

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

**Form S-3**  
**REGISTRATION STATEMENT**  
*UNDER THE SECURITIES ACT OF 1933*

**Ellington Financial LLC**

(Exact name of registrant as specified in its governing instruments)

**Delaware**  
(State or Other Jurisdiction of  
Incorporation or Organization)

**26-0489289**  
(I.R.S. Employer  
Identification No.)

53 Forest Avenue  
Old Greenwich, Connecticut 06870  
(203) 698-1200

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

**Laurence Penn**  
**Chief Executive Officer**  
53 Forest Avenue  
Old Greenwich, Connecticut 06870  
(203) 698-1200

(Name, address, including zip code, and telephone number, including area code, of agent for service)

*Copies to:*

**Daniel M. LeBey**  
**Christopher C. Green**  
**Hunton & Williams LLP**  
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**951 E. Byrd Street**  
**Richmond, Virginia 23219-4074**  
**(804) 788-8200**  
**(804) 788-8218 (Facsimile)**

**Approximate date of commencement of proposed sale to the public:** From time to time after the effective date of this registration statement.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer  Accelerated filer   
Non-accelerated filer  (Do not check if a smaller reporting company) Smaller reporting company

**CALCULATION OF REGISTRATION FEE**

Title of Securities Being Registered	Proposed Maximum Aggregate Offering Price(1)	Amount of Registration Fee(2)
Common Shares Representing Limited Liability Company Interests, no par value, Preferred Shares Representing Limited Liability Company Interests, Shareholder Rights to Purchase Limited Liability Company Interests,	(3)	(3)

Warrants to Purchase Limited Liability Company Interests and Debt Securities

Total	\$750,000,000	\$85,950
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- (1) An indeterminate number of the securities of each identified class of securities is being registered for possible issuance from time to time at indeterminate prices. Includes an indeterminate amount of our securities as may be issued upon conversion of or exchange for, as the case may be, any other securities registered under this registration statement.
- (2) Calculated pursuant to Rule 457(o) of the rules and regulations of the Securities Act of 1933.
- (3) Omitted pursuant to Form S-3 General Instruction II-D.

**The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.**

The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and we are not soliciting an offer to buy these securities in any state where an offer or sale is not permitted.

Prospectus

SUBJECT TO COMPLETION, DATED NOVEMBER 4, 2011

The logo for Ellington Financial, featuring the company name in a serif font on a dark rectangular background.

## Ellington Financial LLC

\$750,000,000

Common Shares Representing Limited Liability Company Interests

Preferred Shares Representing Limited Liability Company Interests

Shareholder Rights to Purchase Common or Preferred Shares Representing Limited Liability Company Interests

Warrants to Purchase Common or Preferred Shares Representing Limited Liability Company Interests

Debt Securities

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We may offer, issue and sell, from time to time, up to an aggregate of \$750,000,000 of common shares representing limited liability company interests, which we refer to as “common shares,” preferred shares representing limited liability company interests, which we refer to as “preferred shares,” shareholder rights to purchase common or preferred shares, which we refer to as “shareholder rights,” warrants to purchase common or preferred shares, which we refer to as “warrants” and debt securities, which may consist of debentures, notes, or other types of debt, in one or more offerings. We will provide specific terms of each issuance of these securities in supplements to this prospectus. We may offer and sell these securities to or through one or more underwriters, dealers and agents, or directly to purchasers, on a continuous or delayed basis. You should read this prospectus and any supplement carefully before you decide to invest. This prospectus may not be used to consummate sales of these securities unless it is accompanied by a prospectus supplement.

Ellington Financial LLC is a specialty finance company that acquires and manages mortgage-related assets, including residential mortgage-backed securities backed by prime jumbo, Alt-A and subprime residential mortgage loans, residential mortgage-backed securities for which the principal and interest payments are guaranteed by a U.S. Government agency or a U.S. Government-sponsored entity, mortgage-related derivatives, commercial mortgage-backed securities, commercial mortgage loans and other commercial real estate debt, as well as corporate debt and equity securities and derivatives. We are externally managed and advised by Ellington Financial Management LLC, or our “Manager,” an affiliate of Ellington Management Group, L.L.C.

Our common shares are listed on the New York Stock Exchange, or “NYSE,” under the symbol “EFC.” The last reported sale price of our common shares on the NYSE on November 3, 2011 was \$18.28 per share.

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**Investing in these securities involves risks. You should carefully read and consider the information referred to under “[Risk Factors](#)” on page 3 of this prospectus and any prospectus supplement before making a decision to purchase these securities.**

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.**

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The date of this prospectus is \_\_\_\_\_, 2011

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You should rely only on the information contained in or incorporated by reference into this prospectus, any prospectus supplement, any free writing prospectus prepared by us or information to which we have referred you. We have not authorized any other person to provide you with information that is different. If anyone provides you with different or inconsistent information, you should not rely on it. We are not making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted. The information contained in this prospectus or any prospectus supplement is current only as of the date on the front of those documents.

## ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement that we filed with the Securities and Exchange Commission, or “SEC.” Under this shelf registration statement, we may offer and sell any combination of our common shares, preferred shares, shareholder rights, warrants and debt securities in one or more offerings. This prospectus provides you with a general description of the securities we may offer. Each time we offer to sell securities under this shelf registration statement, we will provide a prospectus supplement that will contain specific information about the terms of that offering. The prospectus supplement may add, update or change information contained in this prospectus. Before you buy any of our securities, it is important for you to consider the information contained in this prospectus and any prospectus supplement together with additional information described under the headings “Where You Can Find More Information.”

The SEC allows us to incorporate by reference information that is contained in certain reports and other documents that we file with them, which means that we can disclose important information to you by referring to those documents. The information incorporated by reference is considered to be part of this prospectus, and information that we file later with the SEC will automatically update and supersede this information.

Except where the context suggests otherwise, “EFC,” “we,” “us” and “our” refer to Ellington Financial LLC and its subsidiaries, our “Manager” refers to Ellington Financial Management LLC, our external manager, “Ellington” refers to Ellington Management Group, L.L.C. and its affiliated investment advisory firms, including our Manager, and “Manager Group” refers collectively to Ellington and its principals (including family trusts established by the foregoing) and entities in which 100% of the interests are beneficially owned by the foregoing. In certain instances, references to our Manager and services to be provided to us by our Manager may also include services provided by Ellington and its other affiliates from time to time.

### SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

We make forward-looking statements in this prospectus and in the documents incorporated by reference in this prospectus that are subject to risks and uncertainties. These forward-looking statements include information about possible or assured future results of our business, financial condition, liquidity, results of operations, cash flow and plans and objectives. When we use the words “believe,” “expect,” “anticipate,” “estimate,” “plan,” “continue,” “intend,” “should,” “would,” “could,” “goal,” “objective,” “will,” “may” or similar expressions, we intend to identify forward-looking statements.

