (including Liquidated Damages, if any, and Additional Interest, if any) shall accrue for the intervening period.

Section 13.09 Governing Law.

THIS INDENTURE AND THE NOTES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN THE STATE OF NEW YORK, INCLUDING, WITHOUT LIMITATION, SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

Section 13.10 No Recourse Against Others.

A director, officer, employee or stockholder, as such, of the Company shall not have any liability for any Obligations of the Company under the Notes or this Indenture or for any claim based on, in respect of or by reason of such Obligations or their creation. By accepting a Note, each holder shall waive and release all such liability. Such waiver and release shall be part of the consideration for the issuance of the Notes.

Section 13.11 Successors.

All agreements of the Company in this Indenture and the Notes shall bind its successor. All agreements of the Trustee in this Indenture shall bind its successor.

Section 13.12 Multiple Originals.

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

Section 13.13 Table of Contents and Headings.

The Table of Contents and the headings of the Articles or Sections of this Indenture have been inserted for convenience of reference only, are not to be considered as part of this Indenture and shall in no way modify or restrict any of the terms or provisions hereof.

Section 13.14 USA Patriot Act.

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

[signature page follows]

IN WITNESS WHEREOF, the undersigned, being duly authorized, have executed this Indenture on behalf of the respective parties hereto as of the date first above written.

THE MACERICH COMPANY

By: /s/ Thomas E. O'Hern
Name: Thomas E. O'Hern
Executive Vice President,
Chief Financial Officer and Treasurer

THE MACERICH PARTNERSHIP, L.P.,
a Delaware limited partnership

By: The Macerich Company,
a Maryland corporation,
its general partner

By: /s/ Thomas E. O'Hern
Thomas E. O'Hern
Executive Vice President,
Chief Financial Officer and Treasurer

DEUTSCHE BANK TRUST COMPANY AMERICAS, as
Trustee

By: /s/ Wanda Camacho
Name: Wanda Camacho
Title: Vice President

By: /s/ Richard L. Buckwalter
Name: Richard L. Buckwalter
Title: Director

SCHEDULE A

Additional Share Table

The following table sets forth the increase in the Conversion Rate, expressed as a number of Additional Shares to be received per \$1,000 principal amount of Notes:

Effective Date	Stock Price on the Effective Date													
	\$92.90	\$95.00	\$100.00	\$105.00	\$110.00	\$115.00	\$120.00	\$125.00	\$130.00	\$135.00	\$140.00	\$150.00	\$160.00	\$175.00
3/12/2007	1.7940	1.6739	1.3906	1.1616	0.9698	0.8090	0.6741	0.5610	0.4661	0.3867	0.3203	0.2187	0.1494	0.0929
3/15/2008	1.7940	1.6684	1.3797	1.1394	0.9395	0.7733	0.6352	0.5206	0.4254	0.3467	0.2817	0.1842	0.1196	0.0712
3/15/2009	1.7940	1.6500	1.3435	1.0905	0.8823	0.7114	0.5714	0.4571	0.3640	0.2883	0.2271	0.1383	0.0830	0.0484
3/15/2010	1.7940	1.6016	1.2706	1.0010	0.7831	0.6082	0.4687	0.3582	0.2712	0.2032	0.1503	0.0788	0.0413	0.0246
3/15/2011	1.7940	1.5164	1.1394	0.8389	0.6046	0.4261	0.2932	0.1963	0.1271	0.0788	0.0461	0.0157	0.0087	0.0049
3/15/2012	1.7940	1.5567	1.0304	0.5541	0.1215	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

Schedule A-1

EXHIBIT A

[FORM OF FACE OF NOTE]

[Include only on Notes that are Restricted Securities]

[THE SECURITY EVIDENCED BY THIS CERTIFICATE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT OF 1933"), 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 OF 1933;
- (2) AGREES THAT IT WILL NOT, PRIOR TO THE DATE (THE "RESALE RESTRICTION TERMINATION DATE") THAT IS TWO YEARS AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF AND THE LAST DATE ON WHICH THE COMPANY OR ANY AFFILIATE OF THE COMPANY WAS THE OWNER OF THIS SECURITY (OR ANY PREDECESSOR OF SUCH SECURITY), RESELL OR OTHERWISE TRANSFER THE SECURITY EVIDENCED HEREBY OR THE COMMON STOCK ISSUABLE UPON CONVERSION OF SUCH SECURITY EXCEPT (A) TO THE MACERICH COMPANY OR ANY SUBSIDIARY THEREOF, (B) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT OF 1933, (C) PURSUANT TO THE EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT OF 1933 (IF AVAILABLE), OR (D) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT OF 1933 AND WHICH CONTINUES TO BE EFFECTIVE AT THE TIME OF SUCH TRANSFER; AND
- (3) AGREES THAT IT WILL DELIVER TO EACH PERSON TO WHOM THE SECURITY EVIDENCED HEREBY IS TRANSFERRED (OTHER THAN A TRANSFER PURSUANT TO CLAUSE 2(C) OR 2(D) ABOVE) A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND.]

[Include only on Global Notes]

[UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (THE "DEPOSITARY," WHICH TERM INCLUDES ANY SUCCESSOR DEPOSITARY FOR THE CERTIFICATES) TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY) (AND ANY PAYMENT HEREIN IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN. TRANSFERS OF THIS GLOBAL NOTE SHALL BE LIMITED TO TRANSFERS TO NOMINEES OF THE DEPOSITARY OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL NOTE SHALL

A-1

BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE INDENTURE REFERRED TO ON THE REVERSE HEREOF.]

A-2

THE MACERICH COMPANY

3.25% CONVERTIBLE SENIOR NOTES DUE 2012

No.: _____ CUSIP: _____
Issue Date: _____ \$ _____

The Macerich Company, a Maryland corporation (herein called the "Company," which term includes any successor corporation under the Indenture referred to below), for value received hereby promises to pay to [Cede & Co.] or registered assigns the principal amount of _____ Dollars (\$ _____), or such greater or lesser principal amount as set forth on Schedule I hereto)(1), on March 15, 2012.

Interest Payment Dates: March 15 and September 15, commencing September 15, 2007.

Record Dates: March 1 and September 1.

(1) Include only on Global Note.

A-3

Reference is made to the further provisions of this Note on the reverse side, which shall, for all purposes, have the same effect as if set forth at this place.

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

THE MACERICH COMPANY

By: _____
Name:
Title:

A-4

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

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

DEUTSCHE BANK TRUST COMPANY AMERICAS

By: _____
Authorized Signatory

By: _____
Authorized Signatory

Dated:

A-5

[FORM OF REVERSE SIDE OF NOTE]

THE MACERICH COMPANY

3.25% CONVERTIBLE SENIOR NOTES DUE 2012

Capitalized terms used herein shall have the meanings assigned to them in the Indenture referred to below unless otherwise indicated.

(1) Interest.

The Macerich Company, a Maryland corporation (herein called the "Company," which term includes any successors or assigns under the Indenture referred to below), promises to pay interest on the principal amount of this Note at the rate of 3.25% per annum until payment of such principal amount has been made or duly provided for. The Company shall pay interest (including Liquidated Damages, if any, and Additional Interest, if any), semi-annually on March 15 and September 15 of each year (each an "Interest Payment Date"), commencing September 15, 2007; provided, that if any Interest Payment Date

is not a Business Day, then interest (including Liquidated Damages, if any, and Additional Interest, if any) shall be payable on the next succeeding Business Day. Interest on the Notes shall accrue from the most recent date to which interest has been paid or, if no interest has been paid, from the Issue Date.

The Company shall pay interest on any overdue amount at the interest rate borne by the Notes at the time such interest on the overdue principal amount accrues, compounded semi-annually, and shall pay interest on overdue installments of interest (including Liquidated Damages, if any, and Additional Interest, if any) (without regard to any applicable grace period), at the same interest rate, compounded semi-annually. Interest (including Liquidated Damages, if any, and Additional Interest, if any) on the Notes will be computed on the basis of a 360-day year comprised of twelve 30-day months.

(2) Method of Payment.

Except as otherwise provided in the Indenture, the interest (including Liquidated Damages, if any, and Additional Interest, if any) payable on this Note pursuant to the Indenture on any Interest Payment Date shall be paid to the Person in whose name this Note is registered on the Note Register at 5:00 p.m., New York City time, on the March 1 or September 1 next preceding such Interest Payment Date (each a “**Record Date**”). Subject to the terms and conditions of the Indenture, the Company will make all payments and deliveries in respect of the Redemption Price, Fundamental Change Repurchase Price and the principal amount at Stated Maturity, as the case may be, to the holder who surrenders this Note to a Paying Agent to collect such payments in respect of this Note. The Company will pay cash amounts in money of the United States that at the time of payment is legal tender for payment of public and private debts. However, the Company may pay interest (including Liquidated Damages, if any, and Additional Interest, if any), the Redemption Price, Fundamental Change Repurchase Price and the principal amount at Stated Maturity, as the case may be, to a holder holding this Note in certificated form by check mailed to the address of such holder as it appears in the Note Register; *provided* that a holder holding this Note in certificated form with an aggregate principal amount in excess of \$1,000,000 may request payment by wire transfer in immediately available funds to an account in North America at the election of such holder. Notwithstanding the foregoing, so long as this Note is registered in the name of a Depository or its nominee, all payments hereon shall be made by wire transfer of immediately available funds to the account of the Depository or its nominee.

A-6

(3) Paying Agent, Conversion Agent and Note Registrar.

Initially, Deutsche Bank Trust Company Americas (the “**Trustee**”) will act as Paying Agent, Conversion Agent and Note Registrar. The Company may appoint and change any Paying Agent, Conversion Agent or Note Registrar without notice, other than notice to the Trustee; *provided* that the Company will maintain at least one Paying Agent having an office or agency in the Borough of Manhattan, City of New York, State of New York which shall initially be an office or agency of the Trustee. The Company or any of its Subsidiaries or any of their Affiliates may act as Paying Agent, Conversion Agent or Note Registrar.

(4) Indenture.

The Company issued the Notes under an Indenture, dated as of March 16, 2007 (as it may be amended or supplemented from time to time in accordance with the terms thereof, the “**Indenture**”), among the Company, The Macerich Partnership, L.P., a Delaware limited partnership (the “**Guarantor**”, which term includes any successors or assigns under the Indenture), and the Trustee. The terms of this Note include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939, as in effect from time to time (the “**TIA**”). Capitalized terms used herein and not defined herein have the meanings ascribed thereto in the Indenture. This Note is subject to all such terms, and the holder of this Note is referred to the Indenture and the TIA for a statement of those terms.

The Notes are senior unsecured obligations of the Company and may be issued in unlimited principal amount under the Indenture. The Indenture does not limit other indebtedness of the Company, secured or unsecured.

(5) Optional Redemption of Notes.

(a) This Note is not optionally redeemable by the Company except as set forth in Section (5)(b) below.

(b) This Note is redeemable, at the option of the Company, in whole but not in part, at any time that the Company determines that it is necessary in order to preserve the Company’s status as a real estate investment trust under the Code, upon the mailing of a notice of redemption not fewer than 45 Scheduled Trading Days nor more than 60 Scheduled Trading Days before the Redemption Date to the holder, all as provided in the Indenture, for cash at a Redemption Price equal to 100% of the principal amount, together with accrued but unpaid interest (including Liquidated Damages, if any, and Additional Interest, if any) thereon, up to but not including the Redemption Date; *provided* that, if the Redemption Date is after 5:00 p.m., New York City time, on a Record Date and prior to 9:00 a.m., New York City time, on the related Interest Payment Date, accrued but unpaid interest (including Liquidated Damages, if any, and Additional Interest, if any) will be payable to the holder in whose name this Note is registered at 5:00 p.m., New York City time, on the relevant Record Date.

(c) If the Paying Agent holds, in accordance with the Indenture, prior to 11:00 a.m., New York City time, on a Redemption Date, money sufficient to pay amounts owed with respect to Notes payable on that date, then immediately after such Redemption Date: (i) such Notes shall cease to be outstanding, (ii) interest (including Liquidated Damages, if any, and Additional Interest, if any) on such Notes shall cease to accrue, and (iii) such Notes shall cease to be entitled to any benefit or security under the Indenture, and the holders thereof shall have no right in respect of such Notes except the right to receive the Redemption Price, plus accrued and unpaid interest (including Liquidated Damages, if any, and Additional Interest, if any) up to but not including such Redemption Date.

A-7

(d) There is no sinking fund provided for redemption of the Notes.

(6) Conversion.

(a) Subject to and in compliance with the provisions of the Indenture, prior to 5:00 p.m., New York City time, on the second Business Day immediately preceding the Stated Maturity, the holder of this Note shall have the right, at such holder's option, to convert each \$1,000 principal amount of this Note not previously redeemed or repurchased into cash and/or shares of Common Stock, as elected by the Company as described in Section 11.12 of the Indenture, at a Conversion Rate of 8.9702 shares of Common Stock (a conversion price of approximately \$111.48 per share), subject to adjustment from time to time as provided in the Indenture; *provided, however*, that at any time prior to 5:00 p.m., New York City time, on the Business Day prior to December 15, 2011, a holder may convert this Note only upon the satisfaction of specified conditions set forth in the Indenture. The Company, or, at the Company's request, the Trustee in the name and at the expense of the Company, will notify the holder of this Note of the satisfaction of any condition triggering the right to convert the Notes, in accordance with the Indenture, and the Company also shall publicly announce such information and publish it on the Company's web site.

(b) To exercise the conversion right with respect to any Note in certificated form, the holder must surrender the Note with the original or facsimile of the form entitled "**Conversion Notice**" on the reverse hereof, duly completed and manually signed, together with such Note duly endorsed for transfer, accompanied by the funds, if any, required by the Indenture, to the Company at the office or agency of the Company maintained for that purpose in the City of New York in accordance with the terms of the Indenture, or at the option of such holder, the Corporate Trust Office.

To exercise the conversion right with respect to any interest in a Global Note, the beneficial holder must complete, or cause to be completed, the appropriate instruction form pursuant to the Depository's book-entry conversion program; deliver, or cause to be delivered, by book-entry delivery an interest in such Global Note; furnish appropriate endorsements and transfer documents if required by the Company or the Trustee or Conversion Agent, and pay the funds, if any, required pursuant to the terms of the Indenture.

(c) In the event the holder surrenders this Note for conversion in connection with a Fundamental Change, the Company will increase the applicable Conversion Rate, as and when provided in the Indenture.

(d) No adjustment in respect of interest (including Liquidated Damages, if any, and Additional Interest, if any) on any Note converted or dividends on any shares issued upon conversion of such Note will be made upon any conversion except as set forth in the next sentence. If this Note (or portion hereof) is surrendered for conversion during the period after 5:00 p.m., New York City time, on any applicable Record Date and prior to 9:00 a.m., New York City time, on the corresponding Interest Payment Date, this Note (or portion hereof being converted) must be accompanied by payment, in immediately available funds or other funds acceptable to the Company, of an amount equal to the interest (including Liquidated Damages, if any, and Additional Interest, if any) otherwise payable on such Interest Payment Date on the principal amount being converted; *provided* that no such payment shall be required (1) if a holder converts its Notes in connection with a redemption and the Company has specified a Redemption Date that is after a Record Date and on or prior to the next Interest Payment Date, (2) if a holder converts its Notes in connection with a Fundamental Change and the Company has specified a Fundamental Change Repurchase Date that is after a Record Date and on or prior to the next Interest Payment Date, (3) with respect to Notes surrendered for conversion on the Interest Payment Date, (4) if a holder converts its Notes after the Record Date immediately preceding the Stated Maturity, or (5) to the

A-8

extent of any overdue interest, if any exists at the time of conversion with respect to such Note. Notwithstanding the foregoing, in the case of Notes submitted for conversion in connection with a Fundamental Change as set forth in the Indenture, such Notes shall continue to represent the right to receive the Additional Shares, if any, payable pursuant to the Indenture until such Additional Shares are so paid.

No fractional shares will be issued upon any conversion, but an adjustment and payment in cash will be made, as provided in the Indenture, in respect of any fraction of a share which would otherwise be issuable upon the surrender of any Note or Notes for conversion.

(e) If a Note is called for redemption, in order to convert such Note, the holder must deliver the Note to the Conversion Agent (or, if the Note is held in book-entry form, complete and deliver to the Depository appropriate instructions in accordance with the applicable procedures of the Depository) at any time prior to 5:00 p.m., New York City time, on the Business Day immediately preceding the applicable Redemption Date (unless the Company shall default in paying the Redemption Price when due, in which case the conversion right shall terminate on the date such default is cured and such Note is redeemed).

A Note in respect of which a holder has delivered a Fundamental Change Repurchase Notice exercising the option of such holder to require the Company to repurchase such Note as provided in Section 3.05 of the Indenture, may be converted only if such Fundamental Change Repurchase Notice is withdrawn in accordance with the Indenture.

(9) Denominations; Transfer; Exchange.

The Notes are in fully registered form, without coupons, in denominations of \$1,000 principal amount and integral multiples thereof. A holder may transfer or exchange Notes in accordance with the Indenture. No service charge shall be made to any holder for any registration of, transfer or exchange of Notes, but the Company may require payment by the holder of a sum sufficient to cover any tax, assessment or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Notes.

(10) Persons Deemed Owners.

The registered holder of this Note may be treated as the owner of this Note for all purposes.

(11) Amendment; Waiver.

(a) Subject to certain exceptions set forth in the Indenture, the Indenture or the Notes may be amended with the written consent of the holders of not less than a majority in aggregate principal amount of the outstanding Notes. Subject to certain exceptions set forth in the Indenture, without the consent of any holder, the Company and the Trustee may amend the Indenture or the Notes (i) to cure any ambiguity, omission, defect or inconsistency; (ii) to evidence the succession of another Person to the Company, or successive successions, and the assumption by the successor Person of the covenants, agreements and obligations of the Company pursuant to Article V of the Indenture; (iii) to make any other change that does not adversely affect the rights of

any holder of the Notes in any material respect; provided that any change to conform to the Offering Memorandum shall be deemed not to adversely affect the rights of any holder of the Notes; (iv) to comply with the provisions of the TIA (other than the qualification requirements); (v) to evidence and provide for the acceptance of appointment under the Indenture by a successor Trustee with respect to the Notes; (vi) to make provisions with respect to the conversion right

A-9

of holders of the Notes pursuant to the requirements of the Indenture; or (v) to add additional guarantors of the Notes.

(b) The holders of not less than a majority in aggregate principal amount of the outstanding Notes may, on behalf of the holders of all of the Notes, waive any past Default or Event of Default hereunder and its consequences, subject to certain exceptions set forth in the Indenture. Upon such waiver, such Default or Event of Default shall for all purposes of the Notes and the Indenture be deemed to have been cured and to be not continuing; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any rights arising therefrom.

(12) Defaults and Remedies.

If an Event of Default occurs and is continuing, the Trustee may, and at the written request of the holders of at least 25% in aggregate principal amount of outstanding Notes shall, declare all Obligations on all the Notes to be immediately due and payable in the manner provided in the Indenture.

(13) Trustee Dealings with the Company.

Subject to certain limitations imposed by the TIA, the Trustee, Paying Agent, Conversion Agent or Note Registrar, in its individual or any other capacity, may become the owner or pledgee of Notes with the same rights it would have if it were not Trustee, Paying Agent, Conversion Agent or Note Registrar.

(14) No Recourse Against Others.

A director, officer, employee or stockholder, as such, of the Company shall not have any liability for any Obligations of the Company under the Notes or the Indenture or for any claim based on, in respect of or by reason of such Obligations or their creation. By accepting a Note, each holder waives and releases all such liability. Such waiver and release are part of the consideration for the issuance of the Notes.

(15) Authentication.

This Note shall not be valid until an authorized signatory of the Trustee manually signs the Trustee's Certificate of Authentication set forth on the other side of this Note.

(16) Governing Law.

THE INDENTURE AND THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN THE STATE OF NEW YORK, INCLUDING, WITHOUT LIMITATION, SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(17) CUSIP Numbers.

Pursuant to a recommendation promulgated by the Committee on Uniform Note Identification Procedures, the Company has caused CUSIP numbers to be printed on the Notes as a convenience to the holders of the Notes. No representation is made as to the accuracy of such numbers as printed on the Notes and reliance may be placed only on the other identification numbers printed hereon.

A-10

(18) Registration Rights Agreement.

In addition to the rights provided to holders of Notes under the Indenture, holders shall have all the rights set forth in the Registration Rights Agreement, dated as of March 16, 2007, among the Company and the Initial Purchasers named therein.

(19) Guarantee.

The Guarantor has irrevocably and unconditionally guaranteed on a senior basis the Guarantee Obligations (as defined in Section 12.01 of the Indenture), as more fully set forth in the Guarantee endorsed on this Note.

A-11

ABBREVIATIONS

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

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

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

A-12

CONVERSION NOTICE

**TO: THE MACERICH COMPANY
DEUTSCHE BANK TRUST COMPANY AMERICAS, as Trustee**

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

Dated: _____

Signature(s)

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

Signature Guarantee

A-13

Fill in the registration of shares of Common Stock, if any, if to be issued, and any portion of this Note not converted, if any, to be delivered, and the person to whom cash and payment for fractional shares is to be made, if to be made, other than to and in the name of the registered holder:

Please print name and address

(Name)

(Street Address)

(City, State and Zip Code)

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

\$ _____

Social Security or Other Taxpayer
Identification Number:

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

A-14

FUNDAMENTAL CHANGE REPURCHASE NOTICE

**TO: THE MACERICH COMPANY
DEUTSCHE BANK TRUST COMPANY AMERICAS, as Trustee**

The undersigned registered owner of this Note hereby irrevocably acknowledges receipt of a Company Fundamental Change Repurchase Notice from The Macerich Company (the “**Company**”) regarding the right of holders to elect to require the Company to repurchase the Notes and requests and instructs the Company to repay the entire principal amount of this Note, or the portion thereof (which is \$1,000 or an integral multiple thereof) below designated, in cash, in accordance with the terms of the Indenture, at the price of 100% of such entire principal amount or portion thereof, together with accrued but unpaid interest (including Liquidated Damages, if any, and Additional Interest, if any) to but not including the Fundamental Change Repurchase Date, to the registered holder hereof unless a different name has been indicated below. Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Indenture. If any portion of this Note not repurchased are to be issued in the name of a person other than the undersigned, the undersigned will provide the appropriate information below and pay all transfer taxes payable with respect thereto. The Notes shall be repurchased by the Company as of the Fundamental Change Repurchase Date pursuant to the terms and conditions specified in the Indenture.

Dated: _____

Signature(s)

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

Signature Guarantee

A-15

Fill in the registration of any portion of this Note not repurchased, if to be delivered, and the person to whom payment is to be made, if to be made, other than to and in the name of the registered holder:

Please print name and address

(Name)

(Street Address)

(City, State and Zip Code)

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

\$ _____

Social Security or Other Taxpayer
Identification Number:

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

A-16

ASSIGNMENT

For value received _____ hereby sell(s) assign(s) and transfer(s) unto _____ (Please insert social security or other
Taxpayer Identification Number of assignee) the within Note, and hereby irrevocably constitutes and appoints _____ attorney to transfer
said Note on the books of the 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 Macerich Company or any subsidiary thereof; or
- o To a "qualified institutional buyer" in compliance with Rule 144A under the Securities Act of 1933, as amended; or
- o Pursuant to the exemption from registration provided by Rule 144 under the Securities Act of 1933, as amended (if available); or
- o Pursuant to a registration statement that has been declared effective under the Securities Act of 1933, as amended, and which continues to be effective at the time of such transfer;

and unless the Note has been transferred to The Macerich Company or a subsidiary thereof, the undersigned confirms that such Note is not being transferred to an "affiliate" of the Company as defined in Rule 144 under the Securities Act of 1933, as amended.

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

A-17

Dated: _____

Signature(s)

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

Signature Guarantee

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

Schedule I

SCHEDULE OF EXCHANGES OF INTERESTS IN THE GLOBAL NOTE (2)

The following increases or decreases in this Global Note have been made:

<u>Date</u>	<u>Amount of Decrease in Principal Amount of this Global Note</u>	<u>Amount of Increase in Principal Amount of this Global Note</u>	<u>Principal Amount of this Global Note Following Such Decrease or Increase</u>	<u>Signature of Authorized Signatory of Trustee or Note Custodian</u>
-------------	---	---	---	---

(2) This should be included only if the Note is issued in global form.

GUARANTEE

The Macerich Partnership, L.P., a Delaware limited partnership (hereinafter referred to as the “**Guarantor**,” which term includes any successors or assigns under the Indenture, dated the date hereof, among the Company (defined below), the Guarantor and Deutsche Bank Trust Company Americas, as trustee (the “**Indenture**”), has irrevocably and unconditionally guaranteed on a senior basis the Guarantee Obligations (as defined in Section 12.01 of the Indenture), which include (i) the due and punctual payment of the principal of, premium, if any, and interest, Liquidated Damages, if any, and Additional Interest, if any, on the 3.25% Convertible Senior Notes due 2012 (the “**Notes**”) of The Macerich Company, a Maryland corporation (the “**Company**”), whether at Stated Maturity, by acceleration, call for redemption, upon a repurchase or otherwise, the due and punctual payment of interest on the overdue principal and premium, if any, and (to the extent permitted by law) interest on any interest on the Notes, and the due and punctual performance of all other obligations of the Company, to the holders of the Notes or the Trustee all in accordance with the terms set forth in Article XII of the Indenture, and (ii) in case of any extension of time of payment or renewal of any Notes or any such other obligations, that the same shall be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at maturity, by acceleration, call for redemption, upon a repurchase or otherwise.

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

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

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

This is a continuing Guarantee and shall remain in full force and effect and shall be binding upon the Guarantor and its successors and assigns until full and final payment of all of the Company’s obligations under the Notes and Indenture or until legally discharged in accordance with the Indenture and shall inure to the benefit of the successors and assigns of the Trustee and the holders of the Notes, and, in the event of any transfer or assignment of rights by

any holder of the Notes or the Trustee, the rights and privileges herein conferred upon that party shall automatically extend to and be vested in such transferee or assignee, all subject to the terms and conditions hereof. This is a Guarantee of payment and performance and not of collectibility.

This Guarantee shall not be valid or obligatory for any purpose until the certificate of authentication on the Note upon which this Guarantee is noted shall have been executed by the Trustee under the Indenture by the manual signature of one of its authorized officers.

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

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

A-20

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

[signature page follows]

A-21

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

Dated:

THE MACERICH PARTNERSHIP, L.P.