Forward-looking statements are based on our beliefs, assumptions and expectations of our future performance, taking into account information currently in our possession. These beliefs, assumptions and expectations are subject to risks and uncertainties and can change as a result of many possible events or factors, not all of which are known to us. If a change occurs, our business, financial condition, liquidity and results of operations may vary materially from those expressed, anticipated or contemplated in our forward-looking statements. You should carefully consider these risks before you invest in our securities, along with the following factors that could cause actual results to vary from our forward-looking statements:

- difficult conditions in the mortgage and residential real estate markets;
- the effect of the Federal Reserve’s and the Treasury’s actions and programs on the liquidity of the capital markets and the impact and timing of any further programs or regulations implemented by the Federal Government or its agencies;
- the federal conservatorship of Fannie Mae and Freddie Mac and related efforts, along with any changes in laws and regulations affecting the relationship between Fannie Mae, Freddie Mac and Ginnie Mae and the Federal Government;
- the impact of the downgrade of the long-term credit ratings of the U.S., Fannie Mae, Freddie Mac and Ginnie Mae;
- increased prepayments of the mortgages and other loans underlying our Agency RMBS;
- the volatility of our target markets and of the market value of our common shares;

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- increased rates of default and/or decreased recovery rates on our assets;
  - mortgage loan modification programs and future legislative action;
  - the degree to which our hedging strategies may or may not protect us from, or expose us to, credit or interest rate risk;
  - changes in our business and strategy;
  - availability, terms and deployment of capital;
  - our projected financial and operating results;
  - changes in interest rates and the market value of our securities;
  - our ability to maintain existing financing agreements, obtain future financing arrangements and the terms of such arrangements;
  - changes in economic conditions generally and the real estate and debt securities markets specifically;
  - legislative or regulatory changes (including tax law changes and changes to laws governing the regulation of investment companies);
  - availability of qualified personnel;
  - changes in our industry;
  - availability of investment opportunities;
  - the degree and nature of our competition; and
  - changes to GAAP.

These and other risks, uncertainties and factors, including the risk factors described in this prospectus under the heading “Risk Factors” and the risks, uncertainties and factors described in the documents incorporated by reference in this prospectus, could cause our actual results to differ materially from those projected in any forward-looking statements we make. All forward-looking statements speak only as of the date on which they are made. New risks and uncertainties arise over time and it is not possible to predict those events or how they may affect us. Except as required by law, we are not obligated to, and do not intend to, update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

## **Our Company**

Ellington Financial LLC is a specialty finance company formed in August 2007 that acquires and manages mortgage-related assets. Our primary objective is to generate attractive, risk-adjusted total returns for our shareholders by making investments that we believe compensate us appropriately for the risks associated with them. We seek to attain this objective by utilizing an opportunistic strategy. Our targeted assets currently include:

- residential mortgage-backed securities, or “RMBS,” backed by prime jumbo, Alternative A-paper, or “Alt-A,” and subprime residential mortgage loans, or “non-Agency RMBS”;
- RMBS for which the principal and interest payments are guaranteed by a U.S. Government agency or a U.S. Government-sponsored entity, or “Agency RMBS”;
- mortgage-related derivatives;
- commercial mortgage-backed securities, or “CMBS,” commercial mortgage loans and other commercial real estate debt; and
- corporate debt and equity securities and derivatives.

We also may opportunistically acquire and manage other types of mortgage-related assets and financial assets, such as residential whole mortgage loans, asset-backed securities, or “ABS,” backed by consumer and commercial assets and non-mortgage-related derivatives.

We believe that we have been organized and have operated so that we have qualified, and will continue to qualify, to be treated for U.S. federal income tax purposes as a partnership and not as an association or a publicly traded partnership taxable as a corporation.

## **Our Manager and Ellington**

We are externally managed and advised by our Manager, an affiliate of Ellington, pursuant to a management agreement. Our Manager was formed solely to serve as our manager and does not have any other clients. In addition, our Manager currently does not have any employees and instead relies on the employees of Ellington to perform its obligations to us pursuant to a services agreement between our Manager and Ellington. Ellington is an investment management firm and registered investment advisor with a 16-year history of investing in a broad spectrum of mortgage-backed securities, or “MBS,” and related derivatives.

## **Our Corporate Information**

Our principal executive offices are located at 53 Forest Avenue, Old Greenwich, CT 06870. Our telephone number is (203) 698-1200. Our internet address is [www.ellingtonfinancial.com](http://www.ellingtonfinancial.com). Our internet web site, and the information contained therein or connected thereto, does not constitute part of this prospectus.

## **RISK FACTORS**

Investment in our securities involves significant risks. Before making an investment decision, you should carefully read and consider the information set forth under the heading “Risk Factors” in our most recent Annual Report on Form 10-K and any subsequent Quarterly Reports on Form 10-Q (which descriptions are incorporated by reference herein), as well as the other information contained or incorporated by reference in this prospectus or in any prospectus supplement hereto before making a decision to invest in our securities. See “Where You Can Find More Information,” below.

## USE OF PROCEEDS

Unless otherwise indicated in an accompanying prospectus supplement, we intend to use the net proceeds from the sale of securities offered by this prospectus and the accompanying prospectus supplement for the purchase of our targeted assets and for general corporate purposes.

### RATIO OF EARNINGS TO FIXED CHARGES AND OF EARNINGS TO COMBINED FIXED CHARGES AND PREFERRED SHARE DIVIDENDS

The following table sets forth our ratio of earnings to fixed charges and of earnings to combined fixed charges and preferred share dividends for each of the periods indicated:

	Six Months Ended June 30, 2011	Fiscal Years Ended December 31,			
		2010	2009	2008	2007 <sup>(1)</sup>
Ratio of Earnings to Fixed Charges <sup>(2)</sup>	4.1x	11.6x	38.9x	0.61x	—
Ratio of Earnings to Combined Fixed Charges and Preferred Share Dividends <sup>(2)</sup>	4.1x	11.6x	38.9x	0.61x	—

(1) For the period August 17, 2007 (date operations commenced) through December 31, 2007.

(2) Fixed charges consist of interest expense for the nine months ended September 30, 2011 and the fiscal years ended December 31, 2010, 2009 and 2008. There were no fixed charges for the period ended December 31, 2007.

We computed the ratio of earnings to fixed charges by dividing earnings by fixed charges. We computed the ratio of earnings to combined fixed charges and preferred share dividends by dividing earnings by the sum of fixed charges and dividends on outstanding preferred shares. In each case, earnings represent increase (decrease) in shareholders' equity resulting from operations plus fixed charges and preferred share dividends, if any. Fixed charges include interest expense. During the periods presented in the table above, no preferred shares were outstanding. For the fiscal year ended December 31, 2008, earnings were insufficient to cover fixed charges and combined fixed charges and preferred share dividends by approximately \$2.4 million.

## DESCRIPTION OF COMMON SHARES

The following description of our common shares sets forth certain general terms and provisions of the common shares to which any prospectus supplement may relate, including a prospectus supplement which provides for common shares issuable pursuant to shareholder rights or upon conversion of securities which are offered pursuant to such prospectus supplement and convertible into common shares under the terms and conditions set forth in such prospectus supplement, and will apply to any common shares offered by this prospectus unless we provide otherwise in the applicable prospectus supplement.

Our operating agreement provides for the issuance of our common shares, as well as certain terms of our common shares. The following is a summary of some of the terms of our common shares, our operating agreement and the Delaware LLC Act, and is not complete and is subject to, and qualified in its entirety by reference to, all of the provisions of our operating agreement and the Delaware LLC Act.

### **Authorized Shares**

Each of our common shares represents a limited liability company interest in Ellington Financial LLC. We are authorized to issue, pursuant to action by our board of directors and without action by our shareholders, up to 100,000,000 common shares and up to 10,000,000 LTIP units that are convertible into common shares as described below. As of November 1, 2011, 16,491,131 common shares were issued and outstanding.

### **General**

Upon payment in full of the consideration payable with respect to the common shares, as determined by our board of directors, such shareholders shall not be liable to us to make any additional capital contributions with respect to such shares (except as otherwise required by Sections 18-607 and 18-804 of the Delaware LLC Act—see “Certain Provisions of Delaware Law and Our Operating Agreement-Limited Liability”). No holder of common shares is entitled to preemptive, redemption or conversion rights.

### ***Voting Rights***

The holders of common shares are entitled to one vote per share held of record on all matters submitted to a vote of our shareholders. Generally, all matters to be voted on by our shareholders must be approved by a majority (or, in the case of election of directors, by a plurality) of the votes entitled to be cast by all common shares present in person or represented by proxy, voting together as a group.

### ***Distribution Rights***

In general, holders of common shares will share ratably (based on the number of common shares held) in any distribution declared by our board of directors out of funds legally available therefor, subject to any statutory or contractual restrictions on the payment of distributions and to any restrictions on the payment of distributions imposed by the terms of any outstanding preferred shares. Distributions consisting of common shares may be paid only as follows: (1) common shares may be paid only to holders of common shares; and (2) shares shall be paid proportionally with respect to each outstanding common share.

### ***Liquidation Rights***

Upon our dissolution, liquidation or winding up, after payment in full of all amounts required to be paid to creditors and to the holders of preferred shares having liquidation preferences, if any, the holders of our common shares will be entitled to receive our remaining assets available for distribution (only to the extent such assets are converted to cash) in accordance with and to the extent of positive balances in the respective capital accounts after taking into account certain adjustments. If our assets remaining after payment or discharge of our debts or liabilities are insufficient to return their capital contributions, the holders of our common shares shall have no recourse against us or any other holder of our common shares or our Manager.

### ***Other Matters***

In the event of our merger or consolidation with or into another entity in connection with which our common shares are converted into or exchangeable for shares of stock, other securities or property (including cash),

all holders of common shares will thereafter be entitled to receive the same kind and amount of shares of stock and other securities and property (including cash). Under our operating agreement, in the event of an inadvertent termination of partnership status in which the Internal Revenue Service, or the “IRS,” has granted us limited relief, each holder of our common shares also is obligated to make such adjustments or to pay such amounts as are required by the IRS to maintain our status as a partnership for U.S. federal (and applicable state) income tax purposes.

### **LTIP Units**

In connection with our August 2007 private offering, our Board of Directors adopted the Ellington Incentive Plan for Individuals, or the “individual incentive plan,” and the Ellington Incentive Plan for Entities, or the “entity incentive plan,” referred to collectively in this prospectus as the “incentive plans.” Our Manager’s directors, officers, employees and affiliates who provide services to us and our officers, directors, employees, consultants and advisors who are natural persons are eligible to receive awards under the individual incentive plan. Our Manager, consultants and advisors who are not natural persons are eligible to receive awards under the entity incentive plan. The incentive plans are administered by our Compensation Committee. The incentive plans each have a term of ten years from the date of adoption.

As of November 1, 2011, a combined total of 623,750 Long-Term Incentive Plan (“LTIP”) units remain available for issuance. Upon vesting, LTIP units are transferable on a one-for-one basis into common shares. In each subsequent calendar year, the maximum limit on the number of common shares and LTIP units issuable under both incentive plans shall increase by an amount equal to six percent (6%) of the difference, if any (but not less than zero) between (1) the number of common shares that are outstanding as of the last day of such calendar year and (2) the number of common shares that are outstanding as of the last day of the immediately preceding calendar year (excluding any securities issued under the plans). The individual incentive plan requires that of the number of common shares and LTIP units available for awards under both plans, 62,500 common shares be reserved for awards to be made to our independent directors. As of November 1, 2011, 21,250 LTIP units had been issued pursuant to our individual incentive plan and 375,000 LTIPs had been issued pursuant to our entity incentive plan. In no event shall the number of common shares and LTIP units issued pursuant to both incentive plans exceed 10,000,000. In the event that an award expires, or is forfeited, cancelled or otherwise terminates without the issuance of shares, such common shares subject to such award will again be available for subsequent awards, except as prohibited by law. In addition, common shares that we withhold in satisfaction of the holder’s obligation to remit an exercise price or withholding taxes will be available for future awards.

Upon the occurrence of any event that affects our common shares in such a way that an adjustment of outstanding awards is appropriate in order to prevent the dilution or enlargement of rights under the awards (including, without limitation, any extraordinary dividend or other distribution (whether in cash or in kind), recapitalization, stock split, reverse split, reorganization, merger, consolidation, spin-off, combination, repurchase, or share exchange, or other similar corporate transaction or event), the Compensation Committee shall make appropriate equitable adjustments, which may include, without limitation, adjustments to any or all of the number and kind of common shares (or other securities) which may thereafter be issued in connection with such outstanding awards and adjustments to any exercise price specified in the outstanding awards and shall also make appropriate equitable adjustments to the number and kind of common shares (or other securities) authorized by or to be granted under the incentive plans. Such other substitutions or adjustments shall be made respecting awards granted under the incentive plans as may be determined by the Compensation Committee, in its sole discretion. In connection with any event described in this paragraph, the Compensation Committee may provide, in its discretion, for the cancellation of any outstanding award and payment in cash or other property in exchange therefor, equal to the difference, if any, between the fair market value of our common shares or other property subject to the award, and the exercise price, if any.

The Compensation Committee has the authority under the incentive plans to determine the terms and conditions of any awards thereunder, including the terms of any LTIP units. In general, LTIP units will comprise a separate class or classes of our limited liability company interests. Each LTIP unit awarded will typically be deemed to be the equivalent of one common share under the incentive plans. In connection with each grant of LTIP units, the Compensation Committee sets the relevant terms of such grant, including the number, vesting schedule (including any performance-based vesting conditions) and forfeiture provisions, rights to distributions, allocations of income and capital accounts, required capital contributions, if any, voting rights and conversion features, among other

things. As equity interests, the LTIP units are also subject to the terms of our operating agreement. LTIP units may be granted either as free-standing awards or in tandem with other awards under our incentive plans.

In addition to LTIP units, the incentive plans also permit awards of restricted common shares. A restricted common share award is an award of our common shares that may be subject to forfeiture (vesting), restrictions on transferability and such other restrictions, if any, as the Compensation Committee may impose at the date of grant. The restrictions may lapse at such times and under such circumstances, including, without limitation, a specified period of employment or the satisfaction of pre-established criteria, in such installments or otherwise, as our Compensation Committee may determine. Except to the extent restricted under an award agreement, the holder of a restricted common share has all of the rights of a shareholder, including, without limitation, the right to vote and the right to receive distributions on the restricted common shares. Although distributions are paid on all restricted common shares, whether or not vested, at the same rate and on the same date as common shares, the award agreement may prohibit holders of restricted common shares from transferring such restricted common shares until they vest. All restrictions on restricted common shares granted under the incentive plans will be removed immediately and fully upon a change of control of us.

The Compensation Committee may also grant share appreciation rights, performance awards and other share and non-share-based awards under the incentive plans. These awards may be subject to such conditions and restrictions as the compensation committee may determine, including, but not limited to, the achievement of certain performance goals or continued employment with us through a specific period. Generally, holders are not permitted to sell, transfer, pledge or assign any award, and all awards shall be exercisable, during the holder's lifetime, only by the holder; provided, however, that the Compensation Committee may, in its sole discretion, provide that certain awards may be transferable subject to certain restrictions.

Generally, holders are not permitted to sell, transfer, pledge or assign any award, and all awards shall be exercisable, during the holder's lifetime, only by the holder; provided, however, that the Compensation Committee may, in its sole discretion, provide that certain awards may be transferable subject to certain restrictions.

Our Compensation Committee may at any time amend, alter, suspend or discontinue the incentive plans, but cannot, without a participant's consent, take any action that would impair the rights of such participant under any award granted under the plans. To the extent required by law, the Compensation Committee will obtain approval of the shareholders for any amendment that would:

- increase the total number of common shares reserved for issuance under the incentive plans (other than through adjustment as provided in the incentive plan);
- change the class of eligible participants under the incentive plans; or
- otherwise require such approval.