By: The Macerich Company,
its General Partner

By: _____

Name: _____

Its: _____

A-22

EXHIBIT B

FORM OF RESTRICTIVE LEGEND FOR COMMON STOCK ISSUED UPON CONVERSION(3)

THE SECURITY EVIDENCED BY THIS CERTIFICATE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT OF 1933"), 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 OF 1933;

(2) AGREES THAT IT WILL NOT, PRIOR TO THE DATE (THE "RESALE RESTRICTION TERMINATION DATE") THAT IS TWO YEARS AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF AND THE LAST DATE ON WHICH THE COMPANY OR ANY AFFILIATE OF THE COMPANY WAS THE OWNER OF THIS SECURITY (OR ANY PREDECESSOR OF SUCH SECURITY), RESELL OR OTHERWISE TRANSFER THE SECURITY EVIDENCED HEREBY OR THE COMMON STOCK ISSUABLE UPON CONVERSION OF SUCH SECURITY EXCEPT (A) TO THE MACERICH COMPANY OR ANY SUBSIDIARY THEREOF, (B) PURSUANT TO THE EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT OF 1933 (IF AVAILABLE), OR (C) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT OF 1933 AND WHICH CONTINUES TO BE EFFECTIVE AT THE TIME OF SUCH TRANSFER.

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.

(3) This legend should be included only if the Security is a Transfer Restricted Security.

\$950,000,000 3.25% CONVERTIBLE SENIOR NOTES DUE 2012

REGISTRATION RIGHTS AGREEMENT

among

THE MACERICH COMPANY,

as Issuer,

and

J.P. MORGAN SECURITIES INC.

and

DEUTSCHE BANK SECURITIES INC.,

as Initial Purchasers

Dated as of March 16, 2007

THIS REGISTRATION RIGHTS AGREEMENT (this “**Agreement**”) is made and entered into as of March 16, 2007 by and among The Macerich Company, a Maryland corporation (the “**Company**”), J.P. Morgan Securities Inc. and Deutsche Bank Securities Inc. (together, the “**Initial Purchasers**”) under the Purchase Agreement, dated March 12, 2007 (the “**Purchase Agreement**”), by and among the Company, The Macerich Partnership L.P., a Delaware limited partnership (the “**Guarantor**”) and the Initial Purchasers. In order to induce the Initial Purchasers to enter into the Purchase Agreement, the Company has agreed to provide the registration rights set forth in this Agreement. The execution of this Agreement is a condition to the closing under the Purchase Agreement.

The Company agrees with the Initial Purchasers, (i) for their benefit as Initial Purchasers and (ii) for the benefit of the beneficial owners (including the Initial Purchasers) from time to time of the Notes (as defined herein) and the beneficial owners from time to time of the Underlying Common Stock (as defined herein) issued upon conversion of the Notes (each of the foregoing a “**Holder**” and together the “**Holders**”), as follows:

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

“**Affiliate**” means with respect to any specified person, an “affiliate,” as defined in Rule 144, of such person.

“**Amendment Effectiveness Deadline Date**” has the meaning set forth in Section 2(d) hereof.

“**Business Day**” means each Monday, Tuesday, Wednesday, Thursday and Friday that is not a day on which banking institutions in The City of New York are authorized or obligated by law or executive order to close.

“**Common Stock**” means the shares of common stock, par value \$.01 per share, of the Company, together with the rights evidenced by such common stock to the extent provided in the Agreement, dated as of November 10, 1998, between the Company and Computershare Investor Services, as successor to Equiserve Trust Company, N.A., as successor to First Chicago Trust Company of New York, as Rights Agent, and any other securities as may constitute “Common Stock” for purposes of the Indenture, including, without limitation, the Underlying Common Stock.

“**Conversion Price**” has the meaning assigned such term in the Indenture.

“**Damages Accrual Period**” has the meaning set forth in Section 2(e) hereof.

“**Damages Payment Date**” means each March 15 and September 15.

“**Deferral Notice**” has the meaning set forth in Section 3(i) hereof.

“**Deferral Period**” has the meaning set forth in Section 3(i) hereof.

“**Effectiveness Deadline Date**” has the meaning set forth in Section 2(a) hereof.

“**Effectiveness Period**” means the period commencing on the date the Initial Shelf Registration Statement becomes effective under the Securities Act and ending on the date that all Registrable Securities have ceased to be Registrable Securities.

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

“**Filing Deadline Date**” has the meaning set forth in Section 2(a) hereof.

“**Fundamental Change**” has the meaning set forth in the Indenture.

“**Holder**” has the meaning set forth in the second paragraph of this Agreement.

“**Indenture**” means the Indenture, dated as of the date hereof, among the Company, the Guarantor and Deutsche Bank Trust Company Americas, as trustee, pursuant to which the Notes shall be issued.

“**Initial Purchasers**” has the meaning set forth in the preamble to this Agreement.

“**Initial Shelf Registration Statement**” has the meaning set forth in Section 2(a) hereof.

“**Issue Date**” means March 16, 2007.

“**Issuer Free Writing Prospectus**” has the meaning set forth in Section 6(a) hereof.

“**Liquidated Damages Amount**” has the meaning set forth in Section 2(e) hereof.

“**Losses**” has the meaning set forth in Section 6(a) hereof.

“**Material Event**” has the meaning set forth in Section 3(i) hereof.

“**Note Registrar**” has the meaning set forth in the Indenture.

“**Notes**” means the 3.25% Convertible Senior Notes due 2012 of the Company issued and sold pursuant to the Purchase Agreement.

“**Notice and Questionnaire**” means a written notice delivered to the Company containing substantially the information called for by the Selling Securityholder Notice and Questionnaire attached as Annex A to the Offering Memorandum of the Company dated March 12, 2007 relating to the Notes, as such written election may be amended upon the advice of nationally recognized counsel experienced in such matters, to the extent reasonably necessary to ensure compliance with applicable law.

“**Notice Holder**” means, on any date, any Holder that has delivered a completed and signed Notice and Questionnaire to the Company on or prior to such date.

“**Prospectus**” means the prospectus included in any Registration Statement (including, without limitation, a prospectus that discloses information previously omitted from a prospectus filed as part of an effective Registration Statement in reliance upon Rule 430A, 430B or 430C promulgated under the Securities Act), as amended or supplemented by any amendment or prospectus supplement, including post-effective amendments, and all materials incorporated by reference or explicitly deemed to be incorporated by reference in such Prospectus.

“**Purchase Agreement**” has the meaning set forth in the preamble hereof.

“**Record Date**” has the meaning assigned to such term in the Indenture.

“**Record Holder**” means, with respect to any Damages Payment Date relating to any Notes as to which any such Liquidated Damages Amount has accrued, the holder of record of such Note on the Record Date immediately preceding the relevant Damages Payment Date.

“**Registrable Securities**” means the Underlying Common Stock and any securities into or for which such Underlying Common Stock has been converted or exchanged, and any security issued with respect thereto upon any stock dividend, split or similar event until, in the case of any of the foregoing securities (including, without limitation, the Underlying Common Stock and any securities issued upon conversion of or in exchange for such securities), (A) the earliest of (i) its effective registration under the Securities Act and resale in accordance with the Registration Statement covering it, (ii) the expiration of the holding period that would be applicable thereto under Rule 144(k) to a sale by a non-Affiliate of the Company, (iii) its sale to the public pursuant to Rule 144 (or any similar provision then in force, but not Rule 144A) under the Securities Act or (iv) the date on which all of the foregoing securities cease to be outstanding and (B) as a result of the event or circumstance described in any of the foregoing clauses (A)(i) through (iii), the legend with respect to transfer restrictions required by the Indenture is removed or removable in accordance with the terms of the Indenture or such legend, as the case may be.

“**Registration Default**” has the meaning set forth in Section 2(e) hereof.

“**Registration Expenses**” has the meaning set forth in Section 5 hereof.

“**Registration Statement**” means any registration statement of the Company that covers any of the Registrable Securities pursuant to the provisions of this Agreement, including the Prospectus, any amendments and supplements to such registration statement, any post-effective amendments to such registration statement, and all exhibits to, and all materials incorporated by reference or explicitly deemed to be incorporated by reference in, such registration statement.

“**Restricted Securities**” means “restricted securities” as defined in Rule 144.

“**Rule 144**” means Rule 144 under the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the SEC.

“**Rule 144A**” means Rule 144A under the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the SEC.

“SEC” means the Securities and Exchange Commission.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated by the SEC thereunder.

“Shelf Registration Statement” has the meaning set forth in Section 2(a) hereof and includes the Initial Shelf Registration Statement and any Subsequent Shelf Registration Statement.

“Subsequent Shelf Registration Statement” has the meaning set forth in Section 2(b) hereof.

“TIA” means the Trust Indenture Act of 1939, as amended, and the rules and regulations promulgated by the SEC thereunder.

“Trustee” means Deutsche Bank Trust Company Americas, the trustee under the Indenture.

3

“Underlying Common Stock” means the Common Stock into which the Notes are convertible or that is issued upon any such conversion.

Section 2. *Shelf Registration.* (a) The Company shall prepare and file or cause to be prepared and filed with the SEC, by the date (the “**Filing Deadline Date**”) that is ninety (90) days after the Issue Date, a Registration Statement for an offering to be made on a delayed or continuous basis pursuant to Rule 415 of the Securities Act (a “**Shelf Registration Statement**”) registering the resale from time to time by Holders thereof of all of the Registrable Securities (the “**Initial Shelf Registration Statement**”). The Initial Shelf Registration Statement shall be on Form S-3 or another appropriate form permitting registration of such Registrable Securities for resale by such Holders in accordance with the methods of distribution elected by the Holders and set forth in the Initial Shelf Registration Statement. The Company shall use its reasonable best efforts to cause the Initial Shelf Registration Statement to become effective under the Securities Act as promptly as is practicable but in any event by the date (the “**Effectiveness Deadline Date**”) that is one hundred eighty (180) days after the Issue Date, and, to keep the Initial Shelf Registration Statement (or any Subsequent Shelf Registration Statement) continuously effective under the Securities Act until the expiration of the Effectiveness Period. Subject to Section 4, at the time the Initial Shelf Registration Statement becomes effective under the Securities Act, each Holder that became a Notice Holder on or prior to the date that is ten (10) Business Days prior to such time of effectiveness shall be named as a selling securityholder in the Initial Shelf Registration Statement and the related Prospectus in such a manner as to permit such Holder to deliver such Prospectus to purchasers of Registrable Securities in accordance with applicable law.

(b) If the Initial Shelf Registration Statement or any Subsequent Shelf Registration Statement ceases to be effective for any reason at any time during the Effectiveness Period (other than because all Registrable Securities registered thereunder shall have been resold pursuant thereto or shall have otherwise ceased to be Registrable Securities), the Company shall use its reasonable best efforts to obtain the prompt withdrawal of any order suspending the effectiveness thereof, and in any event shall within thirty (30) days of such cessation of effectiveness amend the Shelf Registration Statement in a manner reasonably expected to obtain the withdrawal of the order suspending the effectiveness thereof, or file an additional Shelf Registration Statement covering all of the securities that as of the date of such filing are Registrable Securities (a “**Subsequent Shelf Registration Statement**”). If a Subsequent Shelf Registration Statement is filed, the Company shall use its reasonable best efforts to cause the Subsequent Shelf Registration Statement to become effective as promptly as is practicable after such filing and to keep such Registration Statement (or Subsequent Shelf Registration Statement) continuously effective until the end of the Effectiveness Period. If the Shelf Registration Statement is scheduled to expire during the Effectiveness Period pursuant to Rule 415(a)(5) under the Securities Act, the Company will, prior to such expiration, file a Subsequent Shelf Registration, and use its reasonable best efforts to cause such Subsequent Shelf Registration to become effective under the Securities Act (unless it becomes effective automatically upon filing) within a period that avoids any interruption in the ability of Holders of Registrable Securities covered by the expiring Shelf Registration Statement to make registered dispositions.

(c) The Company shall supplement and amend the Shelf Registration Statement if required by the rules, regulations or instructions applicable to the registration form used by the Company for such Shelf Registration Statement, if required by the Securities Act or as necessary to name a Notice Holder as a selling securityholder pursuant to Section 2(d) below.

(d) Each Holder agrees that if such Holder wishes to sell Registrable Securities pursuant to a Shelf Registration Statement and related Prospectus, it will do so only in accordance with this Section 2(d), Section 3(i) and Section 4. Each Holder wishing to sell Registrable

4

Securities pursuant to a Shelf Registration Statement and related Prospectus agrees to deliver a Notice and Questionnaire to the Company at least fifteen (15) Business Days prior to any intended distribution of Registrable Securities under the Shelf Registration Statement. From and after the date the Initial Shelf Registration Statement becomes effective under the Securities Act, the Company shall, as promptly as practicable after the date a Notice and Questionnaire is delivered to the Company, and in any event upon the later of (x) ten (10) Business Days after such delivery date or (y) ten (10) Business Days after the expiration of any Deferral Period in effect when the Notice and Questionnaire is delivered or put into effect within ten (10) Business Days of such delivery date:

(i) if required by applicable law, file with the SEC a post-effective amendment to the Shelf Registration Statement or prepare and, if required by applicable law, file a supplement to the related Prospectus or a supplement or amendment to any document incorporated therein by reference or file any other required document so that the Holder delivering such Notice and Questionnaire is named as a selling securityholder in the Shelf Registration Statement and the related Prospectus in such a manner as to permit such Holder to deliver such Prospectus to purchasers of the Registrable Securities in accordance with applicable law and, if the Company shall file a post-effective amendment to the Shelf Registration Statement, use its reasonable best efforts to cause such post-effective amendment to be become effective under the Securities Act as promptly as is practicable, but in any event by the date (the “**Amendment Effectiveness Deadline Date**”) that is ninety (90) days after the date such post-effective amendment is required by this clause to be filed by the Company;

(ii) provide such Holder with a reasonable number of copies of any documents filed pursuant to Section 2(d)(i); and

(iii) notify such Holder as promptly as practicable after the effectiveness under the Securities Act of any post-effective amendment filed pursuant to Section 2(d)(i);

provided that if such Notice and Questionnaire is delivered during a Deferral Period, the Company shall so inform the Holder delivering such Notice and Questionnaire and shall take the actions set forth in clauses (i), (ii) and (iii) above upon expiration of the Deferral Period in accordance with Section 3(i). Notwithstanding anything contained herein to the contrary, (i) the Company shall be under no obligation to name any Holder that is not a Notice Holder as a selling securityholder in any Registration Statement or related Prospectus and (ii) the Amendment Effectiveness Deadline Date shall be extended by up to ten (10) Business Days from the expiration of a Deferral Period (and the Company shall incur no obligation to pay Liquidated Damages during such extension) if such Deferral Period shall be in effect on the Amendment Effectiveness Deadline Date.

(e) The parties hereto agree that the Holders of Registrable Securities will suffer damages, and that it would not be feasible to ascertain the extent of such damages with precision, if

(i) the Initial Shelf Registration Statement has not been filed on or prior to the Filing Deadline Date,

(ii) the Initial Shelf Registration Statement has not become effective under the Securities Act on or prior to the Effectiveness Deadline Date,

(iii) the Company has failed to perform its obligations set forth in Section 2(d) within the time period required therein,

5

(iv) any post-effective amendment to a Shelf Registration Statement filed pursuant to Section 2(d)(i) has not become effective under the Securities Act on or prior to the Amendment Effectiveness Deadline Date,

(v) the aggregate duration of Deferral Periods in any period exceeds the number of days permitted in respect of such period pursuant to Section 3(i) hereof, or

(vi) the number of Deferral Periods in any period exceeds the number permitted in respect of such period pursuant to Section 3(i) hereof.

Each event described in any of the foregoing clauses (i) through (vi) is individually referred to herein as a “**Registration Default**.” For purposes of this Agreement, each Registration Default set forth above shall begin on the dates set forth in the table set forth below and shall continue until the ending dates set forth in the table below:

Type of Registration Default by Clause	Beginning Date	Ending Date
(i)	Filing Deadline Date	the date on which the Initial Shelf Registration Statement is filed
(ii)	Effectiveness Deadline Date	the date on which the Initial Shelf Registration Statement becomes effective under the Securities Act
(iii)	the date by which the Company is required to perform its obligations under Section 2(d)	the date on which the Company performs its obligations set forth in Section 2(d)
(iv)	the Amendment Effectiveness Deadline Date	the date on which the applicable post-effective amendment to a Shelf Registration Statement becomes effective under the Securities Act
(v)	the date on which the aggregate duration of Deferral Periods in any period exceeds the number of days permitted by Section 3(i)	termination of the Deferral Period that caused the limit on the aggregate duration of Deferral Periods to be exceeded
(vi)	the date of commencement of a Deferral Period that causes the number of Deferral Periods to exceed the number permitted by Section 3(i)	termination of the Deferral Period that caused the number of Deferral Periods to exceed the number permitted by Section 3(i)

6

Commencing on (and including) any date that a Registration Default has begun and ending on (but excluding) the next date on which there are no Registration Defaults that have occurred and are continuing (a “**Damages Accrual Period**”), the Company shall pay, as liquidated damages and not as a penalty, to Record Holders of Registrable Securities an amount (the “**Liquidated Damages Amount**”) accruing, for each day in the Damages Accrual Period, in respect of any Note then outstanding, (i) at a rate per annum equal to 0.25% of the aggregate principal amount of such Note to and including the 90th day following the occurrence of such Registration Default and (ii) at a rate per annum equal to 0.50% of the aggregate principal amount of such Note from and after the 91st day following the occurrence of such Registration Default; provided that in no event will the Liquidated Damages Amount accrue at a rate exceeding a rate per annum equal to 0.50%; and provided further that in the case of a Damages Accrual Period that is in effect solely as a result of a Registration Default of the type described in clause (iii) or (iv) of the preceding paragraph, such Liquidated Damages Amount shall be paid only to the Holders (as set forth in the succeeding paragraph) that have delivered Notices and Questionnaires that caused the Company to incur the obligations set forth in Section 2(d), the non-performance of which is the basis of such Registration Default. Notwithstanding the foregoing, no Liquidated Damages Amount shall accrue as to any Registrable Security from and after the earlier of (x) the date such security is no longer a Registrable Security and (y) expiration of the Effectiveness Period. The rate of accrual of the Liquidated Damages Amount with respect to any period shall not exceed the rate provided for in this paragraph notwithstanding the occurrence of multiple concurrent Registration Defaults. Following the cure of all Registration Defaults relating to any

particular Registrable Security requiring the payment by the Company of any Liquidated Damages Amount to the Holders of the Registrable Securities pursuant to this Section 2(e), the accrual of such Liquidated Damages Amount with respect to such Registrable Security shall cease (without in any way limiting the effect of any subsequent Registration Default requiring the payment by the Company of any Liquidated Damages Amount).

The Liquidated Damages Amount shall accrue from the first day of the applicable Damages Accrual Period, and shall be payable in cash on each Damages Payment Date during the Damages Accrual Period to the Record Holders of the Registrable Securities on the record date immediately preceding the applicable Damages Payment Date (and on the Damages Payment Date next succeeding the end of the Damages Accrual Period if the Damages Accrual Period does not end on a Damages Payment Date to the Record Holders of the Registrable Securities as of the date that such Damages Accrual Period ends), unless the Indenture provides otherwise for the payment of accrued and unpaid interest, including any Liquidated Damages Amount, in which case the Liquidated Damages Amount shall be paid as set forth in the Indenture; *provided*, that, in the case of a Registration Default of the type described in clause (iii) or (iv) of the first paragraph of this Section 2(e), such Liquidated Damages Amount shall be paid only to the Holders entitled thereto pursuant to such first paragraph by check mailed to the address set forth in the Notice and Questionnaire delivered by such Holder. Nothing shall preclude any Holder from pursuing or obtaining specific performance or other equitable relief with respect to this Agreement.

All of the Company's obligations set forth in this Section 2(e) that are outstanding with respect to any Registrable Security at the time such security ceases to be a Registrable Security shall survive until such time as all such obligations with respect to such security have been satisfied in full (notwithstanding termination of this Agreement pursuant to Section 8(k)).

The parties hereto agree that the Liquidated Damages Amount provided for in this Section 2(e) constitutes a reasonable estimate of the damages that may be incurred by Holders of Registrable Securities by reason of the failure of the Shelf Registration Statement to be filed or become effective under the Securities Act or available for effecting resales of Registrable Securities in accordance with the provisions hereof.

7

Section 3. *Registration Procedures.* In connection with the registration obligations of the Company under Section 2 hereof, the Company shall:

(a) Prepare and file with the SEC a Registration Statement or Registration Statements on any appropriate form under the Securities Act available for the sale of the Registrable Securities by the Holders thereof in accordance with the intended method or methods of distribution thereof, and use its reasonable best efforts to cause each such Registration Statement to become effective and remain effective as provided herein; *provided* that before filing any Registration Statement or Prospectus or any amendments or supplements thereto with the SEC, the Company shall furnish to the Initial Purchasers a reasonable number of copies of all such documents proposed to be filed and use its reasonable best efforts to reflect in each such document when so filed with the SEC such comments as the Initial Purchasers reasonably shall propose within five (5) Business Days of the delivery of such copies to the Initial Purchasers.

(b) Prepare and file with the SEC such amendments and post-effective amendments to each Registration Statement as may be necessary to keep such Registration Statement continuously effective (except as provided in Section 3(i) hereof) for the applicable period specified in Section 2(a); cause the related Prospectus to be supplemented 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 use its reasonable best efforts to comply with the provisions of the Securities Act applicable to it with respect to the disposition of all securities covered by such Registration Statement during the Effectiveness Period in accordance with the intended methods of disposition by the sellers thereof set forth in such Registration Statement as so amended or such Prospectus as so supplemented.

(c) As promptly as practicable give notice to the Notice Holders and the Initial Purchasers, (i) when any Prospectus, prospectus supplement, Registration Statement or post-effective amendment to a Registration Statement has been filed with the SEC (other than any such prospectus supplement or post-effective amendment that solely adds one or more Notice Holders as selling security holders, in which case notice need only be given to such Notice Holders) and, with respect to a Registration Statement or any post-effective amendment, when the same has become effective under the Securities Act, (ii) of the issuance by the SEC or any other federal or state governmental authority of any stop order suspending the effectiveness of any Registration Statement or the initiation or threatening of any proceedings for that purpose, (iii) of the receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Registrable Securities for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose, (iv) of the occurrence of a Material Event, (v) of the determination by the Company that a post-effective amendment to a Registration Statement will be filed with the SEC, which notice may, at the discretion of the Company (or as required pursuant to Section 3(i)), state that it constitutes a Deferral Notice, in which event the provisions of Section 3(i) shall apply, and (vi) of the issuance by the SEC of a notification of objection to the use of the form on which the Registration Statement has been filed, and of the happening of any event that causes the Company to become an "ineligible issuer," as defined in Rule 405 under the Securities Act.

(d) Use its reasonable best efforts to obtain the withdrawal of any order suspending the effectiveness of a Registration Statement or the lifting of any suspension of the qualification (or exemption from qualification) of any of the Registrable Securities for sale in any jurisdiction in which they have been qualified for sale, in either case at the earliest possible moment, and provide prompt notice to each Notice Holder and the Initial Purchasers of the withdrawal of any such order.

8

(e) If reasonably requested by the Initial Purchasers or any Notice Holder, as promptly as practicable incorporate in a prospectus supplement or post-effective amendment to a Registration Statement such information as the Initial Purchasers or such Notice Holder shall, on the basis of an opinion of nationally-recognized counsel experienced in such matters, determine to be required to be included therein by applicable law and make any required filings of such prospectus supplement or post-effective amendment.

(f) As promptly as practicable furnish to each Notice Holder and the Initial Purchasers, upon request and without charge, at least one (1) conformed copy of the Registration Statement and any amendment thereto, including exhibits and all documents incorporated or deemed to be incorporated therein by reference (other than any such amendment that solely adds one or more Notice Holders as selling security holders, in which case such conformed copy need only be given to such Notice Holders).

(g) During the Effectiveness Period, deliver to each Notice Holder and the Initial Purchasers, in connection with any sale of Registrable Securities pursuant to a Registration Statement, without charge, as many copies of the Prospectus or Prospectuses relating to such Registrable Securities (including each preliminary prospectus) and any amendment or supplement thereto as such Notice Holder may reasonably request, and to provide a “reasonable number” of copies thereof to the New York Stock Exchange as contemplated by Rule 153 under the Securities Act; and the Company hereby consents (except during such periods that a Deferral Notice is outstanding and has not been revoked) to the use of such Prospectus or each amendment or supplement thereto by each Notice Holder in connection with any offering and sale of the Registrable Securities covered by such Prospectus or any amendment or supplement thereto in the manner set forth therein.

(h) Prior to any public offering of the Registrable Securities pursuant to a Registration Statement, use its reasonable best efforts to register or qualify or cooperate with the Notice Holders in connection with the registration or qualification (or exemption from such registration or qualification) of such Registrable Securities for offer and sale under the securities or Blue Sky laws of such jurisdictions within the United States as any Notice Holder reasonably requests in writing (which request may be included in the Notice and Questionnaire); prior to any public offering of the Registrable Securities pursuant to the Shelf Registration Statement, use its reasonable best efforts to keep each such registration or qualification (or exemption therefrom) effective during the Effectiveness Period in connection with such Notice Holder’s offer and sale of Registrable Securities pursuant to such registration or qualification (or exemption therefrom) and do any and all other acts or things reasonably necessary or advisable to enable the disposition in such jurisdictions of such Registrable Securities in the manner set forth in the relevant Registration Statement and the related Prospectus; *provided* that the Company will not be required to (i) qualify as a foreign corporation or as a dealer in securities in any jurisdiction where it would not otherwise be required to qualify but for this Agreement, (ii) take any action that would subject it to general service of process in suits or (iii) subject itself to taxation in respect of doing business in any jurisdiction where it is not currently subject to taxation.