#### **Restrictions on Transfer**

See "Certain Provisions of Delaware Law and Our Operating Agreement" for a description of restrictions on transfers of our shares including our common shares and for a description of other provisions of the Operating Agreement affecting your investment in our common shares.

## DESCRIPTION OF PREFERRED SHARES

The following description of our preferred shares sets forth certain general terms and provisions of the preferred shares to which any prospectus supplement may relate, including a prospectus supplement which provides for preferred shares issuable pursuant to shareholder rights or upon conversion of securities which are offered pursuant to such prospectus supplement and convertible into preferred shares under the terms and conditions set forth in such prospectus supplement, and will apply to any preferred shares offered by this prospectus unless we provide otherwise in the applicable prospectus supplement.

Our operating agreement authorizes our board of directors, without action by our shareholders, to approve the issuance of up to 100,000,000 preferred shares. The following is a summary of some of the terms of our preferred shares, our operating agreement and the Delaware LLC Act, and is not complete and is subject to, and qualified in its entirety by reference to, all of the provisions of our operating agreement and the Delaware LLC Act.

As of November 1, 2011, no preferred shares were issued and outstanding. Unless required by law or by any stock exchange, the authorized preferred shares will be available for issuance without further action by common shareholders.

Our board of directors is able to determine, with respect to any series of preferred shares, the terms and rights of that series, including:

- the designation of the series;
- the amount of preferred shares of the series, which our board may, except where otherwise provided in the preferred shares designation, increase or decrease, but not below the number of preferred shares of the series then outstanding;
- whether distributions, if any, will be cumulative or non-cumulative and the dividend rate of the series;
- the dates at which distributions, if any, will be payable;
- the redemption rights and price or prices, if any, for preferred shares of the series;
- the terms and amounts of any sinking fund provided for the purchase or redemption of the preferred shares of the series;
- the amounts payable on preferred shares of the series in the event of any voluntary or involuntary liquidation, dissolution or winding-up of the affairs of our company;
- whether the preferred shares of the series will be convertible into or exchangeable for interests of any other class or series, or any other security, of our company or any other entity, and, if so, the specification of the other class or series or other security, the conversion or exchange price or prices or rate or rates, any rate adjustments, the date or dates on which, the period or periods during which, the shares will be convertible or exchangeable and all other terms and conditions upon which the conversion or exchange may be made;
- restrictions on the issuance of preferred shares of the series or of any shares of any other class or series; and
- the voting rights, if any, of the holders of the preferred shares of the series.

The designations, preferences, rights, powers and duties of each series of preferred shares will be set forth in a designating amendment to our operating agreement that is approved by our board of directors and annexed to our operating agreement.

Our operating agreement authorizes our board of directors to classify and reclassify any unissued common or preferred shares into other classes or series of shares. We could issue or reclassify a series of preferred shares that could, depending on the terms of the series, impede or discourage an acquisition attempt or other transaction that

some, or a majority, of holders of common shares might believe to be in their best interests or in which holders of common shares might receive a premium for their common shares over the market value of the common shares.

**Restrictions on Transfer**

See “Certain Provisions of Delaware Law and Our Operating Agreement” for a description of restrictions on transfers of our shares including our preferred shares and for a description of other provisions of our operating agreement affecting your investment in our preferred shares.

## DESCRIPTION OF SHAREHOLDER RIGHTS

This section describes the general terms and provisions of the rights to purchase certain of our securities that we may issue to holders of our securities pursuant to this prospectus. The applicable prospectus supplement will describe the specific terms of the rights then issued, and the terms and provisions described in this section will apply only to the extent not superseded by the terms of the applicable prospectus supplement.

We may issue, as a dividend at no cost, to holders of record of our securities or any class or series thereof on the applicable record date, rights to purchase common or preferred shares. In this prospectus, we refer to such rights as “shareholder rights.” If shareholder rights are so issued to existing holders of securities, each shareholder right will entitle the registered holder thereof to purchase the securities issuable upon exercise of the rights pursuant to the terms set forth in the applicable prospectus supplement.

If shareholder rights are issued, the applicable prospectus supplement will describe the terms of such shareholder rights including the following where applicable:

- record date;
- subscription price;
- subscription agent;
- aggregate number of common or preferred shares purchasable upon exercise of such shareholder rights and in the case of shareholder rights for preferred shares, the designation, aggregate number, and terms of the class or series of preferred shares purchasable upon exercise of such shareholder rights;
- the date on which the right to exercise such shareholder rights shall commence and the expiration date on which such right shall expire;
- material U.S. federal income tax considerations; and
- other material terms of such shareholder rights.

In addition to the terms of the shareholder rights and the securities issuable upon exercise thereof, the prospectus supplement may describe, for a holder of such shareholder rights who validly exercises all shareholder rights issued to such holder, how to subscribe for unsubscribed securities, issuable pursuant to unexercised shareholder rights issued to other holders, to the extent such shareholder rights have not been exercised.

Holders of shareholder rights will not be entitled, by virtue of being such holders, to vote, to consent, to receive dividends, to receive notice with respect to any meeting of shareholders for the election of our directors or any other matter, or to exercise any rights whatsoever as shareholders of our company, except to the extent described in the related prospectus supplement.

## DESCRIPTION OF WARRANTS

This section describes the general terms and provisions of the warrants that we may offer by this prospectus. The applicable prospectus supplement will describe the specific terms of the warrants then offered, and the terms and provisions described in this section will apply only to the extent not superseded by the terms of the applicable prospectus supplement.

We may issue warrants for the purchase of common shares or preferred shares, respectively referred to as common share warrants and preferred share warrants. Warrants may be issued independently or together with any other securities offered by this prospectus and any accompanying prospectus supplement and may be attached to or separate from such other securities. Each issuance of the warrants will be issued under a separate warrant agreement to be entered into by us and a bank or trust company, as warrant agent, all as set forth in the prospectus supplement relating to the particular issue of offered warrants. Each issue of warrants will be evidenced by warrant certificates. The warrant agent will act solely as an agent of ours in connection with the warrant certificates and will not assume any obligation or relationship of agency or trust for or with any holder of warrant certificates or beneficial owners of warrants.

If we offer warrants pursuant to this prospectus in the future, the applicable prospectus supplement will describe the terms of such warrants, including the following, where applicable:

- the offering price;
- the aggregate number of shares purchasable upon exercise of such warrants, and in the case of warrants for preferred shares, the designation, aggregate number, and terms of the class or series of preferred stock purchasable upon exercise of such warrants;
- the designation and terms of the securities with which such warrants are being offered, if any, and the number of such warrants being offered with each such security;
- the date on and after which such warrants and any related securities will be transferable separately;
- the number of preferred shares or common shares purchasable upon exercise of each of such warrants and the price at which such number of preferred shares or common shares may be purchased upon such exercise;
- the date on which the right to exercise such warrants shall commence and the expiration date on which such right shall expire;
- material U.S. federal income tax considerations applicable to the warrants; and
- any other material terms of such warrants.

Holders of future warrants, if any, will not be entitled by virtue of being such holders, to vote, to consent, to receive dividends, to receive notice with respect to any meeting of shareholders for the election of our directors or any other matter, or to exercise any rights whatsoever as shareholders of the Company.

If warrants for the purchase of preferred shares are offered, the applicable prospectus supplement will also describe the terms of the preferred shares into which the warrants are exercisable as described under "Description of Preferred Shares."

## DESCRIPTION OF DEBT SECURITIES

### General

The debt securities offered by this prospectus will be our direct unsecured general obligations. This prospectus describes certain general terms of the debt securities offered through this prospectus. In the following discussion, we refer to any of our direct unsecured general obligations as the “Debt Securities.” When we offer to sell a particular series of Debt Securities, we will describe the specific terms of that series in a prospectus supplement or any free writing prospectus. The Debt Securities will be issued under an open-ended Indenture (for Debt Securities) between us and a trustee to be selected by us at or about the time we offer our Debt Securities. The form of open-ended Indenture (for Debt Securities) is incorporated by reference into the registration statement of which this prospectus is a part and is filed as an exhibit to the registration statement. In this prospectus we refer to the Indenture (for Debt Securities) as the “Debt Securities Indenture.” We refer to the trustee under any Debt Securities Indenture as the “Debt Securities Trustee.”

The prospectus supplement or any free writing prospectus applicable to a particular series of Debt Securities may state that a particular series of Debt Securities will be our subordinated obligations. The form of Debt Securities Indenture referred to above includes optional provisions (designated by brackets (“[ ]”)) that we would expect to appear in a separate indenture for subordinated debt securities in the event we issue subordinated debt securities. In the following discussion, we refer to any of our subordinated obligations as the “Subordinated Debt Securities.” Unless the applicable prospectus supplement or any free writing prospectus provides otherwise, we will use a separate Debt Securities Indenture for any Subordinated Debt Securities that we may issue. Our Debt Securities Indenture will be qualified under the Trust Indenture Act of 1939, as amended, or the “Trust Indenture Act,” and you should refer to the Trust Indenture Act for the provisions that apply to the Debt Securities.

We have summarized selected provisions of the Debt Securities Indenture below. Each Debt Securities Indenture will be independent of any other Debt Securities Indenture unless otherwise stated in a prospectus supplement or any free writing prospectus. The summary that follows is not complete and the summary is qualified in its entirety by reference to the provisions of the applicable Debt Securities Indenture. You should consult the applicable Debt Securities, Debt Securities Indenture, any supplemental indentures, form of note, officers’ certificates and other related documents for more complete information on the Debt Securities. These documents appear as exhibits to, or are incorporated by reference into, the registration statement of which this prospectus is a part, or will appear as exhibits to other documents that we will file with the SEC, which will be incorporated by reference into this prospectus. In the summary below, we have included references to applicable section numbers of the Debt Securities Indenture so that you can easily locate these provisions.

### Ranking

Our Debt Securities that are not designated Subordinated Debt Securities will be effectively subordinated to all secured indebtedness that we have outstanding from time to time to the extent of the value of the collateral securing such secured indebtedness. Our Debt Securities that are designated Subordinated Debt Securities will be subordinate to all outstanding secured indebtedness as well as Debt Securities that are not designated Subordinated Debt Securities. We incur indebtedness from time to time to finance many of our assets pursuant to repurchase agreements. This indebtedness is deemed to be secured indebtedness. As a result, we have a significant amount of secured indebtedness at any given time in relation to our total assets. The Debt Securities Indenture does not limit the amount of secured indebtedness that we may issue or incur. For a more detailed description regarding our risk exposure on our repurchase agreements, see “Management’s Discussion and Analysis of Financial Condition and Results of Operation—Liquidity and Capital Resources” in our Annual Report on Form 10-K for the fiscal year ended December 31, 2010 filed on March 16, 2011 and incorporated herein by reference.

Our ability to meet our financial obligations with respect to any future Debt Securities, and cash needs generally, is dependent on our operating cash flow, our ability to access various sources of short- and long-term liquidity, including our repurchase agreements, and the capital markets. Holders of our Debt Securities will effectively have a junior position to claims of our creditors, including trade creditors, debt holders, secured creditors, taxing authorities and guarantee holders.

## Provisions of a Particular Series

The Debt Securities may from time to time be issued in one or more series. You should consult the prospectus supplement or free writing prospectus relating to any particular series of Debt Securities for the following information:

- the title of the Debt Securities;
- any limit on the aggregate principal amount of the Debt Securities of the series of which they are a part;
- the date(s), or method for determining the date(s), on which the principal of the Debt Securities will be payable;
- the rate, including the method of determination, if applicable, at which the Debt Securities will bear interest, if any, and:
- the date from which the interest will accrue;
- the dates on which we will pay interest;
- our ability to defer interest payments and any related restrictions during any interest deferral period; and
- the record date for any interest payable on any interest payment date;
- the place where:
  - the principal of, premium, if any, and interest on the Debt Securities will be payable;
  - you may register transfer of the Debt Securities;
  - you may exchange the Debt Securities; and
  - you may serve notices and demands upon us regarding the Debt Securities;
- the security registrar for the Debt Securities and whether the principal of the Debt Securities is payable without presentment or surrender of them;
- the terms and conditions upon which we may elect to redeem any Debt Securities, including any replacement capital or similar covenants limiting our ability to redeem any Subordinated Debt Securities;
- the denominations in which we may issue Debt Securities, if other than \$1,000 and integral multiples of \$1,000;
- the terms and conditions upon which the Debt Securities must be redeemed or purchased due to our obligations pursuant to any sinking fund or other mandatory redemption or tender provisions, or at the holder's option, including any applicable exceptions to notice requirements;
- the currency, if other than United States currency, in which payments on the Debt Securities will be payable;
- the terms according to which elections can be made by us or the holder regarding payments on the Debt Securities in currency other than the currency in which the Debt Securities are stated to be payable;
- if payments are to be made on the Debt Securities in securities or other property, the type and amount of the securities and other property or the method by which the amount shall be determined;

- the manner in which we will determine any amounts payable on the Debt Securities that are to be determined with reference to an index or other fact or event ascertainable outside of the applicable indenture;
- if other than the entire principal amount, the portion of the principal amount of the Debt Securities payable upon declaration of acceleration of their maturity;
- any addition to the events of default applicable to any Debt Securities and any addition to our covenants for the benefit of the holders of the Debt Securities;
- the terms applicable to any rights to convert Debt Securities into or exchange them for other of our securities or those of any other entity;
- whether we are issuing Debt Securities as global securities, and if so:
  - any limitations on transfer or exchange rights or the right to obtain the registration of transfer;
  - any limitations on the right to obtain definitive certificates of the Debt Securities; and
  - any other matters incidental to the Debt Securities;
- whether we are issuing the Debt Securities as bearer certificates;
- any limitations on transfer or exchange of Debt Securities or the right to obtain registration of their transfer, and the terms and amount of any service charge required for registration of transfer or exchange;
- any exceptions to the provisions governing payments due on legal holidays, or any variations in the definition of business day with respect to the Debt Securities;
- any collateral security, assurance, guarantee or other credit enhancement applicable to the Debt Securities;
- any other terms of the Debt Securities not in conflict with the provisions of the applicable Debt Securities Indenture; and
- the material U.S. federal income tax consequences applicable to the Debt Securities.

For more information, see Section 3.01 of the applicable Debt Securities Indenture.

Debt Securities may be sold at a substantial discount below their principal amount. You should consult the applicable prospectus supplement or free writing prospectus for a description of certain material federal income tax considerations that may apply to Debt Securities sold at an original issue discount or denominated in a currency other than U.S. dollars.

Unless the applicable prospectus supplement or free writing prospectus states otherwise, the covenants contained in the applicable indenture will not afford holders of Debt Securities protection in the event we have a change in control or are involved in an highly-leveraged transaction.

#### **Subordination**

The applicable prospectus supplement or free writing prospectus may provide that a series of Debt Securities will be Subordinated Debt Securities, subordinate and junior in right of payment to all of our Senior Indebtedness, as defined below. If so, we will issue these securities under a separate Debt Securities Indenture for Subordinated Debt Securities. For more information, see Article XV of the form of Debt Securities Indenture.