(i) Upon (A) the issuance by the SEC of a stop order suspending the effectiveness of the Shelf Registration Statement or the initiation of proceedings with respect to the Shelf Registration Statement under Section 8(d) or 8(e) of the Securities Act, (B) the occurrence of any event or the existence of any fact (a “**Material Event**”) as a result of which any Registration Statement shall contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, or any Prospectus shall contain any untrue statement of a material fact or omit to state any material fact

9

required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, or (C) the occurrence or existence of any pending corporate development that, in the reasonable discretion of the Company, makes it appropriate to suspend the availability of the Shelf Registration Statement and the related Prospectus for a discrete period of time:

(i) in the case of clause (B) above, subject to clause (ii) below, as promptly as practicable prepare and file, if necessary pursuant to applicable law, a post-effective amendment to such Registration Statement or a supplement to the related Prospectus or any document incorporated therein by reference or file any other required document that would be incorporated by reference into such Registration Statement and Prospectus so that such Registration Statement does not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, and such Prospectus does not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, as thereafter delivered to the purchasers of the Registrable Securities being sold thereunder, and, in the case of a post-effective amendment to a Registration Statement, subject to the next sentence, use its reasonable best efforts to cause it to become effective under the Securities Act as promptly as is practicable, and

(ii) give notice to the Notice Holders that the availability of the Shelf Registration Statement is suspended (a “**Deferral Notice**”) and, upon receipt of any Deferral Notice, each Notice Holder agrees not to sell any Registrable Securities pursuant to the Registration Statement until such Notice Holder’s receipt of copies of the supplemented or amended Prospectus provided for in clause (i) above, or until it is advised in writing by the Company that the Prospectus may be used, and has received copies of any additional or supplemental filings that are incorporated or deemed incorporated by reference in such Prospectus.

The Company will use its reasonable best efforts to ensure that the use of the Prospectus may be resumed (x) in the case of clause (A) above, as promptly as is practicable, (y) in the case of clause (B) above, as soon as, in the reasonable judgment of the Company, public disclosure of such Material Event would not be prejudicial to or contrary to the interests of the Company or, if necessary to avoid unreasonable burden or expense, as soon as practicable thereafter and (z) in the case of clause (C) above, as soon as in the reasonable discretion of the Company, such suspension is no longer appropriate. The Company shall be entitled to exercise its right under this Section 3(i) to suspend the availability of the Shelf Registration Statement or any Prospectus, without incurring or accruing any obligation to pay liquidated damages pursuant to Section 2(e), provided that any such period during which the availability of the Registration Statement and any Prospectus is suspended (the “**Deferral Period**”) shall, without incurring any obligation to pay liquidated damages pursuant to Section 2(e), not exceed 30 days in any three month period or 105 days in any twelve (12) month period; *provided, however*, that if the disclosure giving rise to a Deferral Period relates to a proposed pending or material business transaction, the disclosure of which the board of directors of the Company determines in good faith would be reasonably likely to impede the Company’s ability to consummate such transaction, or would otherwise be seriously detrimental to the Company and its subsidiaries taken as a whole, the Company may extend the Deferral Period from 30 days to 60 days in any three month period or from 105 days to 120 days in any twelve (12) month period.

(j) If requested in writing in connection with a disposition of Registrable Securities pursuant to a Registration Statement, make reasonably available for inspection during normal business hours by a representative for the Notice Holders of such Registrable Securities, any broker-dealers, attorneys and accountants retained by such Notice Holders, and any attorneys or other agents retained by a broker-dealer engaged by such Notice Holders, all relevant financial and other records and pertinent corporate documents and properties of the Company and its subsidiaries, and cause the appropriate officers, directors and employees of the Company and its subsidiaries to make reasonably available for inspection during normal business hours on reasonable notice all relevant information reasonably requested by such representative for the Notice Holders, or any such broker-dealers, attorneys or accountants in connection with such disposition, in each case as is customary for similar “**due diligence**” examinations; *provided* that such persons shall first agree in writing with the Company that any information that is reasonably and in good faith designated by the Company in writing as confidential at the time of delivery of such information shall be kept confidential by such persons and shall be used solely for the purposes of exercising rights under this Agreement, unless (i) disclosure of such information is required by court or administrative order or is necessary to respond to inquiries of regulatory authorities, (ii) disclosure of such information is required by law (including any disclosure requirements pursuant to federal securities laws in connection with the filing of any Registration Statement or the use of any Prospectus referred to in this Agreement), (iii) such information becomes generally available to the public other than as a result of a disclosure or failure to safeguard by any such person or (iv) such information becomes available to any such person from a source other than the Company and such source is not bound by a confidentiality agreement.

(k) Comply with all applicable rules and regulations of the SEC and make generally available to its securityholders earning statements (which need not be audited) as soon as practicable after the effective date of the Registration Statement satisfying the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder (or any similar rule promulgated under the Securities Act).

(l) Cooperate with each Notice Holder to facilitate the timely preparation and delivery of certificates representing Registrable Securities sold pursuant to a Registration Statement, which certificates shall not bear any restrictive legends, and cause such Registrable Securities to be in such denominations as are permitted by the Indenture and registered in such names as such Notice Holder may request in writing at least three (3) Business Day prior to any sale of such Registrable Securities.

(m) Provide a CUSIP number for all Registrable Securities covered by each Registration Statement not later than the effective date of such Registration Statement and provide the Trustee and the transfer agent for the Common Stock with printed certificates for the Registrable Securities that are in a form eligible for deposit with The Depository Trust Company.

(n) Cooperate and assist in any filings required to be made with the National Association of Securities Dealers, Inc. or the New York Stock Exchange, Inc.

(o) Upon (i) the filing of the Initial Shelf Registration Statement and (ii) the effectiveness of the Initial Shelf Registration Statement, announce the same, in each case by release to Reuters Economic Services and Bloomberg Business News or other reasonable means of distribution.

(p) Not, without the prior written consent of the Initial Purchasers, make any offer relating to the Securities that would constitute a “free writing prospectus,” as defined in Rule 405 under the Securities Act.

Section 4. *Holder’s Obligations.* Each Holder agrees, by acquisition of the Registrable Securities, that no Holder shall be entitled to sell any of such Registrable Securities pursuant to a Registration Statement or to receive a Prospectus relating thereto, unless such Holder has furnished the Company with a Notice and Questionnaire as required pursuant to Section 2(d) hereof (including the information required to be included in such Notice and Questionnaire) and the information set forth in the next sentence. Each Notice Holder agrees promptly to furnish to the Company all information required to be disclosed in order to make the information previously furnished to the Company by such Notice Holder not misleading and any other information regarding such Notice Holder and the distribution of such Registrable Securities as the Company may from time to time reasonably request. Any sale of any Registrable Securities by any Holder shall constitute a representation and warranty by such Holder that the information relating to such Holder and its plan of distribution is as set forth in the Prospectus delivered by such Holder in connection with such disposition, that such Prospectus does not as of the time of such sale contain any untrue statement of a material fact relating to or provided by such Holder or its plan of distribution and that such Prospectus does not as of the time of such sale omit to state any material fact relating to or provided by such Holder or its plan of distribution necessary to make the statements in such Prospectus, in the light of the circumstances under which they were made, not misleading.

Section 5. *Registration Expenses.* The Company shall bear all fees and expenses (the “**Registration Expenses**”) incurred in connection with the performance by the Company of its obligations under Sections 2 and 3 of this Agreement whether or not any Registration Statement becomes effective under the Securities Act. Such fees and expenses shall include, without limitation, (i) all registration and filing fees (including, without limitation, fees and expenses (x) with respect to filings required to be made with the National Association of Securities Dealers, Inc. or New York Stock Exchange Inc. and (y) of compliance with federal and state securities or Blue Sky laws (including, without limitation, reasonable fees and disbursements of counsel for the Company in connection with Blue Sky qualifications of the Registrable Securities under the laws of such jurisdictions as Notice Holders of a majority of the Registrable Securities being sold pursuant to a Registration Statement may designate), (ii) printing expenses (including, without limitation, expenses of printing certificates for Registrable Securities in a form eligible for deposit with The Depository Trust Company), (iii) duplication expenses relating to copies of any Shelf Registration Statement or Prospectus delivered to any Holders hereunder, (iv) fees and disbursements of counsel for the Company in connection with the Shelf Registration Statement, (v) reasonable fees and disbursements of the Trustee and its counsel and of the Note Registrar and of the registrar and transfer agent for the Common Stock and (vi) Securities Act liability insurance, if any, obtained by the Company in its sole discretion. In addition, the Company shall pay the internal expenses of the Company (including, without limitation, all salaries and expenses of officers and employees performing legal or accounting duties), the expense of any annual audit, the fees and expenses incurred in connection with the listing by the Company of the Registrable Securities on any securities exchange on which similar securities of the Company are then listed and the fees and expenses of any person, including special experts, retained by the Company. Notwithstanding the provisions of this Section 5, each seller of Registrable Securities shall pay its selling expenses and all of its registration expenses to the extent required by applicable law.

Section 6. *Indemnification.*

(a) *Indemnification by the Company.* The Company shall indemnify and hold harmless each Notice Holder and each person, if any, who controls any Notice Holder (within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act), and each

12

affiliate of any Notice Holder, from and against any and all losses, claims, damages and liabilities (including, without limitation, any legal or other expenses reasonably incurred in connection with defending or investigating any such action or claim) (collectively, “**Losses**”) caused by (i) any untrue statement or alleged untrue statement of a material fact contained in any Registration Statement or any amendment thereof, or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading or (ii) any untrue statement or alleged untrue statement of a material fact contained in any preliminary prospectus, any “issuer free writing prospectus,” as defined in Rule 433 under the Securities Act (an “**Issuer Free Writing Prospectus**”), or the Prospectus (as amended or supplemented if the Company shall have furnished any amendments or supplements thereto), or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein in light of the circumstances under which they were made not misleading, except in each of (i) and (ii) above insofar as such Losses are caused by any such untrue statement or omission or alleged untrue statement or omission based upon information relating to a Holder furnished to the Company in writing by or on behalf of such Holder expressly for use therein.

(b) *Indemnification by Holders.* Each Holder agrees severally and not jointly to indemnify and hold harmless the Company, the directors of the Company, the officers of the Company who sign the Registration Statement, and each person, if any, who controls the Company (within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act), and any other Holder, from and against all Losses caused by (i) any untrue statement or alleged untrue statement of a material fact contained in any Registration Statement or any amendment thereof, or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading or (ii) any untrue statement or alleged untrue statement of a material fact contained in any preliminary prospectus, any Issuer Free Writing Prospectus or the Prospectus (as amended or supplemented if the Company shall have furnished any amendments or supplements thereto) or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, but only with reference to information relating to such Holder furnished to the Company in writing by or on behalf of such Holder expressly for use in such Registration Statement, any preliminary prospectus, any Issuer Free Writing Prospectus, the Prospectus or any amendments or supplements thereto. In no event shall the liability of any Holder hereunder be greater in amount than the dollar amount of the proceeds received by such Holder upon the sale of the Registrable Securities pursuant to the Registration Statement giving rise to such indemnification obligation.

(c) *Conduct of Indemnification Proceedings.* In case any proceeding (including any governmental investigation) shall be instituted involving any person in respect of which indemnity may be sought pursuant to Section 6(a) or 6(b) hereof, such person (the “**indemnified party**”) shall promptly notify the person against whom such indemnity may be sought (the “**indemnifying party**”) in writing and the indemnifying party, upon request of the indemnified party, shall retain counsel reasonably satisfactory to the indemnified party (who shall not, except with the consent of the indemnified party, be counsel to the indemnifying party) to represent the indemnified party and any others the indemnifying party may designate in such proceeding and shall pay the fees and disbursements of such counsel related to such proceeding. In any such proceeding, any indemnified party shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such indemnified party unless (i) the indemnifying party and the indemnified party shall have mutually agreed to the retention of such counsel, (ii) the named parties to any such proceeding (including any impleaded parties) include both the indemnifying party and the indemnified party and representation of both parties by the

13

same counsel would be inappropriate due to actual or potential differing interests between them or (iii) the indemnifying party shall have failed to assume the defense of and employ counsel acceptable to the indemnified party within a reasonable period of time after notice of commencement of the action. It is understood that the indemnifying party shall not, in respect of the legal expenses of any indemnified party in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the fees and expenses of more than one separate firm (in addition to any local counsel) for all Holders and all persons, if any, who control any Holder within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act and (ii) the fees and expenses of more than one separate firm (in addition to any local counsel) for the Company, its directors, its officers who sign the Registration Statement and each person, if any, who controls the Company within the meaning of either such Section, and that all such fees and expenses shall be reimbursed as they are incurred. In the case of any such separate firm for the Holders and such control persons of any Holders, such firm shall be designated in writing by the Holders of a majority (with Holders of Notes deemed to be the Holders, for purposes of determining such majority, of the number of shares of Underlying Common Stock into which such Notes are or would be convertible as of the date on which such designation is made (assuming conversion solely into shares of Common Stock)) of the Registrable Securities covered by the Registration Statement held by Holders that are indemnified parties pursuant to Section 6(a). In the case of any such separate firm for the Company, and such directors, officers and control persons of the Company, such firm shall be designated in writing by the Company. The indemnifying party shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent, the indemnifying party agrees to indemnify the indemnified party from and against any loss or liability by reason of such settlement. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement, compromise or consent in respect of any pending or threatened proceeding in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement, compromise or consent (x) includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such proceeding and (y) does not include a statement as to an admission of fault, culpability or a failure to act by or on the behalf of any indemnified party.

(d) *Contribution.* To the extent that the indemnification provided for in Section 6(a) or 6(b) is otherwise applicable by its terms but is unavailable to an indemnified party or insufficient in respect of any Losses referred to therein, then each indemnifying party under such paragraph, in lieu of indemnifying such indemnified party thereunder, shall contribute to the amount paid or payable by such indemnified party as a result of such Losses (i) in such proportion as is appropriate to reflect the relative benefits received by the indemnifying party or parties on the one hand and the indemnified party or parties on the other hand from the offering of the Registrable Securities or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the indemnifying party or parties on the one hand and of the indemnified party or parties on the other hand in connection with the

statements or omissions that resulted in such Losses, as well as any other relevant equitable considerations. Benefits received by the Company shall be deemed to be equal to the total net proceeds from the sale to the Initial Purchasers pursuant to the Purchase Agreement (after deducting expenses) of the Registrable Securities to which such Losses relate. Benefits received by any Holder shall be deemed to be equal to the value of receiving Registrable Securities that are registered under the Securities Act. The relative fault of the Holders on the one hand and the Company 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 or on behalf of the Holders or by the Company,

and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Holders' respective obligations to contribute pursuant to this paragraph are several in proportion to the respective number of Registrable Securities they have sold pursuant to a Registration Statement, and not joint.

The parties hereto agree that it would not be just or equitable if contribution pursuant to this Section 6(d) were determined by *pro rata* allocation (even if the Holders were treated as one entity for such purpose) or by any other method of allocation that does not take account of the equitable considerations referred to in the immediately preceding paragraph. The amount paid or payable by an indemnified party as a result of the Losses referred to in the immediately preceding paragraph shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding this Section 6(d), an indemnifying party that is a selling Holder shall not be required to contribute any amount in excess of the amount by which the total price at which the Registrable Securities sold by such indemnifying party and distributed to the public were offered to the public exceeds the amount of any damages that such indemnifying party has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The remedies provided for in this Section 6 are not exclusive and shall not limit any rights or remedies which may otherwise be available to any indemnified party at law or in equity.

(e) The indemnity, contribution and expense reimbursement obligations of the parties hereunder shall be in addition to any liability any indemnified party may otherwise have hereunder, under the Purchase Agreement or otherwise.

(f) The indemnity and contribution provisions contained in this Section 6 shall remain operative and in full force and effect regardless of (i) any termination of this Agreement, (ii) any investigation made by or on behalf of any Holder or any person controlling any Holder, or the Company, or the Company's officers or directors or any person controlling the Company and (iii) the sale of any Registrable Securities by any Holder.

Section 7. Information Requirements. The Company covenants that, if at any time before the end of the Effectiveness Period the Company is not subject to the reporting requirements of the Exchange Act, it will cooperate with any Holder and take such further reasonable action as any Holder may reasonably request in writing (including, without limitation, making such reasonable representations as any such Holder may reasonably request), all to the extent required from time to time to enable such Holder to sell Registrable Securities without registration under the Securities Act within the limitation of the exemptions provided by Rule 144 and Rule 144A under the Securities Act and customarily taken in connection with sales pursuant to such exemptions. Upon the written request of any Holder, the Company shall deliver to such Holder a written statement as to whether it has complied with such filing requirements, unless such a statement has been included in the Company's most recent report filed pursuant to Section 13 or Section 15(d) of Exchange Act. Notwithstanding the foregoing, nothing in this Section 7 shall be deemed to require the Company to register any of its securities (other than the Common Stock) under any section of the Exchange Act.

Section 8. Miscellaneous.

(a) *No Conflicting Agreements.* The Company is not, as of the date hereof, a party to, nor shall it, on or after the date of this Agreement, enter into, any agreement with respect to its securities that conflicts with the rights granted to the Holders in this Agreement. The Company

represents and warrants that the rights granted to the Holders hereunder do not in any way conflict with the rights granted to the holders of the Company's securities under any other agreements.

(b) *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 of the then outstanding Underlying Common Stock constituting Registrable Securities (with Holders of Notes deemed to be the Holders, for purposes of this Section, of the number of outstanding shares of Underlying Common Stock into which such Notes are or would be convertible as of the date on which such consent is requested (assuming conversion solely into shares of Common Stock)). Notwithstanding the foregoing, a waiver or consent to depart from the provisions hereof with respect to a matter that relates exclusively to the rights of Holders whose securities are being sold pursuant to a Registration Statement and that does not directly or indirectly affect the rights of other Holders may be given by Holders of at least a majority of the Registrable Securities being sold by such Holders pursuant to such Registration Statement; *provided*, that the provisions of this sentence may not be amended, modified, or supplemented except in accordance with the provisions of the immediately preceding sentence. Each Holder of Registrable Securities outstanding at the time of any such amendment, modification, supplement, waiver or consent or thereafter shall be bound by any such amendment, modification, supplement, waiver or consent effected pursuant to this Section 8(b), whether or not any notice, writing or marking indicating such amendment, modification, supplement, waiver or consent appears on the Registrable Securities or is delivered to such Holder.

(c) *Notices.* All notices and other communications provided for or permitted hereunder shall be made in writing by hand delivery, by telecopier, by courier guaranteeing overnight delivery or by first-class mail, return receipt requested, and shall be deemed given (i) when made, if made by hand delivery, (ii) upon confirmation, if made by telecopier, (iii) one (1) Business Day after being deposited with such courier, if made by overnight courier or (iv) on the date indicated on the notice of receipt, if made by first-class mail, to the parties as follows:

(i) if to a Holder, at the most current address given by such Holder to the Company in a Notice and Questionnaire or any amendment thereto;

16

(ii) if to the Company, to:

The Macerich Company
401 Wilshire Boulevard
Suite 700
Santa Monica, California 90401
Attention: Chief Executive Officer
Fax: (310) 395-2791

with a copy to:

O'Melveny & Myers LLP
400 South Hope Street
Los Angeles, California 90071
Attention: Richard A. Boehmer, Esq.
Fax: (213) 430-6407

(iii) if to the Initial Purchasers, to:

J.P. Morgan Securities Inc.
277 Park Avenue
New York, New York 10172
Attention: Equity Syndicate Desk
Fax: (212) 622-8358

with a copy to:

J.P. Morgan Securities Inc.
277 Park Avenue
8th Floor
New York, New York 10172
Attention: Leslie K. Gardner, Esq.
Fax: (212) 622-6002

and to:

Deutsche Bank Securities Inc.
60 Wall Street
New York, New York 10005
Attention: Syndicate
Fax: (212) 797-9344

with a copy to:

Attention: General Counsel
Fax: (212) 797-4564

or to such other address as such person may have furnished to the other persons identified in this Section 8(c) in writing in accordance herewith.

17

(d) *Approval of Holders.* Whenever the consent or approval of Holders of a specified percentage of Registrable Securities is required hereunder, Registrable Securities held by the Company or its affiliates (as such term is defined in Rule 405 under the Securities Act) (other than the Initial Purchasers or subsequent Holders if such subsequent Holders are deemed to be such affiliates solely by reason of their holdings of such Registrable Securities) shall not be counted in determining whether such consent or approval was given by the Holders of such required percentage. For purposes of determining the Holders of a "majority" of Registrable Securities, holders of Notes shall be deemed to be the Holders of the number of shares of Underlying Common Stock into which such Notes are or would be convertible as of the date such determination is made (assuming conversion solely into shares of Common Stock).

(e) *Successors and Assigns.* Any person who purchases any Registrable Securities from the Initial Purchasers shall be deemed, for purposes of this Agreement, to be an assignee of the Initial Purchasers. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties and shall inure to the benefit of and be binding upon each Holder of any Registrable Securities.

(f) *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 original and all of which taken together shall constitute one and the same agreement.

(g) *Headings.* The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

(h) *Governing Law.* **THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE, AND AGREES NOT TO REQUEST A JURY TRIAL, FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.**

(i) *Severability.* If any term, provision, covenant or restriction of this Agreement is held to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby, and the parties hereto shall use their reasonable best efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction, it being intended that all of the rights and privileges of the parties shall be enforceable to the fullest extent permitted by law.

(j) *Entire Agreement.* This Agreement is intended by the parties as a final expression of their agreement and is intended to be a complete and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein and the registration rights granted by the Company with respect to the Registrable Securities. Except as provided in the Purchase Agreement, there are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein, with respect to the registration rights granted by the Company with respect to the Registrable Securities. This Agreement supersedes all prior agreements and undertakings among the parties with respect to such registration rights. No party hereto shall have any rights, duties or obligations other than

18

those specifically set forth in this Agreement. In no event will such methods of distribution take the form of an underwritten offering of the Registrable Securities without the prior agreement of the Company.

(k) *Termination.* This Agreement and the obligations of the parties hereunder shall terminate upon the end of the Effectiveness Period, except for any liabilities or obligations under Section 5, 6 or 8 hereof and the obligations to make payments of and provide for the Liquidated Damages Amount under Section 2(e) hereof to the extent such amount cumulates prior to the end of the Effectiveness Period, each of which shall remain in effect in accordance with its terms.

[signature page follows]

19

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

THE MACERICH COMPANY

By: /s/ Thomas E. O'Hern
Name: Thomas E. O'Hern
Title: Executive Vice President, Chief Financial Officer and Treasurer

The foregoing Agreement is hereby confirmed and accepted as of the date first above written:

J.P. MORGAN SECURITIES INC.

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

DEUTSCHE BANK SECURITIES INC.

By: /s/ Simon Leopold
Name: Simon Leopold
Title: Director

By: /s/ Craig Ramsey
Name: Craig Ramsey
Title: Director

ELEVENTH AMENDMENT TO THE
AMENDED AND RESTATED
LIMITED PARTNERSHIP AGREEMENT OF
THE MACERICH PARTNERSHIP, L.P.

THIS ELEVENTH AMENDMENT (the “**Amendment**”) TO THE AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT DATED AS OF MARCH 16, 1994, AMENDED AS OF AUGUST 14, 1995, FURTHER AMENDED AS OF JUNE 27, 1997, FURTHER AMENDED AS OF NOVEMBER 16, 1997, FURTHER AMENDED AS OF FEBRUARY 25, 1998, FURTHER AMENDED AS OF FEBRUARY 26, 1998, FURTHER AMENDED AS OF JUNE 17, 1998, FURTHER AMENDED AS OF DECEMBER 23, 1998, FURTHER AMENDED AS OF NOVEMBER 9, 2000, FURTHER AMENDED AS OF JULY 26, 2002, AND FURTHER AMENDED AS OF OCTOBER 26, 2006 (the “**Agreement**”) of THE MACERICH PARTNERSHIP, L.P. (the “**Partnership**”) is dated effective as of March 16, 2007.

RECITALS

WHEREAS, The Macerich Company, the general partner of the Partnership (the “**General Partner**”), will be issuing \$950 million aggregate principal amount of 3.25% Convertible Senior Notes due 2012 (the “**Convertible Notes**”) pursuant to the Convertible Note Purchase Agreement;

WHEREAS, Section 3.4 of the Agreement authorizes the General Partner, notwithstanding anything to the contrary in Section 3.3 of the Agreement, from time to time to advance funds to the Partnership for any proper Partnership purpose as a loan (“**Funding Loan**”) or a preferred equity investment (“**Preferred Investment**”), provided that any such funds must first be obtained by the General Partner from a third party lender, and then all of such funds must be advanced or contributed by the General Partner to the Partnership as a Funding Loan or Preferred Investment on substantially the same terms and conditions, including principal amount or preferred equity amount, rate of interest or preferred return, repayment or redemption schedule, and costs and expenses, as shall be applicable with respect to or incurred in connection with such loan with such third party lender;

WHEREAS, the General Partner proposes to contribute the proceeds from the issuance of the Convertible Notes as a Preferred Investment in the Partnership;

WHEREAS, Section 12.1(b)(iv) of the Agreement provides that the General Partner has the power, without the consent of the Limited Partners of the Partnership, to amend the Agreement to reflect a change that is of an inconsequential nature and does not adversely affect the Limited Partners in any material respect, or to cure any ambiguity, correct or supplement any provision of the Agreement not inconsistent with law or with other provisions, or make other changes with respect to matters arising under the Agreement that will not be inconsistent with law or with the provisions of the Agreement;

WHEREAS, the Preferred Units and Series B Preferred Units, each as defined in the Agreement, are no longer outstanding;

WHEREAS, the General Partner has made the determination pursuant to Section 12.1(b)(iv) of the Agreement that consent of the Limited Partners of the Partnership is not required with respect to the matters set forth in this Amendment; and

WHEREAS, all things necessary to make this Amendment a valid agreement of the Partnership have been done;

NOW, THEREFORE, pursuant to the authority granted to the General Partner under the Agreement, the Agreement is hereby amended as follows:

1. Amendments:

(a) Section 2.2 of the Agreement is hereby amended by inserting the following new Section 2.2(i) to read as follows:

(i) **Convertible Preferred Units.** The General Partner hereby makes a capital contribution to the Partnership in the amount of the gross proceeds from the sale of the Convertible Notes, which amount is \$950 million. In exchange for such capital contribution, the Partnership hereby issues to the General Partner 950,000 Convertible Preferred Units, each Convertible Preferred Unit representing a capital contribution of \$1,000. Convertible Preferred Units shall entitle the General Partner to a Convertible Preferred Return, all as described in Section 4.1 of the Agreement. At the time any Convertible Notes are converted, a number of Convertible Preferred Units equal to the principal amount of such converted Convertible Notes, divided by \$1,000, shall be converted into (i) to the extent common shares of the General Partner are issued upon conversion of the Convertible Notes, a number of Common Units equal to the total number of common shares of the General Partner issued in connection with such conversion (less the number of common shares of the General Partner, if any, received by the General Partner in connection with such conversion pursuant to the call options to purchase common shares of the General Partner evidenced by confirmations dated as of March 12, 2007, as amended as of March 15, 2007, between the General Partner and each of JPMorgan Chase Bank, National Association and Deutsche Bank AG acting through its London Branch) (the “**Call Options**”), divided by the Conversion Factor, and (ii) to the extent cash is paid upon conversion of the Convertible Notes, the Partnership shall pay the General Partner in cash an amount equal to the cash amount paid by the General Partner with respect to the Convertible Notes upon such conversion. To the extent that any Convertible Notes are redeemed, repurchased or repaid, the General Partner shall be obligated to put to the Partnership a number of Convertible Preferred Units equal to the principal amount of the Convertible Notes so redeemed, repurchased or repaid, divided by \$1,000. Upon putting a Convertible Preferred Unit to the Partnership, the General Partner will be paid, in liquidation of each Convertible Preferred Unit put to the Partnership, an amount equal to \$1,000 plus any accumulated, accrued and unpaid Convertible Preferred Return on such Convertible Preferred Unit, plus any other amounts

owed or to be paid by the General Partner in connection with the redemption, repurchase or repayment of the corresponding Convertible Note. Notwithstanding the foregoing, the General Partner shall not put the Convertible Preferred Units to the Partnership or convert such Convertible Preferred Units if the payment in liquidation or conversion of those Convertible Preferred Units would cause the Partnership or the General Partner to be in violation of (i) any provision of any agreement with respect to indebtedness to which the Partnership is an obligor (the “**Debt Instruments**”), or (ii) Section 17-607 of the Act. Before any Convertible Preferred Units may be converted or put to the Partnership, the General Partner shall determine in good faith that such conversion, redemption, repurchase or repayment, as the case may be, of such Convertible Preferred Units will not cause a violation of the Debt Instruments or Section 17-607 of the Act. To the extent the General Partner is not permitted to make a payment in respect of the Convertible Notes by reason of a restriction imposed by the Debt Instruments or the Convertible Note Indenture, the Partnership shall not, and shall not be obligated to, make any such payment to the General Partner with respect to the corresponding Convertible Preferred Units. For income tax purposes, it is the intent that the Convertible Preferred Units and the Call Options shall be treated as if (1) at the time any Convertible Notes are converted, (i) a number of Convertible Preferred Units equal to the principal amount of such converted Convertible Notes, divided by \$1,000, were converted into a number of Common Units equal to the total number of common shares, if any, into which such Convertible Notes are converted, divided by the Conversion Factor, and (ii) the Partnership were to pay the General Partner in cash an amount equal to the cash amount, if any, paid by the General Partner upon such conversion; (2) common shares of the General Partner, if any, received under the Call Options upon their exercise were deemed received by the Partnership; and (3) such shares, if any, were distributed to the General Partner in redemption of an equal number, divided by the Conversion Factor, of Common Units converted pursuant to (1)(i) of this sentence.

(b) Section 4.1 of the Agreement is hereby amended to read as follows:

4.1 Distribution of Net Cash Flow. The General Partner shall cause the Partnership to distribute all or a portion of Net Cash Flow to the Partners from time to time as determined by the General Partner, but in any event not less frequently than quarterly, in such amounts as the General Partner shall determine. Notwithstanding the foregoing, the General Partner shall use its reasonable efforts to cause the Partnership to distribute sufficient amounts to enable the General Partner to pay shareholder dividends that will (a) satisfy the requirements for qualifying as a REIT under the Code and Regulations (“**REIT Requirements**”), and (b) avoid any federal income or excise tax liability of the General Partner. All amounts withheld pursuant to the Code or a provision of any state or local tax law with respect to any allocation, payment or distribution to the General Partner or any Limited Partner shall be treated as amounts distributed to such Partner. Upon the receipt by the General Partner of each Exercise Notice or Series D Exercise Notice pursuant to which one or more Redemption Partners or Series D Redemption Partners exercise Redemption Rights in accordance with the provisions of Article IX and the Redemption Rights Exhibit or the Series D Redemption Rights Exhibit, the General Partner shall, unless the General Partner has elected to issue only

3

Shares to such Redemption Partners in respect of the Purchase Price of the Offered Interests or Series D Preferred Shares to such Series D Redemption Partners in respect of the Series D Purchase Price of the Series D Offered Interests, cause the Partnership to distribute to the Partners, pro rata in accordance with their respective Percentage Interests as of the date of delivery of such Exercise Notice or Series D Exercise Notice, all (or such lesser portion as the General Partner shall reasonably determine to be prudent under the circumstances) of Net Cash Flow, which distribution shall be made prior to the closing of the redemption or purchase and sale of the Offered Interests or the Series D Offered Interests specified in such Exercise Notice or Series D Exercise Notice. Subject to any restrictions or limitations imposed by the Debt Instruments or Section 17-607 of the Act, distributions shall be made in accordance with the following order of priority:

(a) First, to the General Partner, with respect to the Series A Preferred Units and Convertible Preferred Units, and to the holders of the Series D Preferred Units, pro rata, in an amount equal to the cumulative and unpaid Series A Preferred Return on such Series A Preferred Units, the cumulative and unpaid Series D Preferred Return on such Series D Preferred Units and the cumulative and unpaid Convertible Preferred Return on such Convertible Preferred Units in such a way as to allow the General Partner to pay cumulative preferential dividends and any additional amounts (including liquidated damages, if any) required on the Series A Preferred Shares, the Series D Preferred Units and any outstanding Series D Preferred Shares, respectively, and interest on the Convertible Notes, payable to the holders thereof; and

(b) Next, to the Partners holding Common Units, pro rata in accordance with such Partners’ then Percentage Interests.

(c) The definition of the term “Partnership Interest” contained in the Glossary of Defined Terms of the Agreement is hereby amended to read as follows:

“**Partnership Interest**” shall mean an ownership interest of a Partner in the Partnership from time to time, including, as applicable, such Partner’s Common Units, Series A Preferred Units, Series D Preferred Units, Series N Preferred Units, Series P Preferred Units, LTIP Units, Convertible Preferred Units and Percentage Interest and such Partner’s Capital Account, and any and all other benefits to which the holder of such Partnership Interest may be entitled as provided in this Agreement, together with all obligations of such Person to comply with the terms of this Agreement.

(d) The definition of the term “Partnership Unit” contained in the Glossary of Defined Terms of the Agreement is hereby amended to read as follows:

“**Partnership Unit**” shall mean a Common Unit, Series A Preferred Unit, Series D Preferred Unit, Series N Preferred Unit, Series P Preferred Unit, LTIP Unit or Convertible Preferred Unit and shall constitute a fractional, undivided share of the Partnership Interests corresponding to that particular class of Units.

4

(e) The definition of the term “Common Unit” contained in the Glossary of Defined Terms of the Agreement is hereby amended to read as follows:

“**Common Unit**” shall mean Partnership Interests other than Series A Preferred Units, Series D Preferred Units, Series N Preferred Units, Series P Preferred Units, LTIP Units and Convertible Preferred Units.

(f) The Glossary of Defined Terms of the Agreement is hereby amended to include the following definitions:

“**Convertible Note Indenture**” shall mean the Indenture, dated as of March 16, 2007, among the General Partner, the Partnership and Deutsche Bank Trust Company Americas, as trustee.

“**Convertible Note Purchase Agreement**” shall mean the Purchase Agreement among the General Partner, the Partnership, J.P. Morgan Securities Inc. and Deutsche Bank Securities Inc., dated March 12, 2007, relating to the Convertible Notes.

“**Convertible Notes**” shall mean those 3.25% Convertible Senior Notes due 2012 issued by the General Partner pursuant to the Convertible Note Indenture and the Convertible Note Purchase Agreement.

“**Convertible Notes Registration Rights Agreement**” shall mean the Registration Rights Agreement among the General Partner, J.P. Morgan Securities Inc. and Deutsche Bank Securities Inc., dated March 16, 2007, relating to the Convertible Notes.

“**Convertible Preferred Return**” shall mean an amount per Convertible Preferred Unit equal to \$32.50 per annum, payable semi-annually in arrears on March 15 and September 15 in each year, commencing on September 15, 2007. To the extent that the General Partner is required to pay liquidated damages to holders of the Convertible Notes pursuant to Section 2(e) of the Convertible Notes Registration Rights Agreement, then the Convertible Preferred Return shall be increased by an amount equal to such liquidated damages. It is intended that the Convertible Preferred Return will be equal to the interest and any liquidated damages payable on the Convertible Notes to the holders thereof so that the General Partner will receive a Convertible Preferred Return in an amount sufficient for the General Partner to make all payments in respect of the Convertible Notes.

“**Convertible Preferred Units**” shall mean the Partnership Units of the General Partner representing the Capital Contribution of the Convertible Note proceeds, as set forth in Section 2.2(i) of the Agreement. For the purposes of this Agreement, if the proceeds actually received by the General Partner are less than the gross proceeds of the issuance of the Convertible Notes as a result of any discount, placement fee or other expenses paid or incurred in connection with such issuance (including, without limitation, the expense of General Partner in purchasing the Call Options), then the General Partner

5

shall be deemed to have made a Capital Contribution to the Partnership in the amount of the gross proceeds of such issuance and the Partnership shall be deemed simultaneously to have reimbursed the General Partner pursuant to Section 6.1 for the amount of such discount, placement fee or other expenses. Notwithstanding the foregoing, if either or both of the Call Options are terminated and the General Partner receives cash or common shares of the General Partner as a result of such termination then, (i) any cash received will be repaid to the Partnership and, (ii) to the extent any common shares of the General Partner are received, the number of Common Units held by the General Partner will be reduced by a number of Common Units equal to the number of shares of the General Partner received upon such termination, divided by the Conversion Factor. For income tax purposes, it is the intent that clause (i) of the preceding sentence shall be treated as a distribution to the General Partner followed by a contribution to the Partnership of such cash, and clause (ii) shall be treated as a distribution of such common shares of the General Partner to the General Partner in redemption of such number of Common Units.

(g) Sections 2.1 and 2.2 of Exhibit A (Allocations Exhibit) are hereby amended to read as follows:

2.1 **Net Income.** After giving effect to the special allocations set forth in Article 3 of this Allocations Exhibit, Net Income for any fiscal year or other applicable period shall be allocated in the following order and priority:

(a) First, to the Partners, until the cumulative Net Income allocated pursuant to this subparagraph 2.1(a) for the current and all prior periods equals the cumulative Net Loss allocated pursuant to subparagraphs 2.2(c) and (d) hereof for all prior periods, which allocation shall be made among the Partners in the reverse order that such Net Loss was allocated to them (and, in the event of a shift of a Partner’s interest in the Partnership, to the Partners in a manner that most equitably reflects the successors in interest of such Partners);

(b) Second, to the General Partner in respect of the Series A Preferred Units and the Convertible Preferred Units, and to the holders of the Series D Preferred Units, pro rata to such units, until the cumulative Net Income allocated pursuant to this subparagraph 2.1(b) for the current and all prior periods equals the cumulative Net Loss allocated pursuant to subparagraph 2.2(b) for all prior periods;

(c) Third, to the General Partner in respect of its Series A Preferred Units and Convertible Preferred Units, and to the holders of the Series D Preferred Units, pro rata to such units, until the cumulative Net Income allocated pursuant to this subparagraph 2.1(c) equals the cumulative Series A Preferred Return on the Series A Preferred Units, the cumulative Series D Preferred Return on the Series D Preferred Units and the cumulative Convertible Preferred Return on the Convertible Preferred Units, respectively;

(d) Intentionally deleted;

(e) Intentionally deleted;

6

(f) And thereafter, the balance of the Net Income, if any, shall be allocated to the Partners holding Common Units in accordance with their respective Percentage Interests.

2.2 **Net Loss.** After giving effect to special allocations set forth in Article 3 of this Allocation Exhibit, Net Loss of the Partnership for each fiscal year or other applicable period shall be allocated as follows:

(a) To the Partners holding Common Units in accordance with their respective Percentage Interests until the Sub-Capital Accounts attributable to such Common Units are all reduced to zero (determined after all capital contributions, distributions, and special allocations under Article 3 of this Allocations Exhibit allocable to the Partner for the Fiscal Year have been reflected in the Partner's Sub-Capital Account);

(b) Second, to the General Partner in respect of its Series A Preferred Units and Convertible Preferred Units, and to the holders of the Series D Preferred Units in respect of their Series D Preferred Units, pro rata to such units, until their Sub-Capital Accounts attributable to such units are reduced to zero;

(c) Thereafter, to the Partners holding Common Units in accordance with their respective Percentage Interests; and

(d) Notwithstanding the preceding provisions of this Section 2.2, to the extent any Net Losses allocated to a Partner under this Section 2.2 would cause such Partner (hereinafter, a "**Restricted Partner**") to have an Adjusted Capital Account Deficit at the end of the fiscal year to which such Losses related, such Losses shall not be allocated to such Restricted Partners and instead shall be allocated to the other Partner(s) (herein, the "**Permitted Partners**") pro rata in accordance with their relative Percentage Interests.

(h) A new Section 3.8A is hereby added to Section 3 of Exhibit A (Allocations Exhibit) following Section 3.8:

3.8A **Call Options.** Income or gain attributable to the Call Options shall be specially allocated to the General Partner.

(i) A new Section 3.8B is hereby added to Section 3 of Exhibit A (Allocations Exhibit) following Section 3.8A:

3.8B **Exercise of Conversion Feature of Convertible Preferred Units.** Exercise of the conversion feature of a Convertible Preferred Unit shall be treated pursuant to proposed, temporary or final Treasury regulations addressing noncompensatory options. Any special allocations of Liquidating Gains or Liquidating Losses shall be made pursuant to such proposed, temporary or final regulations prior to allocations made pursuant to Sections 3.9 through 3.11.

7

2. **Defined Terms and Recitals.** As used in this Amendment, capitalized terms used and defined in this Amendment shall have the meaning assigned to them in this Amendment, and capitalized terms used in this Amendment but not defined herein, shall have the meaning assigned to them in the Agreement.

3. **Ratification and Confirmation.** Except to the extent specifically amended by this Amendment, the terms and provisions of the Agreement, as previously amended, are hereby ratified and confirmed.

8

IN WITNESS WHEREOF, the undersigned has executed this Amendment effective as of the date first above mentioned.

**GENERAL PARTNER:
THE MACERICH COMPANY**

By: /s/ Richard A. Bayer
Richard A. Bayer
Chief Legal Officer,
Executive Vice President
and Secretary

9



Deutsche Bank AG London
 Winchester house
 1 Great Winchester St,
 London EC2N 2DB
 Telephone: 44 20 7545 8000

c/o Deutsche Bank AG New York
 60 Wall Street
 New York, NY 10005
 Telephone: 212-250-2500

March 12, 2007

To: **The Macerich Company**
 401 Wilshire Boulevard, Suite 700
 Santa Monica, California 90401
 Attention: Chief Financial Officer
 Telephone No.: 310-394-6000
 Facsimile No.: 310-394-0632

Internal Reference No.: 165954

Re: Call Option Transaction

The purpose of this letter agreement (this “**Confirmation**”) is to confirm the terms and conditions of the call option transaction entered into between Deutsche Bank AG acting through its London branch (“**Deutsche**”), and The Macerich Company (“**Counterparty**”) on the Trade Date specified below (the “**Transaction**”). This letter agreement constitutes a “Confirmation” as referred to in the ISDA Master Agreement specified below. This Confirmation shall replace any previous agreements and serve as the final documentation for this Transaction.

DEUTSCHE BANK AG IS NOT REGISTERED AS A BROKER OR DEALER UNDER THE U.S. SECURITIES EXCHANGE ACT OF 1934, AS AMENDED. DEUTSCHE BANK AG, NEW YORK (“AGENT”) HAS ACTED SOLELY AS AGENT IN CONNECTION WITH THE TRANSACTION AND HAS NO OBLIGATION, BY WAY OF ISSUANCE, ENDORSEMENT, GUARANTEE OR OTHERWISE WITH RESPECT TO THE PERFORMANCE OF EITHER PARTY UNDER THE TRANSACTION. DEUTSCHE BANK AG LONDON IS NOT A MEMBER OF THE SECURITIES INVESTOR PROTECTION CORPORATION (SIPC).

The definitions and provisions contained in the 2002 ISDA Equity Derivatives Definitions (the “**Equity Definitions**”), as published by the International Swaps and Derivatives Association, Inc. (“**ISDA**”), are incorporated into this Confirmation. In the event of any inconsistency between the Equity Definitions and this Confirmation, this Confirmation shall govern. Certain defined terms used herein have the meanings assigned to them in the Offering Memorandum dated March 12, 2007 (the “**Offering Memorandum**”) relating to the USD 800,000,000 principal amount of Convertible Senior Notes due 2012 (the “**Convertible Notes**”) and each USD 1,000 principal amount of Convertible Notes, a “**Convertible Note**”) issued by Counterparty pursuant to an Indenture to be dated March 16, 2007 between Counterparty and Deutsche Bank Trust Company Americas, as trustee (as in effect on the date of its execution, the “**Indenture**”). In the event of any inconsistency between the terms defined in the Offering Memorandum, the Indenture and this Confirmation, this Confirmation shall govern. The parties acknowledge that

Chairman of the Supervisory Board: Clemens Börsig Board of
 Managing Directors: Hermann-Josef Lamberti, Josef
 Ackermann, Tessen von Heydebreck, Anthony Dilorio, Hugo
 Banziger

Deutsche Bank AG is regulated by the FSA for the conduct of designated investment business in the UK, is a member of the London Stock Exchange and is a limited liability company incorporated in the Federal Republic of Germany HRB No. 30 000 District Court of Frankfurt am Main; Branch Registration No. in England and Wales BR000005, Registered address: Winchester House, 1 Great Winchester Street, London EC2N 2DB.

this Confirmation is entered into on the date hereof with the understanding that (i) definitions set forth in the Indenture which are also defined herein by reference to the Indenture and (ii) sections of the Indenture that are referred to herein will conform to the descriptions thereof in the Offering Memorandum. If any such definitions in the Indenture or any such sections of the Indenture differ from the descriptions thereof in the Offering Memorandum, the descriptions thereof in the Offering Memorandum will govern for purposes of this Confirmation. The parties further acknowledge that the Indenture section numbers used herein are based on the draft of the Indenture last reviewed by Deutsche as of the date of this Confirmation, and if any such section numbers are changed in the Indenture as executed, the parties will amend this Confirmation in good faith to preserve the intent of the parties. For the avoidance of doubt, references to the Indenture herein are references to the Indenture as in effect on the date of its execution and if the Indenture is amended following its execution, any such amendment will be disregarded for purposes of this Confirmation unless the parties agree otherwise in writing.

Each party is hereby advised, and each such party acknowledges, that the other party has engaged in, or refrained from engaging in, substantial financial transactions and has taken other material actions in reliance upon the parties’ entry into the Transaction to which this Confirmation relates on the terms and conditions set forth below.

1. This Confirmation evidences a complete and binding agreement between Deutsche and Counterparty as to the terms of the Transaction to which this Confirmation relates. This Confirmation shall supplement, form a part of, and be subject to an agreement in the form of the 2002 ISDA Master Agreement (the “**Agreement**”) as if Deutsche and Counterparty had executed an agreement in such form (but without any Schedule except for the election of the laws of the State of New York as the governing law) on the Trade Date. In the event of any inconsistency between provisions of that Agreement and this Confirmation, this Confirmation will prevail for the purpose of the Transaction to which this Confirmation relates. The parties hereby agree that no Transaction other than the Transaction to which this Confirmation relates shall be governed by the Agreement.

2. The terms of the particular Transaction to which this Confirmation relates are as follows:

General Terms:

Trade Date:	March 12, 2007
Option Style:	“Modified American”, as set forth under “Exercise and Valuation” below
Option Type:	Call
Buyer:	Counterparty
Seller:	Deutsche
Shares:	The common stock of Counterparty, par value USD 0.01 per share (Exchange symbol “MAC”)
Number of Options:	400,000. For the avoidance of doubt, the Number of Options shall be reduced by any Options exercised by Counterparty. In no event will the Number of Options be less than zero.
Option Entitlement:	As of any date, a number equal to the Conversion Rate as of such date (as defined in the Indenture, but without regard to any adjustments to the Conversion Rate pursuant to Section 11.05(h) or Section 11.07 of the Indenture), for each Convertible Note.
Strike Price:	USD 111.4802
Cap Price:	USD 130.0600

2

Premium:	USD 25,200,000.00
Premium Payment Date:	March 16, 2007
Exchange:	The New York Stock Exchange
Related Exchange(s):	All Exchanges

Exercise and Valuation:

Exercise Period(s):	Notwithstanding anything to the contrary in the Equity Definitions, an Exercise Period shall occur with respect to an Option hereunder only if such Option is an Exercisable Option (as defined below) and the Exercise Period shall be, in respect of any Exercisable Option, the period commencing on, and including, the relevant Conversion Date and ending on, and including, the Scheduled Valid Day immediately preceding the first day of the relevant Settlement Averaging Period in respect of such Conversion Date; <i>provided</i> that in respect of Exercisable Options relating to Convertible Notes for which the relevant Conversion Date occurs on or after December 15, 2011, the final day of the Exercise Period shall be the Scheduled Valid Day immediately preceding the Expiration Date.
Conversion Date:	With respect to any conversion of Convertible Notes, the date on which the Holder (as such term is defined in the Indenture) of such Convertible Notes satisfies all of the requirements for conversion thereof as set forth in Section 11.02 of the Indenture.

Exercisable Options:

Upon the occurrence of a Conversion Date, a number of Options equal to 50% of the number of Convertible Notes converted on such Conversion Date, other than (i) Convertible Notes surrendered for conversion (x) in connection with (A) an adjustment to the Conversion Rate effected by Counterparty in its discretion (whether pursuant to Section 11.05(h) of the Indenture or in a similar manner) that was not required under the terms of the Indenture as of the Trade Date or (B) an agreement by Counterparty with the Holders (as such term is defined in the Indenture) of such Convertible Notes and, in the case of either (A) or (B), the Holders of such Convertible Notes receive upon conversion or pursuant to such agreement, as the case may be, a payment of cash or delivery of Shares or any other property or value that was not required under the terms of the Indenture as of the Trade Date or (y) after having been acquired from a Holder by or on behalf of Counterparty or any of its affiliates other than pursuant to an exchange by such Holder and thereafter converted by or on behalf of Counterparty or any affiliate of Counterparty (each event described in this clause (i), an “**Induced Conversion**”) or (ii) Convertible Notes surrendered for conversion in connection with a Fundamental Change, a Specified Distribution or a Redemption to Preserve REIT Status (as each such term is defined in the Indenture) pursuant to Sections 11.01(a)(iii), (iv) or (v) of the Indenture (a “**Corporate Event Conversion**”), shall become Exercisable Options. For the avoidance of doubt, if J.P. Morgan Securities Inc. and Deutsche Bank Securities Inc. exercise their option pursuant to Section 2(c)

3

of the Purchase Agreement dated as of March 16, 2007 between Counterparty, J.P. Morgan Securities Inc. and Deutsche Bank Securities Inc. as representatives of the Initial Purchasers party thereto (the “**Purchase Agreement**”), the number of Exercisable Options shall be equal to the product of (a) 50% of the number of Convertible Notes converted on such Conversion Date, other than the Convertible Notes surrendered for conversion as set forth in clauses (i) and (ii) above, and (b) the quotient of (A) the number of Convertible Notes in denominations of USD 1,000 principal amount issued by Counterparty on the closing date for the initial issuance of the Convertible Notes *divided by* (B) the total number of Convertible Notes in denominations of USD 1,000 principal amount outstanding immediately after such exercise.

Expiration Time:	The Valuation Time
Expiration Date:	March 15, 2012, subject to earlier exercise.
Multiple Exercise:	Applicable, as described under Exercisable Options above.
Automatic Exercise:	Applicable; and means that in respect of an Exercise Period, a number of Options not previously exercised hereunder equal to the number of Exercisable Options shall be deemed to be exercised on the final day of such Exercise Period for such Exercisable Options; <i>provided</i> that such Options shall be deemed exercised only to the extent that Counterparty has provided a Notice of Exercise and, to the extent applicable, a Notice of Settlement Method, to Deutsche.
Notice of Exercise:	Notwithstanding anything to the contrary in the Equity Definitions, in order to exercise any Exercisable Options, Counterparty must notify Deutsche in writing before 5:00 p.m. (New York City time) on the second Scheduled Valid Day immediately following the Conversion Date for the Exercisable Options being exercised of (i) the number of such Options; (ii) the scheduled first day of the Settlement Averaging Period and the scheduled Settlement Date and (iii) whether Counterparty elects to settle its conversion obligations with respect to the Convertible Notes converted on such Conversion Date entirely in Shares in accordance with Sections 11.12(b) and (e) of the Indenture (“ Settlement in Shares ”); <i>provided</i> that in respect of Exercisable Options relating to Convertible Notes with a Conversion Date occurring on or after December 15, 2011, such notice may be given on or prior to the second Scheduled Valid Day immediately preceding the Expiration Date (the “ Final Conversion Period ”), such Notice of Exercise need only specify item (i) above.
Notice of Settlement Method:	In order to exercise any Exercisable Options relating to Convertible Notes with a Conversion Date during the Final Conversion Period, Counterparty must notify Deutsche before 5:00 p.m. (New York City time) on or prior to the forty-third (43rd) Scheduled Valid Day prior to the Expiration Date whether Settlement in Shares applies to the settlement of the Convertible Notes converted during the Final Conversion Period.

Market Disruption Event:	Section 6.3(a) of the Equity Definitions is hereby replaced in its entirety by the following: “Market Disruption Event” means (1) a failure by the primary United States national securities exchange or market on which the Shares are listed or admitted for trading to open for trading during its regular trading session or (2) the occurrence or existence prior to 1:00 p.m. (New York City time) on any Valid Day for the Shares of an aggregate one half hour period, of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the stock exchange or otherwise) in the Shares or in any options, contracts or future contracts relating to the Shares.
Settlement Terms:	
Settlement Method:	Net Share Settlement
Net Share Settlement:	Deutsche will deliver to Counterparty, on the relevant Settlement Date, a number of Shares equal to the Net Shares in respect of any Exercisable Option exercised or deemed exercised hereunder. In no event will the Net Shares be less than zero.
Net Shares:	In respect of any Exercisable Option exercised or deemed exercised, a number of Shares equal to (i) the Option Entitlement multiplied by (ii) the sum of the quotients, for each Valid Day during the Settlement Averaging Period for such Exercisable Option, of (A) (1) the amount by which the Cap Price exceeds the Strike Price, if the Relevant Price on such Valid Day is equal to or greater than the Cap Price; (2) the amount by which the Relevant Price exceeds the Strike Price, if such Relevant Price is greater than the Strike Price but less than the Cap Price or (3) zero, if such Relevant Price is less than or equal to the Strike Price; <i>divided by</i> (B) such Relevant Price, divided by (iii) the number of Valid Days in the Settlement Averaging Period. Deutsche will deliver cash in lieu of any fractional Shares to be delivered with respect to any Net Shares valued at the Relevant Price for the last Valid Day of the Settlement Averaging Period.
Valid Day:	A day on which (i) trading in Shares occurs on the Exchange or, if the Shares are not listed on the Exchange, on the principal other national or regional securities exchange on which the Shares are then listed or, if the Shares are not listed on a national or regional securities exchange, on the Nasdaq Global Market or, if the Shares are not quoted on the Nasdaq Global Market, on the principal other U.S. national or regional securities exchange on which the Shares are then listed or, if the Shares are not listed on a U.S. national or regional securities exchange, on the principal other market on which the Shares are then traded and (ii) there is no Market Disruption Event.
Scheduled Valid Day:	A day on which trading in the Shares is scheduled to occur as defined in clause (i) of the definition of Valid Day.