Unless the applicable prospectus supplement or free writing prospectus states otherwise, no payment of principal of, including redemption and sinking fund payments, or any premium or interest on, the Subordinated Debt Securities may be made if:

- there occur certain acts of bankruptcy, insolvency, liquidation, dissolution or other winding up of our company;
- any Senior Indebtedness is not paid when due;
- any applicable grace period with respect to other defaults with respect to any Senior Indebtedness has ended, the default has not been cured or waived and the maturity of such Senior Indebtedness has been accelerated because of the default; or
- the maturity of the Subordinated Debt Securities of any series has been accelerated because of a default and Senior Indebtedness is then outstanding.

Upon any distribution of our assets to creditors upon any dissolution, winding-up, liquidation or reorganization, whether voluntary or involuntary or in bankruptcy, insolvency, receivership or other proceedings, all principal of, and any premium and interest due or to become due on, all outstanding Senior Indebtedness must be paid in full before the holders of the Subordinated Debt Securities are entitled to payment. For more information, see Section 15.02 of the applicable Debt Securities Indenture. The rights of the holders of the Subordinated Debt Securities will be subrogated to the rights of the holders of Senior Indebtedness to receive payments or distributions applicable to Senior Indebtedness until all amounts owing on the Subordinated Debt Securities are paid in full. For more information, see Section 15.04 of the applicable Debt Securities Indenture.

Unless the applicable prospectus supplement or free writing prospectus states otherwise, the term “Senior Indebtedness” means all obligations (other than non-recourse obligations and the indebtedness issued under the Subordinated Debt Securities Indenture) of, or guaranteed or assumed by, us:

- for borrowed money (including both senior and subordinated indebtedness for borrowed money, but excluding the Subordinated Debt Securities);
- for the payment of money relating to any lease that is capitalized on our consolidated balance sheet in accordance with generally accepted accounting principles; or
- indebtedness evidenced by bonds, debentures, notes or other similar instruments.

In the case of any such indebtedness or obligations, Senior Indebtedness includes amendments, renewals, extensions, modifications and refundings, whether existing as of the date of the Subordinated Debt Securities Indenture or subsequently incurred by us.

The Subordinated Debt Securities Indenture does not limit the aggregate amount of Senior Indebtedness we may issue.

### **Form, Exchange and Transfer**

Unless the applicable prospectus supplement or free writing prospectus states otherwise, we will issue Debt Securities only in fully registered form without coupons and in denominations of \$1,000 and integral multiples of that amount. For more information, see Sections 2.01 and 3.02 of the applicable Debt Securities Indenture.

Holders may present Debt Securities for exchange or for registration of transfer, duly endorsed or accompanied by a duly executed instrument of transfer, at the office of the security registrar or at the office of any transfer agent we may designate. Exchanges and transfers are subject to the terms of the applicable indenture and applicable limitations for global securities. We may designate ourselves the security registrar.

No charge will be made for any registration of transfer or exchange of Debt Securities, but we may require payment of a sum sufficient to cover any tax or other governmental charge that the holder must pay in

connection with the transaction. Any transfer or exchange will become effective upon the security registrar or transfer agent, as the case may be, being satisfied with the documents of title and identity of the person making the request. For more information, see Section 3.05 of the applicable Debt Securities Indenture.

The applicable prospectus supplement or free writing prospectus will state the name of any transfer agent, in addition to the security registrar initially designated by us, for any Debt Securities. We may at any time designate additional transfer agents or withdraw the designation of any transfer agent or make a change in the office through which any transfer agent acts. We must, however, maintain a transfer agent in each place of payment for the Debt Securities of each series. For more information, see Section 6.02 of the applicable Debt Securities Indenture.

We will not be required to:

- issue, register the transfer of, or exchange any Debt Securities or any tranche of any Debt Securities during a period beginning at the opening of business 15 days before the day of mailing of a notice of redemption of any Debt Securities called for redemption and ending at the close of business on the day of mailing; or
- register the transfer of, or exchange any, Debt Securities selected for redemption except the unredeemed portion of any Debt Securities being partially redeemed.

For more information, see Section 3.05 of the applicable Debt Securities Indenture.

### **Payment and Paying Agents**

Unless the applicable prospectus supplement or free writing prospectus states otherwise, we will pay interest on a Debt Security on any interest payment date to the person in whose name the Debt Security is registered at the close of business on the regular record date for the interest payment. For more information, see Section 3.07 of the applicable Debt Securities Indenture.

Unless the applicable prospectus supplement or free writing prospectus provides otherwise, we will pay principal and any premium and interest on Debt Securities at the office of the paying agent whom we will designate for this purpose. Unless the applicable prospectus supplement or free writing prospectus states otherwise, the corporate trust office of the Debt Securities Trustee in New York City will be designated as our sole paying agent for payments with respect to Debt Securities of each series. Any other paying agents initially designated by us for the Debt Securities of a particular series will be named in the applicable prospectus supplement or free writing prospectus. We may at any time add or delete paying agents or change the office through which any paying agent acts. We must, however, maintain a paying agent in each place of payment for the Debt Securities of a particular series. For more information, see Section 6.02 of the applicable Debt Securities Indenture.

All money we pay to a paying agent for the payment of the principal and any premium or interest on any Debt Security that remains unclaimed at the end of two years after payment is due will be repaid to us. After that date, the holder of that Debt Security shall be deemed an unsecured general creditor and may look only to us for these payments. For more information, see Section 6.03 of the applicable Debt Securities Indenture.

### **Redemption**

You should consult the applicable prospectus supplement or free writing prospectus for any terms regarding optional or mandatory redemption of Debt Securities. Except for any provisions in the applicable prospectus supplement or free writing prospectus regarding Debt Securities redeemable at the holder's option, Debt Securities may be redeemed only upon notice by mail not less than 30 nor more than 60 days prior to the redemption date. Further, if less than all of the Debt Securities of a series, or any tranche of a series, are to be redeemed, the Debt Securities to be redeemed will be selected by the method provided for the particular series. In the absence of a selection provision, the Debt Securities Trustee will select a fair and appropriate method of selection. For more information, see Sections 4.03 and 4.04 of the applicable Debt Securities Indenture.

A notice of redemption we provide may state:

- that redemption is conditioned upon receipt by the paying agent on or before the redemption date of money sufficient to pay the principal of and any premium and interest on the Debt Securities; and
- that if the money has not been received, the notice will be ineffective and we will not be required to redeem the Debt Securities.

For more information, see Section 4.04 of the applicable Debt Securities Indenture.

### **Consolidation, Merger and Sale of Assets**

We may not consolidate with or merge into any other person, nor may we transfer or lease substantially all of our assets and property to any other person, unless:

- the corporation formed by the consolidation or into which we are merged, or the person that acquires by conveyance or transfer, or that leases, substantially all of our property and assets:
  - is organized and validly existing under the laws of any domestic jurisdiction; and
  - expressly assumes by supplemental indenture our obligations on the Debt Securities and under the applicable indentures;
- immediately after giving effect to the transaction, no event of default, and no event that would become an event of default, has occurred and is continuing; and
- we have delivered to the Debt Securities Trustee an officer's certificate and opinion of counsel as provided in the applicable indentures.

For more information, see Section 11.01 of the applicable Debt Securities Indenture.

### **Events of Default**

Unless the applicable prospectus supplement or free writing prospectus states otherwise, "event of default" under the applicable indenture with respect to Debt Securities of any series means any of the following:

- failure to pay any interest due on any Debt Security of that series within 30 days after it becomes due;
- failure to pay principal or premium, if any, when due on any Debt Security of that series;
- failure to make any required sinking fund payment on any Debt Securities of that series;
- breach of or failure to perform any other covenant or warranty in the applicable indenture with respect to Debt Securities of that series for 60 days (subject to extension under certain circumstances for another 120 days) after we receive notice from the Debt Securities Trustee, or we and the Debt Securities Trustee receive notice from the holders of at least 33% in principal amount of the Debt Securities of that series outstanding under the applicable indenture according to the provisions of the applicable indenture;
- certain events of bankruptcy, insolvency or reorganization; and
- any other event of default set forth in the applicable prospectus supplement or free writing prospectus.