Relevant Price:	On any Valid Day, the per Share volume-weighted average price as displayed under the heading “Bloomberg VWAP” on Bloomberg page MAC.N <equity> AQR (or its equivalent successor if such page is not available) in respect of the period from the scheduled open of trading until scheduled close of trading on the primary trading session on such Valid Day (or if such volume-weighted average price is unavailable, the market value of one Share on such Valid Day, as determined by the Calculation Agent using a volume-weighted method). The Relevant Price will be determined without regard to after hours trading or any other trading outside of the regular trading session hours.
-----------------	--

Settlement Averaging Period:

For any Exercisable Option, (x) if Counterparty has delivered, in accordance with the terms set forth above, a Notice of Exercise to Deutsche with respect to such Exercisable Option with a Conversion Date occurring prior to December 15, 2011, the forty (40) consecutive Valid Day period beginning on and including the third Valid Day after such Conversion Date; *provided* that, if such Notice of Exercise specifies that Settlement in Shares applies to the Convertible Notes converted on such Conversion Date, the Settlement Averaging Period shall be the eighty (80) consecutive Valid Day period beginning on and including the third Scheduled Valid Day after such Conversion Date or (y) if Counterparty has delivered, in accordance with the terms set forth above, a Notice of Settlement Method to Deutsche with respect to such Exercisable Option with a Conversion Date occurring on or following December 15, 2011, the forty (40) consecutive Valid Day period beginning on and including the forty second (42nd) Scheduled Valid Day immediately prior to the Expiration Date; *provided* that, if such Notice of Settlement Method specifies that Settlement in Shares applies to the Convertible Notes converted on such Conversion Date, the Settlement Averaging Period shall be the eighty (80) consecutive Valid Day period beginning on and including the forty second (42nd) Scheduled Valid Day immediately prior to the Expiration Date.

Settlement Date:

For any Exercisable Option, the third Valid Day immediately following the final Valid Day of the Settlement Averaging Period with respect to such Exercisable Options.

Settlement Currency:

USD

Other Applicable Provisions:

The provisions of Sections 9.1(c), 9.8, 9.9, 9.11, 9.12 and 10.5 of the Equity Definitions will be applicable, except that all references in such provisions to “Physically-settled” shall be read as references to “Net Share Settled”. “Net Share Settled” in relation to any Option means that Net Share Settlement is applicable to that Option.

Representation and Agreement:

Notwithstanding Section 9.11 of the Equity Definitions, the parties acknowledge that any Shares delivered to Counterparty shall be, upon delivery, subject to restrictions and limitations arising from Counterparty’s status under applicable securities laws and Counterparty’s Articles of Amendment and Restatement, as amended from time to time (the “**Charter**”).

3. Additional Terms applicable to the Transaction:

Adjustments applicable to the Transaction:

Potential Adjustment Events:

Notwithstanding Section 11.2(e) of the Equity Definitions, a “Potential Adjustment Event” means an occurrence of any event or condition, as set forth in Section 11.05 of the Indenture, that would result in an adjustment to the Conversion Rate of the Convertible Notes; *provided* that in no event shall there be any adjustment hereunder as a result of an adjustment to the Conversion Rate pursuant to Section 11.05(h) or Section 11.07 of the Indenture.

Method of Adjustment:

Calculation Agent Adjustment, which means, notwithstanding anything to the contrary in the Equity Definitions, upon any adjustment to the Conversion Rate of the Convertible Notes pursuant to the Indenture (other than Section 11.05(h) or Section 11.07 of the Indenture), (i) the Calculation Agent shall make a corresponding adjustment to any of the Strike Price, Number of Options and the Option Entitlement and (ii) the Calculation Agent may, in its commercially reasonable discretion, make any adjustment consistent with the Calculation Agent Adjustment set forth in Section 11.2(c) of the Equity Definitions to the Cap Price or any other variable relevant to the exercise, settlement or payment for the Transaction to preserve the fair value of the Options to Deutsche after taking into account such Potential Adjustment Event; *provided further* that in no event shall the Cap Price be less than the Strike Price.

Extraordinary Events applicable to the Transaction:

Merger Events:

Notwithstanding Section 12.1(b) of the Equity Definitions, a “Merger Event” means the occurrence of any event or condition set forth in Section 11.06 of the Indenture.

Tender Offers:	Applicable; <i>provided</i> that notwithstanding Section 12.1(d) of the Equity Definitions, a “Tender Offer” means the occurrence of any event or condition set forth in Section 11.05(f) of the Indenture.
Consequence of Merger Events/ Tender Offers:	Notwithstanding Sections 12.2 and 12.3 of the Equity Definitions, upon the occurrence of a Merger Event or a Tender Offer: <p>(i) the Calculation Agent shall make a corresponding adjustment in respect of any adjustment under the Indenture to any one or more of the nature of the Shares, Strike Price, Number of Options and the Option Entitlement; <i>provided, however,</i> that such adjustment shall be made without regard to any adjustment to the Conversion Rate for the issuance of additional shares as set forth in Section 11.05(h) or Section 11.07 of the Indenture; and</p> <p>(ii) the Calculation Agent may, in its sole discretion, make any adjustment consistent with the Modified Calculation Agent Adjustment set forth in Section 12.2(e) or 12.3(d) of the Equity Definitions, as applicable, to the Cap Price or any other variable relevant to the exercise, settlement or payment for the</p>

Transaction; *provided* that in no event shall the Cap Price be less than the Strike Price;

provided that, with respect to a Merger Event, if the consideration for the Shares includes (or, at the option of a holder of Shares, may include) shares of an entity or person not organized under the laws of the United States, any State thereof or the District of Columbia, Cancellation and Payment (Calculation Agent Determination) shall apply; and *provided further* that, for the avoidance of doubt, adjustments shall be made pursuant to the provisions of subparagraphs (i) and (ii) above regardless of whether any Merger Event or Tender Offer gives rise to a Corporate Event Conversion.

Nationalization, Insolvency or Delisting:	Cancellation and Payment (Calculation Agent Determination); <i>provided</i> that, in addition to the provisions of Section 12.6(a)(iii) of the Equity Definitions, it will also constitute a Delisting if the Exchange is located in the United States and the Shares are not immediately re-listed, re-traded or re-quoted on any of the New York Stock Exchange, the American Stock Exchange, the NASDAQ Global Select Market or the NASDAQ Global Market (or their respective successors); if the Shares are immediately re-listed, re-traded or re-quoted on any of the New York Stock Exchange, the American Stock Exchange, the NASDAQ Global Select Market or the NASDAQ Global Market (or their respective successors), such exchange or quotation system shall thereafter be deemed to be the Exchange.
--	--

Additional Disruption Events:

Change in Law:	Applicable
Failure to Deliver	Applicable
Hedging Party:	For all applicable Additional Disruption Events, Deutsche
Determining Party:	For all applicable Additional Disruption Events, Deutsche
Non-Reliance:	Applicable
Agreements and Acknowledgements Regarding Hedging Activities:	Applicable
Additional Acknowledgments:	Applicable

4. Calculation Agent: Deutsche

5. Account Details:

(a) Account for payments to Counterparty:

Wells Fargo Bank
Los Angeles Main

Acct No.: 4600196232

Account for delivery of Shares to Counterparty:

To be provided by Counterparty

(b) Account for payments to Deutsche:

Bank of New York
ABA 021 000 018
GLA 111-569
A/C DBO

Account for delivery of Shares from Deutsche:

DTC 0060

6. Offices:

The Office of Counterparty for the Transaction is: Inapplicable, Counterparty is not a Multibranch Party.

The Office of Deutsche for the Transaction is: London

Deutsche Chase Bank, National Association
London Branch
P.O. Box 161
60 Victoria Embankment
London EC4Y 0JP
England

7. Notices: For purposes of this Confirmation:

(a) Address for notices or communications to Counterparty:

The Macerich Company
401 Wilshire Boulevard, Suite 700
Santa Monica, California 90401
Attention: Chief Financial Officer
Telephone No.: (310) 394-6000
Facsimile No.: (310) 394-0632

with a copy to:

The Macerich Company
401 Wilshire Boulevard, Suite 700
Santa Monica, California 90401
Attention: General Counsel
Telephone No.: (310) 899-6314
Facsimile No.: (310) 395-2791

(b) Address for notices or communications to Deutsche:

Deutsche Bank AG, London Branch c/o Deutsche Bank AG, New York Branch
Jonathan Miller
(212) 250-4930
Jonathan-Us.Miller@db.com

The representations and warranties of Counterparty set forth in Section 1 of the Purchase Agreement are true and correct and are hereby deemed to be repeated to Deutsche as if set forth herein. Counterparty hereby further represents and warrants to and agrees with, Deutsche as of the Trade Date that:

- (a) Counterparty has all necessary corporate power and authority to execute, deliver and perform its obligations in respect of this Transaction; such execution, delivery and performance have been duly authorized by all necessary corporate action on Counterparty's part; and this Confirmation has been duly and validly executed and delivered by Counterparty and constitutes its valid and binding obligation, enforceable against Counterparty in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity) and except that rights to indemnification and contribution hereunder may be limited by federal or state securities laws or public policy relating thereto.
- (b) Neither the execution and delivery of this Confirmation by Counterparty nor the incurrence or performance of obligations of Counterparty hereunder will conflict with or result in a breach of the Charter or by-laws (or any equivalent documents) of Counterparty, or any applicable law or regulation applicable to Counterparty, or any order, writ, injunction or decree of any court or governmental authority or agency applicable to Counterparty, or any agreement or instrument to which Counterparty or any of its subsidiaries is a party or by which Counterparty or any of its subsidiaries is bound or to which Counterparty or any of its subsidiaries is subject, or constitute a default under any such agreement or instrument, or breach or constitute a default under any agreements and contracts of Counterparty and the significant subsidiaries filed as exhibits to Counterparty's Annual Report on Form 10-K for the year ended December 31, 2006 incorporated by reference in the Offering Memorandum as updated by any subsequent filing.
- (c) No consent, approval, authorization, or order of, or filing with, any governmental agency or body or any court is required in connection with the execution, delivery or performance by Counterparty of this Confirmation, except such as have been obtained or made and such as may be required under the Securities Act of 1933, as amended (the "**Securities Act**"), or state securities laws.
- (d) It is an "eligible contract participant" (as such term is defined in Section 1a(12) of the Commodity Exchange Act, as amended (the "**CEA**")) because one or more of the following is true:

Counterparty is a corporation, partnership, proprietorship, organization, trust or other entity and:

- (i) Counterparty has total assets in excess of USD 10,000,000;
 - (ii) the obligations of Counterparty hereunder are guaranteed, or otherwise supported by a letter of credit or keepwell, support or other agreement, by an entity of the type described in Section 1a(12)(A)(i) through (iv), 1a(12)(A)(v)(I), 1a(12)(A)(vii) or 1a(12)(C) of the CEA; or
 - (iii) Counterparty has a net worth in excess of USD 1,000,000 and has entered into this Agreement in connection with the conduct of Counterparty's business or to manage the risk associated with an asset or liability owned or incurred or reasonably likely to be owned or incurred by Counterparty in the conduct of Counterparty's business.
- (e) Each of it and its affiliates is not, on the date hereof, in possession of any material non-public information with respect to Counterparty or the Shares.

10

-
- (f) Counterparty has all necessary corporate power and authority to execute and deliver a limited waiver dated as of March 12, 2007 to Deutsche and its affiliates that waives the application of the Ownership Limit (as such term is defined in the Charter) (the "**Waiver**"); such execution and delivery have been duly authorized by all necessary corporate action on Counterparty's part; and the Waiver has been duly and validly executed and delivered by Counterparty and constitutes its valid and binding obligation, enforceable against Counterparty in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).
 - (g) Neither the execution and delivery of the Waiver nor the incurrence or performance of obligations of Counterparty thereunder will conflict with or result in a breach of the certificate of incorporation or by-laws (or any equivalent documents) of Counterparty, or any applicable law or regulation applicable to Counterparty, or any order, writ, injunction or decree of any court or governmental authority or agency applicable to Counterparty, or any agreement or instrument to which Counterparty or any of its subsidiaries is a party or by which Counterparty or any of its subsidiaries is bound or to which Counterparty or any of its subsidiaries is subject, or constitute a default under any such agreement or instrument, or breach or constitute a default under any agreements and contracts of Counterparty or any of its significant subsidiaries filed as exhibits to Counterparty's Annual Report on Form 10-K for the year ended December 31, 2006 as updated by any subsequent filings.

9. Other Provisions:

- (a) Opinions. Counterparty shall deliver to Deutsche an opinion of counsel, dated as of the Trade Date, with respect to the matters set forth in Sections 8(a) through (c) and Sections 8(f) and (g) of this Confirmation (It being understood that such opinion of counsel may be limited as to scope in a manner substantially similar to the opinions delivered in connection with the Purchase Agreement, may also include customary assumptions, exceptions and limitations and may be otherwise limited as mutually agreed upon by Counterparty and Deutsche).
- (b) Amendment. If the Initial Purchasers party to the Purchase Agreement exercise their right to purchase additional Convertible Notes as set forth therein, then, at the option of Counterparty, Deutsche and Counterparty will either enter into a new confirmation or amend this Confirmation to provide for such increase in Convertible Notes (but on pricing terms acceptable to Deutsche and Counterparty) (such

additional confirmation or amendment to this Confirmation to provide for the payment by Counterparty to Deutsche of the additional premium related thereto).

- (c) Repurchase Notices. Counterparty shall give Deutsche written notice of any repurchase of Shares (a “**Repurchase Notice**”) at least seven Scheduled Trading Days prior to effecting such repurchase if, after giving effect to such repurchase, the quotient of (x) the product of (a) the Number of Options and (b) the Option Entitlement divided by (y) the number of Counterparty’s outstanding Shares (such quotient expressed as a percentage, the “**Option Equity Percentage**”) would be greater than 6.5%. Such Repurchase Notice shall set forth the number of Shares to be outstanding after giving effect to the relevant Share repurchase. In connection with the delivery of any Repurchase Notice to Deutsche, (x) Counterparty shall, concurrently with or prior to such delivery, publicly announce and disclose the relevant repurchase or (y) Counterparty shall represent and warrant in such Repurchase Notice that the information set forth in such Repurchase Notice does not constitute material non-public information with respect to Counterparty or the Shares.
- (d) Conversion Rate Adjustments. Counterparty shall provide to Deutsche written notice (such notice, a “**Conversion Rate Adjustment Notice**”) at least seven Scheduled Trading Days prior to consummating or otherwise executing or engaging in any transaction or event (a “**Conversion**

11

Rate Adjustment Event”) that would lead to an increase in the Conversion Rate (as such term is defined in the Indenture), other than an increase pursuant to Section 11.05(a), (c) or (e) of the Indenture, which Conversion Rate Adjustment Notice shall set forth the new, adjusted Conversion Rate after giving effect to such Conversion Rate Adjustment Event (the “**New Conversion Rate**”); *provided* that no such Conversion Rate Adjustment Notice needs to be provided unless, after giving effect to such Conversion Rate Adjustment Event, the Option Equity Percentage would be greater than 6.5%. In connection with the delivery of any Conversion Rate Adjustment Notice to Deutsche, (x) Counterparty shall, concurrently with or prior to such delivery, publicly announce and disclose the Conversion Rate Adjustment Event or (y) Counterparty shall, concurrently with such delivery, represent and warrant that the information set forth in such Conversion Rate Adjustment Notice does not constitute material non-public information with respect to Counterparty or the Shares.

- (e) Regulation M. Counterparty is not on the date hereof engaged in a distribution, as such term is used in Regulation M under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), of any securities of Counterparty, other than (i) a distribution meeting the requirements of the exception set forth in Rules 101(b)(10) and 102(b)(7) of Regulation M and (ii) the distribution of the Convertible Notes. Counterparty shall not, until the second Scheduled Trading Day immediately following the Trade Date, engage in any such distribution.
- (f) No Manipulation. Counterparty is not entering into this Transaction to create actual or apparent trading activity in the Shares (or any security convertible into or exchangeable for the Shares) or to raise or depress or otherwise manipulate the price of the Shares (or any security convertible into or exchangeable for the Shares) or otherwise in violation of the Exchange Act.
- (g) Board Authorization. Each of this Transaction and the issuance of the Convertible Notes was approved by its board of directors and publicly announced, solely for the purposes stated in such board resolution and public disclosure and, prior to any exercise of Options hereunder, Counterparty’s board of directors will have duly authorized any repurchase of Shares pursuant to this Transaction. Counterparty further represents that there is no internal policy, whether written or oral, of Counterparty that would prohibit Counterparty from entering into any aspect of this Transaction, including, but not limited to, the purchases of Shares to be made pursuant hereto.
- (h) Transfer or Assignment. Counterparty may not transfer any of its rights or obligations under this Transaction without the prior written consent of Deutsche. Deutsche may, without Counterparty’s consent, transfer or assign all or any part of its rights or obligations under this Transaction to any third party with a rating for its long term, unsecured and unsubordinated indebtedness equal to or better than the lesser of (i) the credit rating of Deutsche at the time of the transfer and (ii) A- by Standard and Poor’s Rating Group, Inc. or its successor (“**S&P**”), or A3 by Moody’s Investor Service, Inc. (“**Moody’s**”) or, if either S&P or Moody’s ceases to rate such debt, at least an equivalent rating or better by a substitute agency rating mutually agreed by Counterparty and Deutsche; *provided* that such third party represents to Counterparty that its Beneficial Ownership (as such term is defined in the Charter of Counterparty) of Equity Stock (as such term is defined in the Charter of Counterparty) following such transfer or assignment shall be less than or equal to 5% and such third party makes the representation and warranty contained in Section 9(i) to Counterparty for the duration of the Transaction (it being understood that all references therein to Deutsche shall instead refer to such third party). If after Deutsche’s commercially reasonable efforts, Deutsche is unable to effect such a transfer or assignment on pricing terms reasonably acceptable to Deutsche and within a time period reasonably acceptable to Deutsche of a sufficient number of Options to reduce (i) Deutsche’s “beneficial ownership” (within the meaning of Section 13 of the Exchange Act and rules promulgated thereunder) to 8.0% of Counterparty’s outstanding Shares or less, (ii) the Option Equity Percentage to 6.5% or less or (iii) Deutsche Bank AG’s (“**Bank**”) Beneficial Ownership (as such term is defined in the Charter) of Equity Stock (as such term is defined in the Charter) to 8.5% or less, Deutsche may designate any Exchange Business Day as an Early Termination Date with respect to a portion (the “**Terminated Portion**”) of this Transaction, such that (i) its “beneficial ownership” following such partial termination will be

12

equal to or less than 8.0%, (ii) the Option Equity Percentage following such partial termination will be equal to or less than 6.5% or (iii) Bank’s Beneficial Ownership (as such term is defined in the Charter) of Equity Stock (as such term is defined in the Charter) following such partial termination will be equal to or less than 8.5%. If the Waiver terminates or ceases to be valid, binding or enforceable against Counterparty or the representation by Deutsche in Section 9(i) ceases to be valid, Deutsche may designate any Exchange Business Day as an Early Termination Date with respect to all or a portion of this Transaction. Solely for purposes of this subsection, following receipt of any Repurchase Notice or Conversion Rate Adjustment Notice, (i) Deutsche’s “beneficial ownership” (within the meaning of Section 13 of

the Exchange Act and rules promulgated thereunder) with respect to Shares, (ii) the Options Equity Percentage and (iii) Bank's Beneficial Ownership (as such term is defined in the Charter) with respect to the Equity Stock (as such term is defined in the Charter), as the case may be, shall incorporate the deemed effect of the relevant Share repurchase (in the case of a Repurchase Notice) or New Conversion Rate (in the case of a Conversion Rate Adjustment Notice). In the event that Deutsche so designates an Early Termination Date with respect to a portion of this Transaction, a payment shall be made pursuant to Section 6 of the Agreement as if (i) an Early Termination Date had been designated in respect of a Transaction having terms identical to this Transaction and a Number of Options equal to the Terminated Portion, (ii) Counterparty shall be the sole Affected Party with respect to such partial termination and (iii) such Transaction shall be the only Terminated Transaction (and, for the avoidance of doubt, the provisions of Section 9(q) shall apply to any amount that is payable by Deutsche to Counterparty pursuant to this sentence as if Counterparty was not the Affected Party). Before any transfer, assignment or designation of an Early Termination Date by Deutsche pursuant to this section 9(h) that relates solely to the Bank's Beneficial Ownership, the parties agree to use commercially reasonable efforts to obtain a modification of the Waiver, within a time period reasonably acceptable to Deutsche, that would permit the Bank's Beneficial Ownership at a level higher than that in the existing Waiver. Notwithstanding any other provision in this Confirmation to the contrary requiring or allowing Deutsche to purchase, sell, receive or deliver any shares or other securities to or from Counterparty, Deutsche may designate any of its affiliates to purchase, sell, receive or deliver such shares or other securities and otherwise to perform Deutsche's obligations in respect of this Transaction and any such designee may assume such obligations. Deutsche shall be discharged of its obligations to Counterparty to the extent of any such performance.

- (i) Additional Representations. Deutsche hereby represents and warrants to Counterparty that for the duration of the Transaction, (i) the obligation of Deutsche with respect to the Transaction, to the extent of the portion of the Transaction to which Deutsche is a party, will not exceed 10% of the outstanding securities (within the meaning of Section 856 of Internal Revenue Code of 1986, as amended (the "Code")) of Deutsche, (ii) the obligation of any affiliate of Deutsche under the Transaction, to the extent of the portion of the Transaction to which such affiliate is a party, including by assignment or transfer, will not exceed 10% of the outstanding securities (within the meaning of Section 856 of the Code) of such affiliate and (iii) for U.S. federal income tax purposes, Deutsche will not take a position inconsistent with Counterparty's treatment of the associated rights of the parties pursuant to the Transaction as a single instrument. Each Party represents that it is not required by any applicable law, as modified by the practice of any relevant governmental revenue authority, of any Relevant Jurisdiction to make any deduction or withholding for or on account of any Tax from any payment to be made by it to the other party under this Agreement.
- (j) Staggered Settlement. If upon advice of counsel with respect to applicable legal and regulatory requirements, including any requirements relating to Deutsche's hedging activities hereunder, Deutsche reasonably determines that it would not be practicable or advisable to deliver, or to acquire Shares to deliver, any or all of the Shares to be delivered by Deutsche on the Settlement Date for the Transaction, Deutsche may, by notice to Counterparty on or prior to any Settlement Date (a "Nominal Settlement Date"), elect to deliver the Shares on two or more dates (each, a "Staggered Settlement Date") as follows:

13

-
- (i) in such notice, Deutsche will specify to Counterparty the related Staggered Settlement Dates (the first of which will be such Nominal Settlement Date and the last of which will be no later than the twentieth (20th) Exchange Business Day following such Nominal Settlement Date) and the number of Shares that it will deliver on each Staggered Settlement Date on a payment versus delivery basis;
- (ii) the aggregate number of Shares that Deutsche will deliver to Counterparty hereunder on all such Staggered Settlement Dates will equal the number of Shares that Deutsche would otherwise be required to deliver on such Nominal Settlement Date; and
- (iii) Net Share Settlement terms will apply on each Staggered Settlement Date, except that the Net Shares will be allocated among such Staggered Settlement Dates as specified by Deutsche in the notice referred to in clause (i) above.
- (k) Early Unwind. In the event the sale of Convertible Notes is not consummated with the initial purchasers for any reason or Counterparty fails to deliver to Deutsche opinions of counsel to Counterparty as required pursuant to Section 9(a) by the close of business in New York on March 16, 2007(1) (or such later date as agreed upon by the parties) (March 16, 2007 or such later date as agreed upon being the "Early Unwind Date"), this Transaction shall automatically terminate (the "Early Unwind") on the Early Unwind Date and (i) the Transaction and all of the respective rights and obligations of Deutsche and Counterparty under the Transaction shall be cancelled and terminated and (ii) each party shall be released and discharged by the other party from and agrees not to make any claim against the other party with respect to any obligations or liabilities of the other party arising out of and to be performed in connection with the Transaction either prior to or after the Early Unwind Date; *provided* that Counterparty shall purchase from Deutsche on the Early Unwind Date all Shares purchased by Deutsche or one or more of its affiliates and reimburse Deutsche for any costs or expenses (including market losses) relating to the unwinding of its hedging activities in connection with the Transaction (including any loss or cost incurred as a result of its terminating, liquidating, obtaining or reestablishing any hedge or related trading position). The amount of any such reimbursement shall be determined by Deutsche in its sole good faith discretion. Deutsche shall notify Counterparty of such amount and Counterparty shall pay such amount in immediately available funds on the Early Unwind Date. Each of Deutsche and Counterparty represents and acknowledges to the other that, subject to the proviso included in this paragraph, upon an Early Unwind, all obligations with respect to the Transaction shall be deemed fully and finally discharged.
- (l) Method of Delivery. Whenever delivery of funds or other assets is required hereunder by or to Counterparty, such delivery shall be effected through Agent. In addition, all notices, demands and communications of any kind relating to the Transaction between Deutsche and Counterparty shall be transmitted exclusively through Agent.
- (m) Dividends. If at any time during the period from and including the Trade Date, to but excluding the Expiration Date, (i) an ex-dividend date for a cash dividend occurs with respect to the Shares (an "Ex-Dividend Date"), and that dividend is less than the Regular Dividend on a per Share basis or (ii) if no Ex-Dividend date for a cash dividend occurs with respect to the Shares in any quarterly dividend period of Counterparty, then the Calculation Agent will adjust the Cap Price to preserve the fair value of the Options to Deutsche after taking into account such dividend or lack thereof. "Regular Dividend" shall mean USD 0.71 per Share per quarter.

(n) Additional Termination Events. Notwithstanding anything to the contrary in this Confirmation, (i) upon the occurrence of a Conversion Date with respect to an Induced Conversion or a Corporate Event Conversion, as applicable:

(A) Counterparty shall within one Scheduled Trading Day provide written notice (an “**Excluded Conversion Notice**”) to Deutsche specifying the number of Convertible Notes

(1) Insert the closing date for the securities.

14

converted on such Conversion Date and identifying the related conversions as Induced Conversions or Corporate Event Conversions, as applicable;

(B) such Induced Conversion or Corporate Event Conversion, as applicable, shall constitute an Additional Termination Event hereunder with respect to the number of Options relating to the number of Convertible Notes surrendered for conversion in connection with such Induced Conversion or Corporate Event Conversion, as applicable, (the “**Affected Number of Options**”), in which case (x) the sole Affected Transaction shall consist of a transaction identical to the Transaction except that Number of Options for such Affected Transaction shall equal the Affected Number of Options and Counterparty shall be deemed the sole Affected Party and (y) the Transaction shall remain in full force and effect, except that the Number of Options subject to the Transaction immediately prior to the Conversion Date for such Induced Conversion or Corporate Event Conversion, as applicable, shall as of such Conversion Date be reduced by the Affected Number of Options;

(C) notwithstanding anything to the contrary in the Agreement, Deutsche shall designate an Early Termination Date in respect of such Affected Transaction, which shall be no earlier than one Scheduled Trading Day following the Conversion Date for the related Induced Conversion or Corporate Event Conversion, as applicable; and

(D) for the avoidance of doubt, in determining the amount payable in respect of such Affected Transaction pursuant to Section 6 of the Agreement, the Calculation Agent shall assume that (x) the relevant Induced Conversion or Corporate Event Conversion, as applicable, had not occurred, (y) in the case of an Induced Conversion, any adjustments, agreements, payments, deliveries or acquisitions by or on behalf of Counterparty or any affiliate of Counterparty leading thereto, had not occurred and (z) the corresponding Convertible Notes remain outstanding.

(ii) if an event of default with respect to Counterparty shall occur under the terms of the Convertible Notes as set forth in Section 6.01 of the Indenture, then such event of default shall constitute an Additional Termination Event applicable to the Transaction and, with respect to such event of default (A) Counterparty shall be deemed to be the sole Affected Party and the Transaction shall be the sole Affected Transaction and (B) Deutsche shall be the party entitled to designate an Early Termination Date pursuant to Section 6(b) of the Agreement.

(o) Amendments to Equity Definitions. (i) Section 11.2(a) of the Equity Definitions is hereby amended by deleting the words “diluting or concentrative” and replacing them with the word “material”.

(ii) Section 11.2(c) of the Equity Definitions is hereby amended by (x) replacing the words “a diluting or concentrative” with “an” and (y) deleting the phrase “(provided that no adjustments will be made to account solely for changes in volatility, expected dividends, stock loan rate or liquidity relative to the relevant Shares)” and replacing it with the phrase “(and, for the avoidance of doubt, adjustments may be made to account solely for changes in volatility, expected dividends, stock loan rate or liquidity relative to the relevant Shares).”

(iii) Section 12.6(a)(ii) of the Equity Definitions is hereby amended by (1) deleting from the fourth line thereof the word “or” after the word “official” and inserting a comma therefor, and (2) deleting the semi-colon at the end of subsection (B) thereof and inserting the following words therefor “or (C) at Deutsche’s option, the occurrence of any of the events specified in Section 5(a)(vii) (1) through (9) of the ISDA Master Agreement with respect to that Issuer.”

(iv) Section 12.9(b)(i) of the Equity Definitions is hereby amended by (1) replacing “either party may elect” with “Deutsche may elect” and (2) replacing “notice to the other party” with “notice to Counterparty” in the first sentence of such section.

15

(p) No Collateral or Setoff. Notwithstanding any provision of the Agreement or any other agreement between the parties to the contrary, the obligations of Counterparty hereunder are not secured by any collateral. Obligations under this Transaction shall not be set off against any other obligations of the parties, whether arising under the Agreement, this Confirmation, under any other agreement between the parties hereto, by operation of law or otherwise, and no other obligations of the parties shall be set off against obligations under this Transaction, whether arising under the Agreement, this Confirmation, under any other agreement between the parties hereto, by operation of law or otherwise, and each party hereby waives any such right of setoff.

(q) Alternative Calculations and Payment on Early Termination and on Certain Extraordinary Events. If in respect of this Transaction, an amount is payable by Deutsche to Counterparty (i) pursuant to Section 12.7 or Section 12.9 of the Equity Definitions or (ii) pursuant to Section 6(d)(ii) of the Agreement (a “**Payment Obligation**”), Counterparty may request Deutsche to satisfy any such Payment Obligation by the Share Termination Alternative (as defined below) (except that Counterparty shall not make such an election in the event of a Nationalization, Insolvency or Merger Event, in each case, in which the consideration to be paid to holders of Shares consists solely of cash, or an Event of Default in which Counterparty is the Defaulting Party or a Termination Event in which Counterparty is the Affected Party,

other than an Event of Default of the type described in Section 5(a)(iii), (v), (vi), (vii) or (viii) of the Agreement or a Termination Event of the type described in Section 5(b)(i), (ii), (iii), (iv), (v) or (vi) of the Agreement or an Additional Termination Event as a result of an Induced Conversion in each case that resulted from an event or events outside Counterparty's control) and shall give irrevocable telephonic notice to Deutsche, confirmed in writing within one Currency Business Day, no later than 12:00 p.m. New York local time on the Merger Date, the Announcement Date (in the case of Nationalization, Insolvency or Delisting), Early Termination Date or date of cancellation, as applicable. For avoidance of doubt, the parties agree that in calculating the Payment Obligation the Determining Party may consider the purchase price paid in connection with the purchase of Share Termination Delivery Property.

- Share Termination Alternative: Applicable and means that Deutsche shall deliver to Counterparty the Share Termination Delivery Property on, or within a commercially reasonable period of time after, the date when the Payment Obligation would otherwise be due pursuant to Section 12.7 or 12.9 of the Equity Definitions or Section 6(d)(ii) and 6(e) of the Agreement, as applicable (the "**Share Termination Payment Date**"), in satisfaction of the Payment Obligation in the manner reasonably requested by Counterparty free of payment.
- Share Termination Delivery Property: A number of Share Termination Delivery Units, as calculated by the Calculation Agent, equal to the Payment Obligation divided by the Share Termination Unit Price. The Calculation Agent shall adjust the Share Termination Delivery Property by replacing any fractional portion of a security therein with an amount of cash equal to the value of such fractional security based on the values used to calculate the Share Termination Unit Price.
- Share Termination Unit Price: The value to Deutsche of property contained in one Share Termination Delivery Unit, as determined by the Calculation Agent in its discretion by commercially reasonable means and notified by the

16

Calculation Agent to Deutsche at the time of notification of the Payment Obligation.

- Share Termination Delivery Unit: One Share or, if a Merger Event has occurred and a corresponding adjustment to this Transaction has been made, a unit consisting of the number or amount of each type of property received by a holder of one Share (without consideration of any requirement to pay cash or other consideration in lieu of fractional amounts of any securities) in such Merger Event, as determined by the Calculation Agent.
- Failure to Deliver: Applicable
- Other applicable provisions: If this Transaction is to be Share Termination Settled, the provisions of Sections 9.9, 9.11, 9.12 and 10.5 (as modified above) of the Equity Definitions will be applicable, except that all references in such provisions to "Physically-settled" shall be read as references to "Share Termination Settled" and all references to "Shares" shall be read as references to "Share Termination Delivery Units". "Share Termination Settled" in relation to this Transaction means that Share Termination Settlement is applicable to this Transaction.

- (r) **Registration.** Counterparty hereby agrees that if, in the good faith reasonable judgment of Deutsche, the Shares ("**Hedge Shares**") acquired by Deutsche for the purpose of hedging its obligations pursuant to this Transaction cannot be sold in the public market by Deutsche without registration under the Securities Act, Counterparty shall, at its election, either (i) in order to allow Deutsche to sell the Hedge Shares in a registered offering, make available to Deutsche an effective registration statement under the Securities Act and enter into an agreement, in form and substance reasonably satisfactory to Deutsche, substantially in the form of an underwriting agreement for a registered secondary offering; *provided, however*, that if Deutsche, in its sole reasonable discretion, is not satisfied with access to due diligence materials, the results of its due diligence investigation, or the procedures and documentation for the registered offering referred to above, then clause (ii) or clause (iii) of this paragraph shall apply at the election of Counterparty, (ii) in order to allow Deutsche to sell the Hedge Shares in a private placement, enter into a private placement agreement substantially similar to private placement purchase agreements customary for private placements of equity securities, in form and substance reasonably satisfactory to Deutsche (in which case, the Calculation Agent shall make any adjustments to the terms of this Transaction that are necessary, in its reasonable judgment, to compensate Deutsche for any discount from the public market price of the Shares incurred on the sale of Hedge Shares in a private placement), or (iii) purchase the Hedge Shares from Deutsche at the Relevant Price (as such term is defined in the Equity Definitions) on such Trading Days, and in the amounts, requested by Deutsche.
- (s) **Indemnification.** Counterparty agrees to indemnify and hold harmless Deutsche and its affiliates and their respective officers, directors, employees, affiliates, advisors, agents and controlling persons (each, an "**Indemnified Person**") from and against any and all losses (including, without limitation, losses relating to Deutsche's hedging or trading activities, losses relating to Deutsche's hedging activities as a consequence of becoming, or of the risk of becoming, a Section 16 "insider," any losses resulting from the operation of any ownership limitations contained in the Charter and any losses in connection therewith with respect to this Transaction), claims, damages, judgments, liabilities and expenses (including reasonable attorney's fees), joint or several, which an Indemnified Person may become subject to, as a result of (i) Counterparty's failure to publicly

17

announce and disclose the contents of any Repurchase Notice or Conversion Rate Adjustment Notice, as the case may be, or (ii) Counterparty's failure to provide Deutsche with a Repurchase Notice on the day and in the manner specified in Section 9(c); and to reimburse, within 30 days, upon written request, each of such Indemnified Persons for any reasonable legal or other expenses incurred in connection with investigating, preparing for, providing testimony or other evidence in connection with or defending any of the foregoing. If any suit, action, proceeding (including any governmental or regulatory investigation), claim or demand shall be brought or asserted against the Indemnified Person as a result of Counterparty's failure to publicly announce and disclose the contents of any Repurchase Notice or Conversion Rate Adjustment Notice, as the case may be, such Indemnified Person shall promptly notify Counterparty in writing, and Counterparty, upon request of the Indemnified Person, shall retain counsel reasonably satisfactory to the Indemnified Person to represent the Indemnified Person and any others Counterparty may designate in such proceeding and shall pay the fees and expenses of such counsel related to such proceeding. Counterparty shall not be liable for any settlement of any proceeding contemplated by this subsection that is effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, Counterparty agrees to indemnify any Indemnified Person from and against any loss or liability by reason of such settlement or judgment. Counterparty shall not, without the prior written consent of the Indemnified Person, effect any settlement of any pending or threatened proceeding contemplated by this subsection that is in respect of which any Indemnified Person is or could have been a party and indemnity could have been sought hereunder by such Indemnified Person, unless such settlement includes an unconditional release of such Indemnified Person from all liability on claims that are the subject matter of such proceeding on terms reasonably satisfactory to such Indemnified Person. If the indemnification provided for in this subsection is unavailable to an Indemnified Person or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then Counterparty hereunder, in lieu of indemnifying such Indemnified Person thereunder, shall contribute to the amount paid or payable by such Indemnified Person as a result of such losses, claims, damages or liabilities. The remedies provided for in this subsection are not exclusive and shall not limit any rights or remedies which may otherwise be available to any Indemnified Party at law or in equity. The indemnity and contribution agreements contained in this subsection shall remain operative and in full force and effect regardless of the termination of this Transaction.

- (t) Notice of Merger Consideration. Counterparty covenants and agrees that, as promptly as practicable following the public announcement of any transaction or event described in Section 11.06 of the Indenture, Counterparty shall notify Deutsche in writing of the types and amounts of consideration that holders of Shares have elected to receive upon consummation of such transaction or event (the date of such notification, the "**Consideration Notification Date**"); *provided* that in no event shall the Consideration Notification Date be later than the date on which such transaction or event is consummated.
- (u) Tax Disclosure. Effective from the date of commencement of discussions concerning the Transaction, Counterparty and each of its employees, representatives, or other agents may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the Transaction and all materials of any kind (including opinions or other tax analyses) that are provided to Counterparty relating to such tax treatment and tax structure.
- (v) Right to Extend. Deutsche may postpone, in whole or in part, any Valid Day or Valid Days during the Settlement Averaging Period with respect to some or all of the relevant Options (in which event the Calculation Agent shall make appropriate adjustments to the number of Options with respect to one or more of the Valid Days during such Settlement Averaging Period) if Deutsche determines, in its good faith and commercially reasonable judgment, that such extension is reasonably necessary to preserve Deutsche's hedging or hedge unwind activity hereunder in light of existing liquidity conditions or to enable Deutsche to effect purchases or sales of Shares in connection with its hedging or settlement activity hereunder in a manner that would, if Deutsche were Counterparty or an affiliated purchaser of Counterparty, be in compliance with applicable

18

legal, regulatory or self-regulatory requirements, or with related policies and procedures applicable to Deutsche.

- (w) Status of Claims in Bankruptcy. Deutsche acknowledges and agrees that this Confirmation is not intended to convey to Deutsche rights against Counterparty with respect to the Transaction that are senior to the claims of common stockholders of Counterparty in any U.S. bankruptcy proceedings of Counterparty; *provided* that nothing herein shall limit or shall be deemed to limit Deutsche's right to pursue remedies in the event of a breach by Counterparty of its obligations and agreements with respect to the Transaction; *provided, further*, that nothing herein shall limit or shall be deemed to limit Deutsche's rights in respect of any transactions other than the Transaction.
- (x) Securities Contract; Swap Agreement. The parties hereto intend for: (a) the Transaction to be a "securities contract" and a "swap agreement" as defined in the Bankruptcy Code (Title 11 of the United States Code) (the "**Bankruptcy Code**"), and the parties hereto to be entitled to the protections afforded by, among other Sections, Sections 362(b)(6), 555 and 560 of the Bankruptcy Code; (b) a party's right to liquidate the Transaction and to exercise any other remedies upon the occurrence of any Event of Default under the Agreement with respect to the other party to constitute a "contractual right" as described in the Bankruptcy Code; (c) any cash, securities or other property provided as performance assurance, credit support or collateral with respect to the Transaction to constitute "margin payments" and "transfers" under a "swap agreement" as defined in the Bankruptcy Code; and (d) all payments for, under or in connection with the Transaction, all payments for the Shares and the transfer of such Shares to constitute "settlement payments" and "transfers" under a "swap agreement" as defined in the Bankruptcy Code.
- (y) Governing Law. New York law (without reference to choice of law doctrine).
- (z) Waiver of Jury Trial. Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to this Transaction. Each party (i) certifies that no representative, agent or attorney of either party has represented, expressly or otherwise, that such other party would not, in the event of such a suit, action or proceeding, seek to enforce the foregoing waiver and (ii) acknowledges that it and the other party have been induced to enter into this Transaction, as applicable, by, among other things, the mutual waivers and certifications provided herein.

19

Counterparty hereby agrees to check this Confirmation and to confirm that the foregoing correctly sets forth the terms of the Transaction by signing in the space provided below and returning to Deutsche a facsimile of the fully-executed Confirmation to Jonathan Miller at (732) 578-2650. Originals shall be provided for your execution upon your request.

Very truly yours,

DEUTSCHE BANK AG, LONDON BRANCH

By: /s/ Lee Frankefield
Name: Lee Frankefield
Title: Managing Director

By: /s/ Andrea Leung
Name: Andrea Leung
Title: Managing Director

DEUTSCHE BANK AG, NEW YORK BRANCH

acting solely as Agent in connection
with this Transaction

By: /s/ Andrew Yaeger
Name: Andrew yaeger
Title: Director

By: /s/ Lee Frankefield
Name: Lee Frankefield
Title: Managing Director

Accepted and confirmed
as of the Trade Date:

THE MACERICH COMPANY

By: /s/ Richard A. Bayer
Authorized Signatory
Name: Richard A. Bayer



Deutsche Bank

Deutsche Bank AG London
 Winchester house
 1 Great Winchester St,
 London EC2N 2DB
 Telephone: 44 20 7545 8000

c/o Deutsche Bank AG New York
 60 Wall Street
 New York, NY 10005
 Telephone: 212-250-2500

March 15, 2007

To: **The Macerich Company**
 401 Wilshire Boulevard, Suite 700
 Santa Monica, California 90401
 Attention: Chief Financial Officer
 Telephone No.: 310-394-6000
 Facsimile No.: 310-394-0632

Internal Reference No.: 165954

Re: Call Option Transaction Amendment

The purpose of this letter agreement (the "**Amendment**") is to amend the terms and conditions of the call option (the "**Transaction**") entered into between Deutsche Bank AG acting through its London branch ("**Deutsche**") and The Macerich Company ("**Counterparty**") pursuant to a letter agreement (the "**Confirmation**") dated March 12, 2007, pursuant to which Counterparty purchased from Deutsche a Number of Options equal to 400,000 in connection with the issuance by Counterparty of \$800,000,000 principal amount of 3.25% Convertible Senior Notes due 2012 (the "**Initial Convertible Notes**") under the Indenture to be dated March 16, 2007 between Counterparty and Deutsche Bank Trust Company Americas, as trustee. This Amendment relates to, and sets forth the terms of, the purchase by Counterparty from Deutsche of an additional number of Options (the "**Additional Number of Options**") in connection with the issuance by Counterparty of an additional \$150,000,000 principal amount of 3.25% Convertible Senior Notes due 2012 (the "**Additional Convertible Notes**") and, together with the Initial Convertible Notes, the "**Convertible Notes**") to the initial purchasers of the Convertible Notes as a result of their exercise of the right granted with respect to such Additional Convertible Notes pursuant to the Purchase Agreement dated March 12, 2007.

Upon the effectiveness of this Amendment, all references to "Number of Options" and "Transaction" in the Confirmation, as amended, will include the Additional Number of Options purchased by Counterparty and Parent pursuant to the terms set forth below, all references to "Convertible Notes" will include the Additional Convertible Notes and, except to the extent specified below, all other provisions of the Confirmation shall apply to the Additional Number of Options as if such Additional Number of Options were originally subject to the Confirmation. Capitalized terms used herein without definition shall have the meanings assigned to them in the Confirmation.

Chairman of the Supervisory Board: Clemens Börsig Board of Managing
 Directors: Hermann-Josef Lamberti, Josef Ackermann, Tessen von
 Heydebreck, Anthony DiIorio, Hugo Banziger

Deutsche Bank AG is regulated by the FSA for the conduct of designated investment business in the UK, is a member of the London Stock Exchange and is a limited liability company incorporated in the Federal Republic of Germany HRB No. 30 000 District Court of Frankfurt am Main; Branch Registration No. in England and Wales BR000005, Registered address: Winchester House, 1 Great Winchester Street, London EC2N 2DB

The terms relating to the purchase of the Additional Number of Options are as follows:

1. The "**Trade Date**" with respect to the Additional Number of Options will be March 15, 2007.
2. The "**Number of Options**" for the Transaction will be "475,000" reflecting an addition of 75,000 Additional Number of Options.
3. The "**Premium**" for the Transaction will be \$29,925,000.00 reflecting an increase of the premium payable by the Counterparty to Deutsche in the amount of \$4,725,000.00 for the Additional Number of Options.
4. The "**Premium Payment Date**" with respect to the premium for the Additional Number of Options will be March 16, 2007.
5. The last sentence of the definition of "**Exercisable Options**" shall be deleted in its entirety.
5. Counterparty hereby repeats the representations, warranties and agreements contained in the Confirmation with respect to the Amendment or with respect to the Confirmation, as amended by the Amendment, as the context requires.
6. Except as amended hereby, all the terms of the Transaction and provisions in the Confirmation shall remain and continue in full force and effect and are hereby confirmed in all respects.

7. This Amendment may be signed in any number of counterparts, each of which shall be an original, with the same effect as if all of the signatures thereto and hereto were upon the same instrument.

8. The provisions of this Amendment shall be governed by the New York law (without reference to choice of law doctrine).

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing this Amendment and returning it to Deutsche a facsimile of the fully-executed Amendment to Jonathan Miller at (732) 578-2650. Originals shall be provided for your execution upon your request.

Very truly yours,

DEUTSCHE BANK AG, LONDON BRANCH

By: /s/ Lee Frankefield
Name: Lee Frankefield
Title: Managing Director

By: /s/ Andrea Leung
Name: Andrea Leung
Title: Managing Director

DEUTSCHE BANK AG, NEW YORK BRANCH

acting solely as Agent in connection
with this Transaction

By: /s/ Andrew Yaeger
Name: Andrew Yaeger
Title: Director

By: /s/ Paul Maley
Name: Paul Maley
Title: Director

Accepted and confirmed
as of the Trade Date:

THE MACERICH COMPANY

By: /s/ Richard A. Bayer
Authorized Signatory
Name: Richard A. Bayer



JPMorgan Chase Bank, National Association

P.O. Box 161
60 Victoria Embankment
London EC4Y 0JP
England

March 12, 2007

To: **The Macerich Company**
401 Wilshire Boulevard, Suite 700
Santa Monica, California 90401
Attention: Chief Financial Officer
Telephone No.: 310-394-6000
Facsimile No.: 310-394-0632

Re: Call Option Transaction

The purpose of this letter agreement (this "**Confirmation**") is to confirm the terms and conditions of the call option transaction entered into between JPMorgan Chase Bank, National Association, London Branch ("**JPMorgan**"), and The Macerich Company ("**Counterparty**") on the Trade Date specified below (the "**Transaction**"). This letter agreement constitutes a "Confirmation" as referred to in the ISDA Master Agreement specified below. This Confirmation shall replace any previous agreements and serve as the final documentation for this Transaction.

The definitions and provisions contained in the 2002 ISDA Equity Derivatives Definitions (the "**Equity Definitions**"), as published by the International Swaps and Derivatives Association, Inc. ("**ISDA**"), are incorporated into this Confirmation. In the event of any inconsistency between the Equity Definitions and this Confirmation, this Confirmation shall govern. Certain defined terms used herein have the meanings assigned to them in the Offering Memorandum dated March 12, 2007 (the "**Offering Memorandum**") relating to the USD 800,000,000 principal amount of Convertible Senior Notes due 2012 (the "**Convertible Notes**" and each USD 1,000 principal amount of Convertible Notes, a "**Convertible Note**") issued by Counterparty pursuant to an Indenture to be dated March 16, 2007 between Counterparty and Deutsche Bank Trust Company Americas, as trustee (as in effect on the date of its execution, the "**Indenture**"). In the event of any inconsistency between the terms defined in the Offering Memorandum, the Indenture and this Confirmation, this Confirmation shall govern. The parties acknowledge that this Confirmation is entered into on the date hereof with the understanding that (i) definitions set forth in the Indenture which are also defined herein by reference to the Indenture and (ii) sections of the Indenture that are referred to herein will conform to the descriptions thereof in the Offering Memorandum. If any such definitions in the Indenture or any such sections of the Indenture differ from the descriptions thereof in the Offering Memorandum, the descriptions thereof in the Offering Memorandum will govern for purposes of this Confirmation. The parties further acknowledge that the Indenture section numbers used herein are based on the draft of the Indenture last reviewed by JPMorgan as of the date of this Confirmation, and if any such section numbers are changed in the Indenture as executed, the parties will amend this Confirmation in good faith to preserve the intent of the parties. For the avoidance of doubt, references to the Indenture herein are references to the Indenture as in effect on the date of its execution and if the Indenture is amended following its execution, any such amendment will be disregarded for purposes of this Confirmation unless the parties agree otherwise in writing.

Each party is hereby advised, and each such party acknowledges, that the other party has engaged in, or refrained from engaging in, substantial financial transactions and has taken other material actions in reliance upon the parties' entry into the Transaction to which this Confirmation relates on the terms and conditions set forth below.

JPMorgan Chase Bank, National Association
Organised the laws of the United States as a National Banking Association.
Main Office 1111 Polaris Parkway, Columbus, Ohio 43271
Registered as a branch in England & Wales branch No. BR000746. Registered
Branch Office 125 London Wall, London EC2Y 5AJ
Authorised and regulated by the Financial Services Authority

1. This Confirmation evidences a complete and binding agreement between JPMorgan and Counterparty as to the terms of the Transaction to which this Confirmation relates. This Confirmation shall supplement, form a part of, and be subject to an agreement in the form of the 2002 ISDA Master Agreement (the "**Agreement**") as if JPMorgan and Counterparty had executed an agreement in such form (but without any Schedule except for the election of the laws of the State of New York as the governing law) on the Trade Date. In the event of any inconsistency between provisions of that Agreement and this Confirmation, this Confirmation will prevail for the purpose of the Transaction to which this Confirmation relates. The parties hereby agree that no Transaction other than the Transaction to which this Confirmation relates shall be governed by the Agreement.

2. The terms of the particular Transaction to which this Confirmation relates are as follows:

General Terms:

Trade Date:	March 12, 2007
Option Style:	"Modified American", as set forth under "Exercise and Valuation" below
Option Type:	Call

Buyer: Counterparty
Seller: JPMorgan
Shares: The common stock of Counterparty, par value USD 0.01 per share (Exchange symbol "MAC")
Number of Options: 400,000. For the avoidance of doubt, the Number of Options shall be reduced by any Options exercised by Counterparty. In no event will the Number of Options be less than zero.
Option Entitlement: As of any date, a number equal to the Conversion Rate as of such date (as defined in the Indenture, but without regard to any adjustments to the Conversion Rate pursuant to Section 11.05(h) or Section 11.07 of the Indenture), for each Convertible Note.
Strike Price: USD 111.4802
Cap Price: USD 130.0600
Premium: USD 25,200,000.00
Premium Payment Date: March 16, 2007
Exchange: The New York Stock Exchange
Related Exchange(s): All Exchanges

Exercise and Valuation:

Exercise Period(s): Notwithstanding anything to the contrary in the Equity Definitions, an Exercise Period shall occur with respect to an Option hereunder only if such Option is an Exercisable Option (as defined below) and the Exercise Period shall be, in respect of any Exercisable Option, the period commencing on, and including,

the relevant Conversion Date and ending on, and including, the Scheduled Valid Day immediately preceding the first day of the relevant Settlement Averaging Period in respect of such Conversion Date; *provided* that in respect of Exercisable Options relating to Convertible Notes for which the relevant Conversion Date occurs on or after December 15, 2011, the final day of the Exercise Period shall be the Scheduled Valid Day immediately preceding the Expiration Date.