For more information, see Section 8.01 of the applicable Debt Securities Indenture.

An event of default with respect to a particular series of Debt Securities does not necessarily constitute an event of default with respect to the Debt Securities of any other series issued under the applicable indenture.

If an event of default with respect to a particular series of Debt Securities occurs and is continuing, either the Debt Securities Trustee or the holders of at least 33% in principal amount of the outstanding Debt Securities of that series may declare the principal amount of all of the Debt Securities of that series to be due and payable

immediately. If the Debt Securities of that series are discount securities or similar Debt Securities, only the portion of the principal amount as specified in the applicable prospectus supplement or free writing prospectus may be immediately due and payable. If an event of default occurs and is continuing with respect to all series of Debt Securities issued under a Debt Securities Indenture, including all events of default relating to bankruptcy, insolvency or reorganization, the Debt Securities Trustee or the holders of at least 33% in principal amount of the outstanding Debt Securities of all series issued under that Debt Securities Indenture, considered together, may declare an acceleration of the principal amount of all series of Debt Securities issued under that Debt Securities Indenture. There is no automatic acceleration, even in the event of our bankruptcy or insolvency.

The applicable prospectus supplement or free writing prospectus may provide, with respect to a series of Debt Securities to which a credit enhancement is applicable, that the provider of the credit enhancement may, if a default has occurred and is continuing with respect to the series, have all or any part of the rights with respect to remedies that would otherwise have been exercisable by the holder of that series.

At any time after a declaration of acceleration with respect to the Debt Securities of a particular series, and before a judgment or decree for payment of the money due has been obtained, the event of default giving rise to the declaration of acceleration will, without further action, be deemed to have been waived, and the declaration and its consequences will be deemed to have been rescinded and annulled, if:

- we have paid or deposited with the Debt Securities Trustee a sum sufficient to pay:
  - all overdue interest on all Debt Securities of the particular series;
  - the principal of and any premium on any Debt Securities of that series that have become due otherwise than by the declaration of acceleration and any interest at the rate prescribed in the Debt Securities;
  - interest upon overdue interest at the rate prescribed in the Debt Securities, to the extent payment is lawful; and
  - all amounts due to the Debt Securities Trustee under the applicable indenture; and
- any other event of default with respect to the Debt Securities of the particular series, other than the failure to pay the principal of the Debt Securities of that series that has become due solely by the declaration of acceleration, has been cured or waived as provided in the applicable indenture.

For more information, see Section 8.02 of the applicable Debt Securities Indenture.

The applicable Debt Securities Indenture includes provisions as to the duties of the Debt Securities Trustee in case an event of default occurs and is continuing. Consistent with these provisions, the Debt Securities Trustee will be under no obligation to exercise any of its rights or powers at the request or direction of any of the holders unless those holders have offered to the Debt Securities Trustee reasonable indemnity against the costs, expenses and liabilities that may be incurred by it in compliance with such request or direction. For more information, see Section 9.03 of the applicable Debt Securities Indenture. Subject to these provisions for indemnification, the holders of a majority in principal amount of the outstanding Debt Securities of any series may direct the time, method and place of conducting any proceeding for any remedy available to the Debt Securities Trustee, or exercising any trust or power conferred on the Debt Securities Trustee, with respect to the Debt Securities of that series. For more information, see Section 8.12 of the applicable Debt Securities Indenture.

No holder of Debt Securities may institute any proceeding regarding the applicable indenture, or for the appointment of a receiver or a trustee, or for any other remedy under the applicable indenture unless:

- the holder has previously given to the Debt Securities Trustee written notice of a continuing event of default of that particular series;
- the holders of a majority in principal amount of the outstanding Debt Securities of all series with respect to which an event of default is continuing have made a written request to the Debt Securities Trustee,

and have offered reasonable indemnity to the Debt Securities Trustee, to institute the proceeding as trustee; and

- the Debt Securities Trustee has failed to institute the proceeding, and has not received from the holders of a majority in principal amount of the outstanding Debt Securities of that series a direction inconsistent with the request, within 60 days after notice, request and offer of reasonable indemnity.

For more information, see Section 8.07 of the applicable Debt Securities Indenture.

The preceding limitations do not apply, however, to a suit instituted by a holder of a Debt Security for the enforcement of payment of the principal of or any premium or interest on the Debt Securities on or after the applicable due date stated in the Debt Securities. For more information, see Section 8.08 of the applicable Debt Securities Indenture.

We must furnish annually to the Debt Securities Trustee a statement by an appropriate officer as to that officer's knowledge of our compliance with all conditions and covenants under each of the indentures for Debt Securities. Our compliance is to be determined without regard to any grace period or notice requirement under the respective indenture. For more information, see Section 6.06 of the applicable Debt Securities Indenture.

#### **Modification and Waiver**

We and the Debt Securities Trustee, without the consent of the holders of the Debt Securities, may enter into one or more supplemental indentures for any of the following purposes:

- to evidence the assumption by any permitted successor of our covenants in the applicable indenture and the Debt Securities;
- to add one or more covenants or other provisions for the benefit of the holders of our outstanding Debt Securities or to surrender any right or power conferred upon us by the applicable indenture;
- to add any additional events of default;
- to change or eliminate any provision of the applicable indenture or add any new provisions to it, but if this action would adversely affect the interests of the holders of any particular series of Debt Securities in any material respect, the action will not become effective with respect to that series while any Debt Securities of that series remain outstanding under the applicable indenture;
- to provide collateral security for the Debt Securities;
- to establish the form or terms of Debt Securities according to the provisions of the applicable indenture;
- to evidence the acceptance of appointment of a successor Debt Securities Trustee under the applicable indenture with respect to one or more series of the Debt Securities and to add to or change any of the provisions of the applicable indenture as necessary to provide for trust administration under the applicable indenture by more than one trustee;
- to provide for the procedures required to permit the use of a non-certificated system of registration for any series of Debt Securities;
- to change any place where:
  - the principal of and any premium and interest on any Debt Securities are payable;
  - any Debt Securities may be surrendered for registration of transfer or exchange; or
  - notices and demands to or upon us regarding Debt Securities and the applicable indentures may be served; or

- to cure any ambiguity or inconsistency, but only by means of changes or additions that will not adversely affect the interests of the holders of Debt Securities of any series in any material respect.

For more information, see Section 12.01 of the applicable Debt Securities Indenture.

The holders of at least a majority in aggregate principal amount of the outstanding Debt Securities of any series may waive:

- compliance by us with certain provisions of the applicable indenture (see Section 6.07 of the applicable Debt Securities Indenture); and
- any past default under the applicable indenture, except a default in the payment of principal, premium or interest and certain covenants and provisions of the applicable indenture that cannot be modified or amended without consent of the holder of each outstanding Debt Security of the series affected (see Section 8.13 of the applicable Debt Securities Indenture).

The Trust Indenture Act of 1939 may be amended after the date of the applicable indenture to require changes to the indenture. In this event, the indenture will be deemed to have been amended so as to effect the changes, and we and the Debt Securities Trustee may, without the consent of any holders, enter into one or more supplemental indentures to evidence or effect the amendment. For more information, see Section 12.01 of the applicable Debt Securities Indenture.