Conversion Date: With respect to any conversion of Convertible Notes, the date on which the Holder (as such term is defined in the Indenture) of such Convertible Notes satisfies all of the requirements for conversion thereof as set forth in Section 11.02 of the Indenture.

Exercisable Options:

Upon the occurrence of a Conversion Date, a number of Options equal to 50% of the number of Convertible Notes converted on such Conversion Date, other than (i) Convertible Notes surrendered for conversion (x) in connection with (A) an adjustment to the Conversion Rate effected by Counterparty in its discretion (whether pursuant to Section 11.05(h) of the Indenture or in a similar manner) that was not required under the terms of the Indenture as of the Trade Date or (B) an agreement by Counterparty with the Holders (as such term is defined in the Indenture) of such Convertible Notes and, in the case of either (A) or (B), the Holders of such Convertible Notes receive upon conversion or pursuant to such agreement, as the case may be, a payment of cash or delivery of Shares or any other property or value that was not required under the terms of the Indenture as of the Trade Date or (y) after having been acquired from a Holder by or on behalf of Counterparty or any of its affiliates other than pursuant to an exchange by such Holder and thereafter converted by or on behalf of Counterparty or any affiliate of Counterparty (each event described in this clause (i), an **“Induced Conversion”**) or (ii) Convertible Notes surrendered for conversion in connection with a Fundamental Change, a Specified Distribution or a Redemption to Preserve REIT Status (as each such term is defined in the Indenture) pursuant to Sections 11.01(a)(iii), (iv) or (v) of the Indenture (a **“Corporate Event Conversion”**), shall become Exercisable Options. For the avoidance of doubt, if J.P. Morgan Securities Inc. and Deutsche Bank Securities Inc. exercise their option pursuant to Section 2(c) of the Purchase Agreement dated as of March 16, 2007 between Counterparty, J.P. Morgan Securities Inc. and Deutsche Bank Securities Inc. as representatives of the Initial Purchasers party thereto (the **“Purchase Agreement”**), the number of Exercisable Options shall be equal to the product of (a) 50% of the number of Convertible Notes converted on such Conversion Date, other than the Convertible Notes surrendered for conversion as set forth in clauses (i) and (ii) above, and (b) the quotient of (A) the number of Convertible Notes in denominations of USD 1,000 principal amount issued by Counterparty on the closing date for the initial issuance of the Convertible Notes *divided by* (B) the total number of Convertible Notes in denominations of USD 1,000 principal amount outstanding immediately after such exercise.

Expiration Time:

The Valuation Time

Expiration Date:

March 15, 2012, subject to earlier exercise.

Multiple Exercise:

Applicable, as described under Exercisable Options above.

Automatic Exercise:

Applicable; and means that in respect of an Exercise Period, a number of Options not previously exercised hereunder equal to the number of Exercisable Options shall be deemed to be exercised on the final day of such Exercise Period for such Exercisable Options; *provided* that such Options shall be deemed exercised only to the extent that Counterparty has provided a Notice of Exercise and, to the extent applicable, a Notice of Settlement Method, to JPMorgan.

Notice of Exercise:

Notwithstanding anything to the contrary in the Equity Definitions, in order to exercise any Exercisable Options, Counterparty must notify JPMorgan in writing before 5:00 p.m. (New York City time) on the second Scheduled Valid Day immediately following the Conversion Date for the Exercisable Options being exercised of (i) the number of such Options; (ii) the scheduled first day of the Settlement Averaging Period and the scheduled Settlement Date and (iii) whether Counterparty elects to settle its conversion obligations with respect to the Convertible Notes converted on such Conversion Date entirely in Shares in accordance with Sections 11.12(b) and (e) of the Indenture (**“Settlement in Shares”**); *provided* that in respect of Exercisable Options relating to Convertible Notes with a Conversion Date occurring on or after December 15, 2011, such notice may be given on or prior to the second Scheduled Valid Day immediately preceding the Expiration Date (the **“Final Conversion Period”**), such Notice of Exercise need only specify item (i) above.

Notice of Settlement Method:

In order to exercise any Exercisable Options relating to Convertible Notes with a Conversion Date during the Final Conversion Period, Counterparty must notify JPMorgan before 5:00 p.m. (New York City time) on or prior to the forty-third (43rd) Scheduled Valid Day prior to the Expiration Date whether Settlement in Shares applies to the settlement of the Convertible Notes converted during the Final Conversion Period.

Market Disruption Event:

Section 6.3(a) of the Equity Definitions is hereby replaced in its entirety by the following:

“Market Disruption Event” means (1) a failure by the primary United States national securities exchange or market on which the Shares are listed or admitted for trading to open for trading during its regular trading session or (2) the occurrence or existence prior to 1:00 p.m. (New York City time) on any Valid Day for the Shares of an aggregate one half hour period, of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the stock exchange or otherwise) in

4

the Shares or in any options, contracts or future contracts relating to the Shares.

Settlement Terms:

Settlement Method:	Net Share Settlement
Net Share Settlement:	JPMorgan will deliver to Counterparty, on the relevant Settlement Date, a number of Shares equal to the Net Shares in respect of any Exercisable Option exercised or deemed exercised hereunder. In no event will the Net Shares be less than zero.
Net Shares:	<p>In respect of any Exercisable Option exercised or deemed exercised, a number of Shares equal to (i) the Option Entitlement multiplied by (ii) the sum of the quotients, for each Valid Day during the Settlement Averaging Period for such Exercisable Option, of (A) (1) the amount by which the Cap Price exceeds the Strike Price, if the Relevant Price on such Valid Day is equal to or greater than the Cap Price; (2) the amount by which the Relevant Price exceeds the Strike Price, if such Relevant Price is greater than the Strike Price but less than the Cap Price or (3) zero, if such Relevant Price is less than or equal to the Strike Price; <i>divided by</i> (B) such Relevant Price, divided by (iii) the number of Valid Days in the Settlement Averaging Period.</p> <p>JPMorgan will deliver cash in lieu of any fractional Shares to be delivered with respect to any Net Shares valued at the Relevant Price for the last Valid Day of the Settlement Averaging Period.</p>
Valid Day:	A day on which (i) trading in Shares occurs on the Exchange or, if the Shares are not listed on the Exchange, on the principal other national or regional securities exchange on which the Shares are then listed or, if the Shares are not listed on a national or regional securities exchange, on the Nasdaq Global Market or, if the Shares are not quoted on the Nasdaq Global Market, on the principal other U.S. national or regional securities exchange on which the Shares are then listed or, if the Shares are not listed on a U.S. national or regional securities exchange, on the principal other market on which the Shares are then traded and (ii) there is no Market Disruption Event.
Scheduled Valid Day:	A day on which trading in the Shares is scheduled to occur as defined in clause (i) of the definition of Valid Day.
Relevant Price:	On any Valid Day, the per Share volume-weighted average price as displayed under the heading “Bloomberg VWAP” on Bloomberg page MAC.N <equity> AQR (or its equivalent successor if such page is not available) in respect of the period from the scheduled open of trading until scheduled close of trading on the primary trading session on such Valid Day (or if such volume-weighted average price is unavailable, the market value of one Share on such Valid Day, as determined by the Calculation Agent using a volume-weighted method). The Relevant Price will be determined without regard to after hours

5

trading or any other trading outside of the regular trading session hours.

Settlement Averaging Period:

For any Exercisable Option, (x) if Counterparty has delivered, in accordance with the terms set forth above, a Notice of Exercise to JPMorgan with respect to such Exercisable Option with a Conversion Date occurring prior to December 15, 2011, the forty (40) consecutive Valid Day period beginning on and including the third Valid Day after such Conversion Date; *provided* that, if such Notice of Exercise specifies that Settlement in Shares applies to the Convertible Notes converted on such Conversion Date, the Settlement Averaging Period shall be the eighty (80) consecutive Valid Day period beginning on and including the third Scheduled Valid Day after such Conversion Date or (y) if Counterparty has delivered, in accordance with the terms set forth above, a Notice of Settlement Method to JPMorgan with respect to such Exercisable Option with a Conversion Date occurring on or following December 15, 2011, the forty (40) consecutive Valid Day period beginning on and including the forty second (42nd) Scheduled Valid Day immediately prior to the Expiration Date; *provided* that, if such Notice of Settlement Method specifies that Settlement in Shares applies to the Convertible Notes converted on such Conversion Date, the Settlement Averaging Period shall be the eighty (80) consecutive Valid Day period beginning on and including the forty second (42nd) Scheduled Valid Day immediately prior to the Expiration Date.

Settlement Date:

For any Exercisable Option, the third Valid Day immediately following the final Valid Day of the Settlement Averaging Period with respect to such Exercisable Options.

Settlement Currency:

USD

Other Applicable Provisions:

The provisions of Sections 9.1(c), 9.8, 9.9, 9.11, 9.12 and 10.5 of the Equity Definitions will be applicable, except that all references in such provisions to "Physically-settled" shall be read as references to "Net Share Settled". "Net Share Settled" in relation to any Option means that Net Share Settlement is applicable to that Option.

Representation and Agreement:

Notwithstanding Section 9.11 of the Equity Definitions, the parties acknowledge that any Shares delivered to Counterparty shall be, upon delivery, subject to restrictions and limitations arising from Counterparty's status under applicable securities laws and Counterparty's Articles of Amendment and Restatement, as amended from time to time (the "**Charter**").

3. Additional Terms applicable to the Transaction:

Adjustments applicable to the Transaction:

Potential Adjustment Events:

Notwithstanding Section 11.2(e) of the Equity Definitions, a "Potential Adjustment Event" means an occurrence of any event or condition, as set forth in Section 11.05 of the Indenture, that would result in an adjustment to the Conversion Rate of the

Convertible Notes; *provided* that in no event shall there be any adjustment hereunder as a result of an adjustment to the Conversion Rate pursuant to Section 11.05(h) or Section 11.07 of the Indenture.

Method of Adjustment:

Calculation Agent Adjustment, which means, notwithstanding anything to the contrary in the Equity Definitions, upon any adjustment to the Conversion Rate of the Convertible Notes pursuant to the Indenture (other than Section 11.05(h) or Section 11.07 of the Indenture), (i) the Calculation Agent shall make a corresponding adjustment to any of the Strike Price, Number of Options and the Option Entitlement and (ii) the Calculation Agent may, in its commercially reasonable discretion, make any adjustment consistent with the Calculation Agent Adjustment set forth in Section 11.2(c) of the Equity Definitions to the Cap Price or any other variable relevant to the exercise, settlement or payment for the Transaction to preserve the fair value of the Options to JPMorgan after taking into account such Potential Adjustment Event; *provided further* that in no event shall the Cap Price be less than the Strike Price.

Extraordinary Events applicable to the Transaction:

Merger Events:

Notwithstanding Section 12.1(b) of the Equity Definitions, a "Merger Event" means the occurrence of any event or condition set forth in Section 11.06 of the Indenture.

Tender Offers:

Applicable; *provided* that notwithstanding Section 12.1(d) of the Equity Definitions, a "Tender Offer" means the occurrence of any event or condition set forth in Section 11.05(f) of the Indenture.

Consequence of Merger Events/
Tender Offers:

Notwithstanding Sections 12.2 and 12.3 of the Equity Definitions, upon the occurrence of

a Merger Event or a Tender Offer:

(i) the Calculation Agent shall make a corresponding adjustment in respect of any adjustment under the Indenture to any one or more of the nature of the Shares, Strike Price, Number of Options and the Option Entitlement; *provided, however*, that such adjustment shall be made without regard to any adjustment to the Conversion Rate for the issuance of additional shares as set forth in Section 11.05(h) or Section 11.07 of the Indenture; and

(ii) the Calculation Agent may, in its sole discretion, make any adjustment consistent with the Modified Calculation Agent Adjustment set forth in Section 12.2(e) or 12.3(d) of the Equity Definitions, as applicable, to the Cap Price or any other variable relevant to the exercise, settlement or payment for the Transaction; *provided* that in no event shall the Cap Price be less than the Strike Price;

provided that, with respect to a Merger Event, if the consideration for the Shares includes (or, at the option of a holder of Shares, may include) shares of an entity or person not organized under the laws of the United States, any State thereof or the District of

7

Columbia, Cancellation and Payment (Calculation Agent Determination) shall apply; and *provided further* that, for the avoidance of doubt, adjustments shall be made pursuant to the provisions of subparagraphs (i) and (ii) above regardless of whether any Merger Event or Tender Offer gives rise to a Corporate Event Conversion.

Nationalization, Insolvency
or Delisting:

Cancellation and Payment (Calculation Agent Determination); *provided* that, in addition to the provisions of Section 12.6(a)(iii) of the Equity Definitions, it will also constitute a Delisting if the Exchange is located in the United States and the Shares are not immediately re-listed, re-traded or re-quoted on any of the New York Stock Exchange, the American Stock Exchange, the NASDAQ Global Select Market or the NASDAQ Global Market (or their respective successors); if the Shares are immediately re-listed, re-traded or re-quoted on any of the New York Stock Exchange, the American Stock Exchange, the NASDAQ Global Select Market or the NASDAQ Global Market (or their respective successors), such exchange or quotation system shall thereafter be deemed to be the Exchange.

Additional Disruption Events:

Change in Law:	Applicable
Failure to Deliver	Applicable
Hedging Party:	For all applicable Additional Disruption Events, JPMorgan
Determining Party:	For all applicable Additional Disruption Events, JPMorgan

Non-Reliance: Applicable

Agreements and Acknowledgements Regarding
Hedging Activities: Applicable

Additional Acknowledgments: Applicable

4. Calculation Agent: JPMorgan

5. Account Details:

(a) Account for payments to Counterparty:

Wells Fargo Bank
Los Angeles Main
11601 Wilshire Blvd. 17th Floor
Los Angeles, CA 90025
ABA: 121000248
Acct: The Macerich Company
Acct No.: 4600196232

Account for delivery of Shares to Counterparty:

To be provided by Counterparty

(b) Account for payments to JPMorgan:

JPMorgan Chase Bank, National Association, New York
 ABA: 021 000 021
 Favour: JPMorgan Chase Bank, National Association — London
 A/C: 0010962009 CHASUS33

Account for delivery of Shares from JPMorgan:

DTC 0060

6. Offices:

The Office of Counterparty for the Transaction is: Inapplicable, Counterparty is not a Multibranch Party.

The Office of JPMorgan for the Transaction is: London

JPMorgan Chase Bank, National Association
 London Branch
 P.O. Box 161
 60 Victoria Embankment
 London EC4Y 0JP
 England

7. Notices: For purposes of this Confirmation:

(a) Address for notices or communications to Counterparty:

The Macerich Company
 401 Wilshire Boulevard, Suite 700
 Santa Monica, California 90401
 Attention: Chief Financial Officer
 Telephone No.: (310) 394-6000
 Facsimile No.: (310) 394-0632

with a copy to:

The Macerich Company
 401 Wilshire Boulevard, Suite 700
 Santa Monica, California 90401
 Attention: General Counsel
 Telephone No.: (310) 899-6314
 Facsimile No.: (310) 395-2791

(b) Address for notices or communications to JPMorgan:

JPMorgan Chase Bank, National Association
 277 Park Avenue, 11th Floor
 New York, NY 10172
 Attention: Eric Stefanik
 Title: Operations Analyst
 EDG Corporate Marketing
 Telephone No: (212) 622-5814
 Facsimile No: (212) 622-8534

8. Representations and Warranties of Counterparty

The representations and warranties of Counterparty set forth in Section 1 of the Purchase Agreement are true and correct and are hereby deemed to be repeated to JPMorgan as if set forth herein. Counterparty hereby further represents and warrants to and agrees with, JPMorgan as of the Trade Date that:

- (a) Counterparty has all necessary corporate power and authority to execute, deliver and perform its obligations in respect of this Transaction; such execution, delivery and performance have been duly authorized by all necessary corporate action on Counterparty's part; and this

Confirmation has been duly and validly executed and delivered by Counterparty and constitutes its valid and binding obligation, enforceable against Counterparty in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity) and except that rights to indemnification and contribution hereunder may be limited by federal or state securities laws or public policy relating thereto.

- (b) Neither the execution and delivery of this Confirmation by Counterparty nor the incurrence or performance of obligations of Counterparty hereunder will conflict with or result in a breach of the Charter or by-laws (or any equivalent documents) of Counterparty, or any applicable law or regulation applicable to Counterparty, or any order, writ, injunction or decree of any court or governmental authority or agency applicable to Counterparty, or any agreement or instrument to which Counterparty or any of its subsidiaries is a party or by which Counterparty or any of its subsidiaries is bound or to which Counterparty or any of its subsidiaries is subject, or constitute a default under any such agreement or instrument, or breach or constitute a default under any agreements and contracts of Counterparty and the significant subsidiaries filed as exhibits to Counterparty's Annual Report on Form 10-K for the year ended December 31, 2006 incorporated by reference in the Offering Memorandum as updated by any subsequent filing.
- (c) No consent, approval, authorization, or order of, or filing with, any governmental agency or body or any court is required in connection with the execution, delivery or performance by Counterparty of this Confirmation, except such as have been obtained or made and such as may be required under the Securities Act of 1933, as amended (the "**Securities Act**"), or state securities laws.
- (d) It is an "eligible contract participant" (as such term is defined in Section 1a(12) of the Commodity Exchange Act, as amended (the "**CEA**")) because one or more of the following is true:

Counterparty is a corporation, partnership, proprietorship, organization, trust or other entity and:

- (i) Counterparty has total assets in excess of USD 10,000,000;
 - (ii) the obligations of Counterparty hereunder are guaranteed, or otherwise supported by a letter of credit or keepwell, support or other agreement, by an entity of the type described in Section 1a(12)(A)(i) through (iv), 1a(12)(A)(v)(I), 1a(12)(A)(vii) or 1a(12)(C) of the CEA; or
 - (iii) Counterparty has a net worth in excess of USD 1,000,000 and has entered into this Agreement in connection with the conduct of Counterparty's business or to manage the risk associated with an asset or liability owned or incurred or reasonably likely to be owned or incurred by Counterparty in the conduct of Counterparty's business.
- (e) Each of it and its affiliates is not, on the date hereof, in possession of any material non-public information with respect to Counterparty or the Shares.

-
- (f) Counterparty has all necessary corporate power and authority to execute and deliver a limited waiver dated as of March 12, 2007 to JPMorgan and its affiliates that waives the application of the Ownership Limit (as such term is defined in the Charter) (the "**Waiver**"); such execution and delivery have been duly authorized by all necessary corporate action on Counterparty's part; and the Waiver has been duly and validly executed and delivered by Counterparty and constitutes its valid and binding obligation, enforceable against Counterparty in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).
 - (g) Neither the execution and delivery of the Waiver nor the incurrence or performance of obligations of Counterparty thereunder will conflict with or result in a breach of the certificate of incorporation or by-laws (or any equivalent documents) of Counterparty, or any applicable law or regulation applicable to Counterparty, or any order, writ, injunction or decree of any court or governmental authority or agency applicable to Counterparty, or any agreement or instrument to which Counterparty or any of its subsidiaries is a party or by which Counterparty or any of its subsidiaries is bound or to which Counterparty or any of its subsidiaries is subject, or constitute a default under any such agreement or instrument, or breach or constitute a default under any agreements and contracts of Counterparty or any of its significant subsidiaries filed as exhibits to Counterparty's Annual Report on Form 10-K for the year ended December 31, 2006 as updated by any subsequent filings.

9. Other Provisions:

- (a) **Opinions.** Counterparty shall deliver to JPMorgan an opinion of counsel, dated as of the Trade Date, with respect to the matters set forth in Sections 8(a) through (c) and Sections 8(f) and (g) of this Confirmation (It being understood that such opinion of counsel may be limited as to scope in a manner substantially similar to the opinions delivered in connection with the Purchase Agreement, may also include customary assumptions, exceptions and limitations and may be otherwise limited as mutually agreed upon by Counterparty and JPMorgan).
- (b) **Amendment.** If the Initial Purchasers party to the Purchase Agreement exercise their right to purchase additional Convertible Notes as set forth therein, then, at the option of Counterparty, JPMorgan and Counterparty will either enter into a new confirmation or amend this Confirmation to provide for such increase in Convertible Notes (but on pricing terms acceptable to JPMorgan and Counterparty) (such additional confirmation or amendment to this Confirmation to provide for the payment by Counterparty to JPMorgan of the additional premium related thereto).
- (c) **Repurchase Notices.** Counterparty shall give JPMorgan written notice of any repurchase of Shares (a "**Repurchase Notice**") at least seven Scheduled Trading Days prior to effecting such repurchase if, after giving effect to such repurchase, the quotient of (x) the product of (a) the Number of Options and (b) the Option Entitlement divided by (y) the number of Counterparty's outstanding Shares (such quotient

expressed as a percentage, the “**Option Equity Percentage**”) would be greater than 6.5%. Such Repurchase Notice shall set forth the number of Shares to be outstanding after giving effect to the relevant Share repurchase. In connection with the delivery of any Repurchase Notice to JPMorgan, (x) Counterparty shall, concurrently with or prior to such delivery, publicly announce and disclose the relevant repurchase or (y) Counterparty shall represent and warrant in such Repurchase Notice that the information set forth in such Repurchase Notice does not constitute material non-public information with respect to Counterparty or the Shares.

-
- (d) **Conversion Rate Adjustments.** Counterparty shall provide to JPMorgan written notice (such notice, a “**Conversion Rate Adjustment Notice**”) at least seven Scheduled Trading Days prior to consummating or otherwise executing or engaging in any transaction or event (a “**Conversion Rate Adjustment Event**”) that would lead to an increase in the Conversion Rate (as such term is defined in the Indenture), other than an increase pursuant to Section 11.05(a), (c) or (e) of the Indenture, which Conversion Rate Adjustment Notice shall set forth the new, adjusted Conversion Rate after giving effect to such Conversion Rate Adjustment Event (the “**New Conversion Rate**”); *provided* that no such Conversion Rate Adjustment Notice needs to be provided unless, after giving effect to such Conversion Rate Adjustment Event, the Option Equity Percentage would be greater than 6.5%. In connection with the delivery of any Conversion Rate Adjustment Notice to JPMorgan, (x) Counterparty shall, concurrently with or prior to such delivery, publicly announce and disclose the Conversion Rate Adjustment Event or (y) Counterparty shall, concurrently with such delivery, represent and warrant that the information set forth in such Conversion Rate Adjustment Notice does not constitute material non-public information with respect to Counterparty or the Shares.
- (e) **Regulation M.** Counterparty is not on the date hereof engaged in a distribution, as such term is used in Regulation M under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), of any securities of Counterparty, other than (i) a distribution meeting the requirements of the exception set forth in Rules 101(b)(10) and 102(b)(7) of Regulation M and (ii) the distribution of the Convertible Notes. Counterparty shall not, until the second Scheduled Trading Day immediately following the Trade Date, engage in any such distribution.
- (f) **No Manipulation.** Counterparty is not entering into this Transaction to create actual or apparent trading activity in the Shares (or any security convertible into or exchangeable for the Shares) or to raise or depress or otherwise manipulate the price of the Shares (or any security convertible into or exchangeable for the Shares) or otherwise in violation of the Exchange Act.
- (g) **Board Authorization.** Each of this Transaction and the issuance of the Convertible Notes was approved by its board of directors and publicly announced, solely for the purposes stated in such board resolution and public disclosure and, prior to any exercise of Options hereunder, Counterparty’s board of directors will have duly authorized any repurchase of Shares pursuant to this Transaction. Counterparty further represents that there is no internal policy, whether written or oral, of Counterparty that would prohibit Counterparty from entering into any aspect of this Transaction, including, but not limited to, the purchases of Shares to be made pursuant hereto.
- (h) **Transfer or Assignment.** Counterparty may not transfer any of its rights or obligations under this Transaction without the prior written consent of JPMorgan. JPMorgan may, without Counterparty’s consent, transfer or assign all or any part of its rights or obligations under this Transaction to any third party with a rating for its long term, unsecured and unsubordinated indebtedness equal to or better than the lesser of (i) the credit rating of JPMorgan at the time of the transfer and (ii) A- by Standard and Poor’s Rating Group, Inc. or its successor (“**S&P**”), or A3 by Moody’s Investor Service, Inc. (“**Moody’s**”) or, if either S&P or Moody’s ceases to rate such debt, at least an equivalent rating or better by a substitute agency rating mutually agreed by Counterparty and JPMorgan; *provided* that such third party represents to Counterparty that its Beneficial Ownership (as such term is defined in the Charter of Counterparty) of Equity Stock (as such term is defined in the Charter of Counterparty) following such transfer or assignment shall be less than or equal to 5% and such third party makes the representation and warranty contained in Section 9(i) to Counterparty for the duration of the Transaction (it being understood that all references therein to JPMorgan shall instead refer to such third party). If after JPMorgan’s commercially reasonable efforts, JPMorgan is unable to effect such a transfer or assignment on pricing terms reasonably acceptable to JPMorgan and within a time period reasonably acceptable to JPMorgan of a sufficient number of Options to reduce (i) JPMorgan’s “beneficial ownership” (within the meaning of Section 13 of the Exchange Act and rules promulgated thereunder) to 8.0% of Counterparty’s outstanding Shares or less, (ii) the Option Equity Percentage to 6.5% or less or

(iii) J.P. Morgan Chase & Co.’s (“**Bank**”) Beneficial Ownership (as such term is defined in the Charter) of Equity Stock (as such term is defined in the Charter) to 8.5% or less, JPMorgan may designate any Exchange Business Day as an Early Termination Date with respect to a portion (the “**Terminated Portion**”) of this Transaction, such that (i) its “beneficial ownership” following such partial termination will be equal to or less than 8.0%, (ii) the Option Equity Percentage following such partial termination will be equal to or less than 6.5% or (iii) Bank’s Beneficial Ownership (as such term is defined in the Charter) of Equity Stock (as such term is defined in the Charter) following such partial termination will be equal to or less than 8.5%. If the Waiver terminates or ceases to be valid, binding or enforceable against Counterparty or the representation by JPMorgan in Section 9(i) ceases to be valid, JPMorgan may designate any Exchange Business Day as an Early Termination Date with respect to all or a portion of this Transaction. Solely for purposes of this subsection, following receipt of any Repurchase Notice or Conversion Rate Adjustment Notice, (i) JPMorgan’s “beneficial ownership” (within the meaning of Section 13 of the Exchange Act and rules promulgated thereunder) with respect to Shares, (ii) the Options Equity Percentage and (iii) Bank’s Beneficial Ownership (as such term is defined in the Charter) with respect to the Equity Stock (as such term is defined in the Charter), as the case may be, shall incorporate the deemed effect of the relevant Share repurchase (in the case of a Repurchase Notice) or New Conversion Rate (in the case of a Conversion Rate Adjustment Notice). In the event that JPMorgan so designates an Early Termination Date with respect to a portion of this Transaction, a payment shall be made pursuant to Section 6 of the Agreement as if (i) an Early Termination Date had been designated in respect of a Transaction having terms identical to this Transaction and a Number of Options equal to the Terminated Portion,

(ii) Counterparty shall be the sole Affected Party with respect to such partial termination and (iii) such Transaction shall be the only Terminated Transaction (and, for the avoidance of doubt, the provisions of Section 9(q) shall apply to any amount that is payable by JPMorgan to Counterparty pursuant to this sentence as if Counterparty was not the Affected Party). Before any transfer, assignment or designation of an Early Termination Date by JPMorgan pursuant to this section 9(h) that relates solely to the Bank's Beneficial Ownership, the parties agree to use commercially reasonable efforts to obtain a modification of the Waiver, within a time period reasonably acceptable to JPMorgan, that would permit the Bank's Beneficial Ownership at a level higher than that in the existing Waiver. Notwithstanding any other provision in this Confirmation to the contrary requiring or allowing JPMorgan to purchase, sell, receive or deliver any shares or other securities to or from Counterparty, JPMorgan may designate any of its affiliates to purchase, sell, receive or deliver such shares or other securities and otherwise to perform JPMorgan's obligations in respect of this Transaction and any such designee may assume such obligations. JPMorgan shall be discharged of its obligations to Counterparty to the extent of any such performance.

- (i) Additional Representations. JPMorgan hereby represents and warrants to Counterparty that for the duration of the Transaction, (i) the obligation of JPMorgan with respect to the Transaction, to the extent of the portion of the Transaction to which JPMorgan is a party, will not exceed 10% of the outstanding securities (within the meaning of Section 856 of Internal Revenue Code of 1986, as amended (the "Code")) of JPMorgan, (ii) the obligation of any affiliate of JPMorgan under the Transaction, to the extent of the portion of the Transaction to which such affiliate is a party, including by assignment or transfer, will not exceed 10% of the outstanding securities (within the meaning of Section 856 of the Code) of such affiliate and (iii) for U.S. federal income tax purposes, JPMorgan will not take a position inconsistent with Counterparty's treatment of the associated rights of the parties pursuant to the Transaction as a single instrument. Each Party represents that it is not required by any applicable law, as modified by the practice of any relevant governmental revenue authority, of any Relevant Jurisdiction to make any deduction or withholding for or on account of any Tax from any payment to be made by it to the other party under this Agreement.
- (j) Staggered Settlement. If upon advice of counsel with respect to applicable legal and regulatory requirements, including any requirements relating to JPMorgan's hedging activities hereunder, JPMorgan reasonably determines that it would not be practicable or advisable to deliver, or to

13

acquire Shares to deliver, any or all of the Shares to be delivered by JPMorgan on the Settlement Date for the Transaction, JPMorgan may, by notice to Counterparty on or prior to any Settlement Date (a "Nominal Settlement Date"), elect to deliver the Shares on two or more dates (each, a "Staggered Settlement Date") as follows:

- (i) in such notice, JPMorgan will specify to Counterparty the related Staggered Settlement Dates (the first of which will be such Nominal Settlement Date and the last of which will be no later than the twentieth (20th) Exchange Business Day following such Nominal Settlement Date) and the number of Shares that it will deliver on each Staggered Settlement Date on a payment versus delivery basis;
- (ii) the aggregate number of Shares that JPMorgan will deliver to Counterparty hereunder on all such Staggered Settlement Dates will equal the number of Shares that JPMorgan would otherwise be required to deliver on such Nominal Settlement Date; and
- (iii) Net Share Settlement terms will apply on each Staggered Settlement Date, except that the Net Shares will be allocated among such Staggered Settlement Dates as specified by JPMorgan in the notice referred to in clause (i) above.
- (k) Early Unwind. In the event the sale of Convertible Notes is not consummated with the initial purchasers for any reason or Counterparty fails to deliver to JPMorgan opinions of counsel to Counterparty as required pursuant to Section 9(a) by the close of business in New York on March 16, 2007 (or such later date as agreed upon by the parties) (March 16, 2007 or such later date as agreed upon being the "Early Unwind Date"), this Transaction shall automatically terminate (the "Early Unwind") on the Early Unwind Date and (i) the Transaction and all of the respective rights and obligations of JPMorgan and Counterparty under the Transaction shall be cancelled and terminated and (ii) each party shall be released and discharged by the other party from and agrees not to make any claim against the other party with respect to any obligations or liabilities of the other party arising out of and to be performed in connection with the Transaction either prior to or after the Early Unwind Date; provided that Counterparty shall purchase from JPMorgan on the Early Unwind Date all Shares purchased by JPMorgan or one or more of its affiliates and reimburse JPMorgan for any costs or expenses (including market losses) relating to the unwinding of its hedging activities in connection with the Transaction (including any loss or cost incurred as a result of its terminating, liquidating, obtaining or reestablishing any hedge or related trading position). The amount of any such reimbursement shall be determined by JPMorgan in its sole good faith discretion. JPMorgan shall notify Counterparty of such amount and Counterparty shall pay such amount in immediately available funds on the Early Unwind Date. Each of JPMorgan and Counterparty represents and acknowledges to the other that, subject to the proviso included in this paragraph, upon an Early Unwind, all obligations with respect to the Transaction shall be deemed fully and finally discharged.
- (l) Role of Agent. Each party agrees and acknowledges that (i) J.P. Morgan Securities Inc., an affiliate of JPMorgan ("JPMSI"), has acted solely as agent and not as principal with respect to this Transaction and (ii) JPMSI has no obligation or liability, by way of guaranty, endorsement or otherwise, in any manner in respect of this Transaction (including, if applicable, in respect of the settlement thereof). Each party agrees it will look solely to the other party (or any guarantor in respect thereof) for performance of such other party's obligations under this Transaction.
- (m) Dividends. If at any time during the period from and including the Trade Date, to but excluding the Expiration Date, (i) an ex-dividend date for a cash dividend occurs with respect to the Shares (an "Ex-Dividend Date"), and that dividend is less than the Regular Dividend on a per Share basis or (ii) if no Ex-Dividend date for a cash dividend occurs with respect to the Shares in any quarterly dividend period of Counterparty, then the Calculation Agent will adjust the Cap Price to preserve the fair value of the Options to JPMorgan after taking into account such dividend or lack thereof. "Regular Dividend" shall mean USD 0.71 per Share per quarter.

14

- (n) *Additional Termination Events.* Notwithstanding anything to the contrary in this Confirmation, (i) upon the occurrence of a Conversion Date with respect to an Induced Conversion or a Corporate Event Conversion, as applicable:
- (A) Counterparty shall within one Scheduled Trading Day provide written notice (an “**Excluded Conversion Notice**”) to JPMorgan specifying the number of Convertible Notes converted on such Conversion Date and identifying the related conversions as Induced Conversions or Corporate Event Conversions, as applicable;
- (B) such Induced Conversion or Corporate Event Conversion, as applicable, shall constitute an Additional Termination Event hereunder with respect to the number of Options relating to the number of Convertible Notes surrendered for conversion in connection with such Induced Conversion or Corporate Event Conversion, as applicable, (the “**Affected Number of Options**”), in which case (x) the sole Affected Transaction shall consist of a transaction identical to the Transaction except that Number of Options for such Affected Transaction shall equal the Affected Number of Options and Counterparty shall be deemed the sole Affected Party and (y) the Transaction shall remain in full force and effect, except that the Number of Options subject to the Transaction immediately prior to the Conversion Date for such Induced Conversion or Corporate Event Conversion, as applicable, shall as of such Conversion Date be reduced by the Affected Number of Options;
- (C) notwithstanding anything to the contrary in the Agreement, JPMorgan shall designate an Early Termination Date in respect of such Affected Transaction, which shall be no earlier than one Scheduled Trading Day following the Conversion Date for the related Induced Conversion or Corporate Event Conversion, as applicable; and
- (D) for the avoidance of doubt, in determining the amount payable in respect of such Affected Transaction pursuant to Section 6 of the Agreement, the Calculation Agent shall assume that (x) the relevant Induced Conversion or Corporate Event Conversion, as applicable, had not occurred, (y) in the case of an Induced Conversion, any adjustments, agreements, payments, deliveries or acquisitions by or on behalf of Counterparty or any affiliate of Counterparty leading thereto, had not occurred and (z) the corresponding Convertible Notes remain outstanding.
- (ii) if an event of default with respect to Counterparty shall occur under the terms of the Convertible Notes as set forth in Section 6.01 of the Indenture, then such event of default shall constitute an Additional Termination Event applicable to the Transaction and, with respect to such event of default (A) Counterparty shall be deemed to be the sole Affected Party and the Transaction shall be the sole Affected Transaction and (B) JPMorgan shall be the party entitled to designate an Early Termination Date pursuant to Section 6(b) of the Agreement.
- (o) *Amendments to Equity Definitions.* (i) Section 11.2(a) of the Equity Definitions is hereby amended by deleting the words “diluting or concentrative” and replacing them with the word “material”.
- (ii) Section 11.2(c) of the Equity Definitions is hereby amended by (x) replacing the words “a diluting or concentrative” with “an” and (y) deleting the phrase “(provided that no adjustments will be made to account solely for changes in volatility, expected dividends, stock loan rate or liquidity relative to the relevant Shares)” and replacing it with the phrase “(and, for the avoidance of doubt, adjustments may be made to account solely for changes in volatility, expected dividends, stock loan rate or liquidity relative to the relevant Shares).”
- (iii) Section 12.6(a)(ii) of the Equity Definitions is hereby amended by (1) deleting from the fourth line thereof the word “or” after the word “official” and inserting a comma therefor, and (2) deleting the semi-colon at the end of subsection (B) thereof and inserting the following words

therefor “or (C) at JPMorgan’s option, the occurrence of any of the events specified in Section 5(a)(vii) (1) through (9) of the ISDA Master Agreement with respect to that Issuer.”

(iv) Section 12.9(b)(i) of the Equity Definitions is hereby amended by (1) replacing “either party may elect” with “JPMorgan may elect” and (2) replacing “notice to the other party” with “notice to Counterparty” in the first sentence of such section.

- (p) *No Collateral or Setoff.* Notwithstanding any provision of the Agreement or any other agreement between the parties to the contrary, the obligations of Counterparty hereunder are not secured by any collateral. Obligations under this Transaction shall not be set off against any other obligations of the parties, whether arising under the Agreement, this Confirmation, under any other agreement between the parties hereto, by operation of law or otherwise, and no other obligations of the parties shall be set off against obligations under this Transaction, whether arising under the Agreement, this Confirmation, under any other agreement between the parties hereto, by operation of law or otherwise, and each party hereby waives any such right of setoff.
- (q) *Alternative Calculations and Payment on Early Termination and on Certain Extraordinary Events.* If in respect of this Transaction, an amount is payable by JPMorgan to Counterparty (i) pursuant to Section 12.7 or Section 12.9 of the Equity Definitions or (ii) pursuant to Section 6(d)(ii) of the Agreement (a “**Payment Obligation**”), Counterparty may request JPMorgan to satisfy any such Payment Obligation by the Share Termination Alternative (as defined below) (except that Counterparty shall not make such an election in the event of a Nationalization, Insolvency or Merger Event, in each case, in which the consideration to be paid to holders of Shares consists solely of cash, or an Event of Default in which Counterparty is the Defaulting Party or a Termination Event in which Counterparty is the Affected Party, other than an Event of Default of the type described in Section 5(a)(iii), (v), (vi), (vii) or (viii) of the Agreement or a Termination Event of the type described in Section 5(b)(i), (ii), (iii), (iv), (v) or (vi) of the Agreement or an Additional Termination Event as a result of an Induced Conversion in each case that resulted from an event or events outside Counterparty’s control) and shall give irrevocable telephonic notice to JPMorgan, confirmed in writing within one Currency Business Day, no later than 12:00 p.m. New York local time on the Merger Date, the Announcement Date (in the case of Nationalization, Insolvency or Delisting), Early Termination Date or date of cancellation, as

applicable. For avoidance of doubt, the parties agree that in calculating the Payment Obligation the Determining Party may consider the purchase price paid in connection with the purchase of Share Termination Delivery Property.

- Share Termination Alternative: Applicable and means that JPMorgan shall deliver to Counterparty the Share Termination Delivery Property on, or within a commercially reasonable period of time after, the date when the Payment Obligation would otherwise be due pursuant to Section 12.7 or 12.9 of the Equity Definitions or Section 6(d)(ii) and 6(e) of the Agreement, as applicable (the “**Share Termination Payment Date**”), in satisfaction of the Payment Obligation in the manner reasonably requested by Counterparty free of payment.
- Share Termination Delivery Property: A number of Share Termination Delivery Units, as calculated by the Calculation Agent, equal to the Payment Obligation divided by the Share Termination Unit Price. The Calculation Agent shall adjust the Share Termination Delivery Property by replacing any fractional portion of a security therein with an amount of cash equal to the value of such fractional security based on the values used to calculate the Share Termination Unit Price.

16

-
- Share Termination Unit Price: The value to JPMorgan of property contained in one Share Termination Delivery Unit, as determined by the Calculation Agent in its discretion by commercially reasonable means and notified by the Calculation Agent to JPMorgan at the time of notification of the Payment Obligation.
- Share Termination Delivery Unit: One Share or, if a Merger Event has occurred and a corresponding adjustment to this Transaction has been made, a unit consisting of the number or amount of each type of property received by a holder of one Share (without consideration of any requirement to pay cash or other consideration in lieu of fractional amounts of any securities) in such Merger Event, as determined by the Calculation Agent.
- Failure to Deliver: Applicable
- Other applicable provisions: If this Transaction is to be Share Termination Settled, the provisions of Sections 9.9, 9.11, 9.12 and 10.5 (as modified above) of the Equity Definitions will be applicable, except that all references in such provisions to “Physically-settled” shall be read as references to “Share Termination Settled” and all references to “Shares” shall be read as references to “Share Termination Delivery Units”. “Share Termination Settled” in relation to this Transaction means that Share Termination Settlement is applicable to this Transaction.

- (r) **Registration.** Counterparty hereby agrees that if, in the good faith reasonable judgment of JPMorgan, the Shares (“**Hedge Shares**”) acquired by JPMorgan for the purpose of hedging its obligations pursuant to this Transaction cannot be sold in the public market by JPMorgan without registration under the Securities Act, Counterparty shall, at its election, either (i) in order to allow JPMorgan to sell the Hedge Shares in a registered offering, make available to JPMorgan an effective registration statement under the Securities Act and enter into an agreement, in form and substance reasonably satisfactory to JPMorgan, substantially in the form of an underwriting agreement for a registered secondary offering; *provided, however*, that if JPMorgan, in its sole reasonable discretion, is not satisfied with access to due diligence materials, the results of its due diligence investigation, or the procedures and documentation for the registered offering referred to above, then clause (ii) or clause (iii) of this paragraph shall apply at the election of Counterparty, (ii) in order to allow JPMorgan to sell the Hedge Shares in a private placement, enter into a private placement agreement substantially similar to private placement purchase agreements customary for private placements of equity securities, in form and substance reasonably satisfactory to JPMorgan (in which case, the Calculation Agent shall make any adjustments to the terms of this Transaction that are necessary, in its reasonable judgment, to compensate JPMorgan for any discount from the public market price of the Shares incurred on the sale of Hedge Shares in a private placement), or (iii) purchase the Hedge Shares from JPMorgan at the Relevant Price (as such term is defined in the Equity Definitions) on such Trading Days, and in the amounts, requested by JPMorgan.

17

-
- (s) **Indemnification.** Counterparty agrees to indemnify and hold harmless JPMorgan and its affiliates and their respective officers, directors, employees, affiliates, advisors, agents and controlling persons (each, an “**Indemnified Person**”) from and against any and all losses (including, without limitation, losses relating to JPMorgan’s hedging or trading activities, losses relating to JPMorgan’s hedging activities as a consequence of becoming, or of the risk of becoming, a Section 16 “insider,” any losses resulting from the operation of any ownership limitations contained in the Charter and any losses in connection therewith with respect to this Transaction), claims, damages, judgments, liabilities and expenses (including reasonable attorney’s fees), joint or several, which an Indemnified Person may become subject to, as a result of (i) Counterparty’s failure to publicly announce and disclose the contents of any Repurchase Notice or Conversion Rate Adjustment Notice, as the case may be, or (ii) Counterparty’s failure to provide JPMorgan with a Repurchase Notice on the day and in the manner specified in Section 9(c); and to reimburse, within 30 days, upon written request, each of such Indemnified Persons for any reasonable legal or other expenses incurred in connection with investigating, preparing for, providing testimony or other evidence in connection with or defending any of the foregoing. If any suit, action, proceeding (including any governmental or regulatory investigation), claim or demand shall be brought or asserted against the Indemnified Person as a result of Counterparty’s failure to publicly announce and disclose the contents of any Repurchase Notice or Conversion Rate Adjustment Notice, as the case may be, such Indemnified Person shall promptly notify Counterparty in writing, and Counterparty, upon request of the Indemnified Person, shall retain counsel reasonably satisfactory to the

Indemnified Person to represent the Indemnified Person and any others Counterparty may designate in such proceeding and shall pay the fees and expenses of such counsel related to such proceeding. Counterparty shall not be liable for any settlement of any proceeding contemplated by this subsection that is effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, Counterparty agrees to indemnify any Indemnified Person from and against any loss or liability by reason of such settlement or judgment. Counterparty shall not, without the prior written consent of the Indemnified Person, effect any settlement of any pending or threatened proceeding contemplated by this subsection that is in respect of which any Indemnified Person is or could have been a party and indemnity could have been sought hereunder by such Indemnified Person, unless such settlement includes an unconditional release of such Indemnified Person from all liability on claims that are the subject matter of such proceeding on terms reasonably satisfactory to such Indemnified Person. If the indemnification provided for in this subsection is unavailable to an Indemnified Person or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then Counterparty hereunder, in lieu of indemnifying such Indemnified Person thereunder, shall contribute to the amount paid or payable by such Indemnified Person as a result of such losses, claims, damages or liabilities. The remedies provided for in this subsection are not exclusive and shall not limit any rights or remedies which may otherwise be available to any Indemnified Party at law or in equity. The indemnity and contribution agreements contained in this subsection shall remain operative and in full force and effect regardless of the termination of this Transaction.

- (t) Notice of Merger Consideration. Counterparty covenants and agrees that, as promptly as practicable following the public announcement of any transaction or event described in Section 11.06 of the Indenture, Counterparty shall notify JPMorgan in writing of the types and amounts of consideration that holders of Shares have elected to receive upon consummation of such transaction or event (the date of such notification, the “**Consideration Notification Date**”); *provided* that in no event shall the Consideration Notification Date be later than the date on which such transaction or event is consummated.
- (u) Tax Disclosure. Effective from the date of commencement of discussions concerning the Transaction, Counterparty and each of its employees, representatives, or other agents may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the Transaction and all materials of any kind (including opinions or other tax analyses) that are provided to Counterparty relating to such tax treatment and tax structure.

18

-
- (v) Right to Extend. JPMorgan may postpone, in whole or in part, any Valid Day or Valid Days during the Settlement Averaging Period with respect to some or all of the relevant Options (in which event the Calculation Agent shall make appropriate adjustments to the number of Options with respect to one or more of the Valid Days during such Settlement Averaging Period) if JPMorgan determines, in its good faith and commercially reasonable judgment, that such extension is reasonably necessary to preserve JPMorgan’s hedging or hedge unwind activity hereunder in light of existing liquidity conditions or to enable JPMorgan to effect purchases or sales of Shares in connection with its hedging or settlement activity hereunder in a manner that would, if JPMorgan were Counterparty or an affiliated purchaser of Counterparty, be in compliance with applicable legal, regulatory or self-regulatory requirements, or with related policies and procedures applicable to JPMorgan.
 - (w) Status of Claims in Bankruptcy. JPMorgan acknowledges and agrees that this Confirmation is not intended to convey to JPMorgan rights against Counterparty with respect to the Transaction that are senior to the claims of common stockholders of Counterparty in any U.S. bankruptcy proceedings of Counterparty; *provided* that nothing herein shall limit or shall be deemed to limit JPMorgan’s right to pursue remedies in the event of a breach by Counterparty of its obligations and agreements with respect to the Transaction; *provided, further*, that nothing herein shall limit or shall be deemed to limit JPMorgan’s rights in respect of any transactions other than the Transaction.
 - (x) Securities Contract; Swap Agreement. The parties hereto intend for: (a) the Transaction to be a “securities contract” and a “swap agreement” as defined in the Bankruptcy Code (Title 11 of the United States Code) (the “**Bankruptcy Code**”), and the parties hereto to be entitled to the protections afforded by, among other Sections, Sections 362(b)(6), 555 and 560 of the Bankruptcy Code; (b) a party’s right to liquidate the Transaction and to exercise any other remedies upon the occurrence of any Event of Default under the Agreement with respect to the other party to constitute a “contractual right” as described in the Bankruptcy Code; (c) any cash, securities or other property provided as performance assurance, credit support or collateral with respect to the Transaction to constitute “margin payments” and “transfers” under a “swap agreement” as defined in the Bankruptcy Code; and (d) all payments for, under or in connection with the Transaction, all payments for the Shares and the transfer of such Shares to constitute “settlement payments” and “transfers” under a “swap agreement” as defined in the Bankruptcy Code.
 - (y) Governing Law. New York law (without reference to choice of law doctrine).
 - (z) Waiver of Jury Trial. Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to this Transaction. Each party (i) certifies that no representative, agent or attorney of either party has represented, expressly or otherwise, that such other party would not, in the event of such a suit, action or proceeding, seek to enforce the foregoing waiver and (ii) acknowledges that it and the other party have been induced to enter into this Transaction, as applicable, by, among other things, the mutual waivers and certifications provided herein.

19

**J.P. Morgan Securities Inc., as agent for
JPMorgan Chase Bank, National Association**

By: /s/ Santosh Sreenivasan
Authorized Signatory
Name: Santosh Sreenivasan

Accepted and confirmed
as of the Trade Date:

The Macerich Company

By: /s/ Richard A. Bayer
Authorized Signatory
Name: Richard A. Bayer



EXECUTION COPY

JPMorgan Chase Bank, National Association
P.O. Box 161
60 Victoria Embankment
London EC4Y 0JP
England

March 15, 2007

To: **The Macerich Company**
401 Wilshire Boulevard, Suite 700
Santa Monica, California 90401
Attention: Chief Financial Officer
Telephone No.: 310-394-6000
Facsimile No.: 310-394-0632

Re: Call Option Transaction Amendment

The purpose of this letter agreement (the "**Amendment**") is to amend the terms and conditions of the call option (the "**Transaction**") entered into between JPMorgan Chase Bank, National Association, London Branch ("**JPMorgan**") and The Macerich Company ("**Counterparty**") pursuant to a letter agreement (the "**Confirmation**") dated March 12, 2007, pursuant to which Counterparty purchased from JPMorgan a Number of Options equal to 400,000 in connection with the issuance by Counterparty of \$800,000,000 principal amount of 3.25% Convertible Senior Notes due 2012 (the "**Initial Convertible Notes**") under the Indenture to be dated March 16, 2007 between Counterparty and Deutsche Bank Trust Company Americas, as trustee. This Amendment relates to, and sets forth the terms of, the purchase by Counterparty from JPMorgan of an additional number of Options (the "**Additional Number of Options**") in connection with the issuance by Counterparty of an additional \$150,000,000 principal amount of 3.25% Convertible Senior Notes due 2012 (the "**Additional Convertible Notes**" and, together with the Initial Convertible Notes, the "**Convertible Notes**") to the initial purchasers of the Convertible Notes as a result of their exercise of the right granted with respect to such Additional Convertible Notes pursuant to the Purchase Agreement dated March 12, 2007.

Upon the effectiveness of this Amendment, all references to "Number of Options" and "Transaction" in the Confirmation, as amended, will include the Additional Number of Options purchased by Counterparty and Parent pursuant to the terms set forth below, all references to "Convertible Notes" will include the Additional Convertible Notes and, except to the extent specified below, all other provisions of the Confirmation shall apply to the Additional Number of Options as if such Additional Number of Options were originally subject to the Confirmation. Capitalized terms used herein without definition shall have the meanings assigned to them in the Confirmation.

The terms relating to the purchase of the Additional Number of Options are as follows:

1. The "**Trade Date**" with respect to the Additional Number of Options will be March 15, 2007.
2. The "**Number of Options**" for the Transaction will be "475,000" reflecting an addition of 75,000 Additional Number of Options.
3. The "**Premium**" for the Transaction will be \$29,925,000.00 reflecting an increase of the premium payable by the Counterparty to JPMorgan in the amount of \$4,725,000.00 for the Additional Number of Options.

A subsidiary of J.P. Morgan Chase & Co.
Organized as a national bank association with limited liability under the United States National Bank Act.
Registered in England branch number BR000746. Authorized by the FSA.
Registered branch address 125 London Wall, London, EC2Y 5AJ. Head office 270 Park Avenue, New York, USA.

-
4. The "**Premium Payment Date**" with respect to the premium for the Additional Number of Options will be March 16, 2007.
 5. The last sentence of the definition of "**Exercisable Options**" shall be deleted in its entirety.
 5. Counterparty hereby repeats the representations, warranties and agreements contained in the Confirmation with respect to the Amendment or with respect to the Confirmation, as amended by the Amendment, as the context requires.
 6. Except as amended hereby, all the terms of the Transaction and provisions in the Confirmation shall remain and continue in full force and effect and are hereby confirmed in all respects.
 7. This Amendment may be signed in any number of counterparts, each of which shall be an original, with the same effect as if all of the signatures thereto and hereto were upon the same instrument.
 8. The provisions of this Amendment shall be governed by the New York law (without reference to choice of law doctrine).

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing this Amendment and returning it to EDG Confirmation Group, J.P. Morgan Securities Inc., 277 Park Avenue, 11th Floor, New York, NY 10172-3401, or by fax to **(212) 622 8519**.

Very truly yours,

**J.P. MORGAN SECURITIES INC., as
agent for JPMorgan Chase Bank,
National Association**

By: /s/ Santosh Sreenivasan

Authorized Signatory

Name: Santosh Sreenivasan

Accepted and confirmed:

THE MACERICH COMPANY

By: /s/ Richard A. Bayer

Authorized Signatory

Name: Richard A. Bayer