Except as provided in this section, the consent of the holders of a majority in aggregate principal amount of the outstanding Debt Securities issued pursuant to a Debt Securities Indenture, considered as one class, is required to change in any manner the applicable indenture pursuant to one or more supplemental indentures. If less than all of the series of Debt Securities outstanding under a Debt Securities Indenture are directly affected by a proposed supplemental indenture, however, only the consent of the holders of a majority in aggregate principal amount of the outstanding Debt Securities of all series directly affected, considered as one class, will be required. Furthermore, if the Debt Securities of any series have been issued in more than one tranche and if the proposed supplemental indenture directly affects the rights of the holders of one or more, but not all, tranches, only the consent of the holders of a majority in aggregate principal amount of the outstanding Debt Securities of all tranches directly affected, considered as one class, will be required. In addition, an amendment or modification:

- may not, without the consent of the holder of each outstanding Debt Security affected:
  - change the maturity of the principal of, or any installment of principal of or interest on, any Debt Securities;
  - reduce the principal amount or the rate of interest, or the amount of any installment of interest, or change the method of calculating the rate of interest;
  - reduce any premium payable upon the redemption of Debt Securities;
  - reduce the amount of the principal of any Debt Security originally issued at a discount from the stated principal amount that would be due and payable upon a declaration of acceleration of maturity;
  - change the currency or other property in which a Debt Security or premium or interest on a Debt Security is payable; or
  - impair the right to institute suit for the enforcement of any payment on or after the stated maturity, or in the case of redemption, on or after the redemption date, of any Debt Securities;
- may not reduce the percentage of principal amount requirement for consent of the holders for any supplemental indenture, or for any waiver of compliance with any provision of or any default under the applicable indenture, or reduce the requirements for quorum or voting, without the consent of the holder of each outstanding Debt Security of each series or tranche affected; and

- may not modify provisions of the applicable indenture relating to supplemental indentures, waivers of certain covenants and waivers of past defaults with respect to the Debt Securities of any series, or any tranche of a series, without the consent of the holder of each outstanding Debt Security affected.

A supplemental indenture will be deemed not to affect the rights under the applicable indenture of the holders of any series or tranche of the Debt Securities if the supplemental indenture:

- changes or eliminates any covenant or other provision of the applicable indenture expressly included solely for the benefit of one or more other particular series of Debt Securities or tranches thereof; or
- modifies the rights of the holders of Debt Securities of any other series or tranches with respect to any covenant or other provision.

For more information, see Section 12.02 of the applicable Debt Securities Indenture.

If we solicit from holders of the Debt Securities any type of action, we may at our option by board resolution fix in advance a record date for the determination of the holders entitled to vote on the action. We shall have no obligation, however, to do so. If we fix a record date, the action may be taken before or after the record date, but only the holders of record at the close of business on the record date shall be deemed to be holders for the purposes of determining whether holder of the requisite proportion of the outstanding Debt Securities have authorized the action. For that purpose, the outstanding Debt Securities shall be computed as of the record date. Any holder action shall bind every future holder of the same security and the holder of every security issued upon the registration of transfer of or in exchange for or in lieu of the security in respect of anything done or permitted by the Debt Securities Trustee or us in reliance on that action, whether or not notation of the action is made upon the security. For more information, see Section 1.04 of the applicable Debt Securities Indenture.

### **Defeasance**

Unless the applicable prospectus supplement or free writing prospectus provides otherwise, any Debt Security, or portion of the principal amount of a Debt Security, will be deemed to have been paid for purposes of the applicable indenture, and, at our election, our entire indebtedness in respect of the Debt Security, or portion thereof, will be deemed to have been satisfied and discharged, if we have irrevocably deposited with the Debt Securities Trustee or any paying agent other than us, in trust money, certain eligible obligations, as defined in the applicable indenture, or a combination of the two, sufficient to pay principal of and any premium and interest due and to become due on the Debt Security or portion thereof. For more information, see Section 7.01 of the applicable Debt Securities Indenture. For this purpose, unless the applicable prospectus supplement or free writing prospectus provides otherwise, eligible obligations include direct obligations of, or obligations unconditionally guaranteed by, the United States, entitled to the benefit of full faith and credit of the United States, and certificates, depositary receipts or other instruments that evidence a direct ownership interest in those obligations or in any specific interest or principal payments due in respect of those obligations.

### **Resignation, Removal of Debt Securities Trustee; Appointment of Successor**

The Debt Securities Trustee may resign at any time by giving written notice to us or may be removed at any time by an action of the holders of a majority in principal amount of outstanding Debt Securities delivered to the Debt Securities Trustee and us. No resignation or removal of the Debt Securities Trustee and no appointment of a successor trustee will become effective until a successor trustee accepts appointment in accordance with the requirements of the applicable indenture. So long as no event of default or event that would become an event of default has occurred and is continuing, and except with respect to a Debt Securities Trustee appointed by an action of the holders, if we have delivered to the Debt Securities Trustee a resolution of our board of directors appointing a successor trustee and the successor trustee has accepted the appointment in accordance with the terms of the applicable indenture, the Debt Securities Trustee will be deemed to have resigned and the successor trustee will be deemed to have been appointed as trustee in accordance with the applicable indenture. For more information, see Section 9.10 of the applicable Debt Securities Indenture.

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**Notices**

We will give notices to holders of Debt Securities by mail to their addresses as they appear in the Debt Security Register. For more information, see Section 1.06 of the applicable Debt Securities Indenture.

**Title**

The Debt Securities Trustee and its agents, and we and our agents, may treat the person in whose name a Debt Security is registered as the absolute owner of that Debt Security, whether or not that Debt Security may be overdue, for the purpose of making payment and for all other purposes. For more information, see Section 3.08 of the applicable Debt Securities Indenture.

**Governing law**

The Debt Securities Indenture and the Debt Securities, including any Subordinated Debt Securities Indentures and Subordinated Debt Securities, will be governed by, and construed in accordance with, the law of the State of New York. For more information, see Section 1.12 of the applicable Debt Securities Indenture.

## GLOBAL SECURITIES

We may issue some or all of our securities or any series as global securities. We will register each global security in the name of a depositary identified in the applicable prospectus supplement. The global securities will be deposited with a depositary or nominee of the custodian for the depositary and will bear a legend regarding restrictions on exchanges and registration of transfer as discussed below and any other matters to be provided pursuant to the indenture.

As long as the depositary or its nominee is the registered holder of a global security, that person will be considered the sole owner and holder of the global security and the securities represented by it for all purposes under the securities and the indenture. Except in limited circumstances, owners of a beneficial interest in a global security:

- will not be entitled to have the global security or any securities represented by it registered in their names;
- will not receive or be entitled to receive physical delivery of certificated securities in exchange for the global security; and
- will not be considered to be the owners or holders of the global security or any securities represented by it for any purposes under the securities or the indenture.

We will make all payments of principal and any premium and interest on a global security to the depositary or its nominee as the holder of the global security. The laws of some jurisdictions require that certain purchasers of securities take physical delivery of securities in definitive form. These laws may impair the ability to transfer beneficial interests in a global security.

Ownership of beneficial interests in a global security will be limited to institutions having accounts with the depositary or its nominee, called “participants” for purposes of this discussion, and to persons that hold beneficial interests through participants. When a global security is issued, the depositary will credit on its book-entry, registration and transfer system the principal amounts of securities represented by the global security to the accounts of its participants. Ownership of beneficial interests in a global security will be shown only on, and the transfer of those ownership interests will be effected only through, records maintained by:

- the depositary, with respect to participants’ interests; or
- any participant, with respect to interests of persons held by the participants on their behalf.

Payments by participants to owners of beneficial interests held through the participants will be the responsibility of the participants. The depositary may from time to time adopt various policies and procedures governing payments, transfers, exchanges and other matters relating to beneficial interests in a global security. None of the following will have any responsibility or liability for any aspect of the depositary’s or any participant’s records relating to, or for payments made on account of, beneficial interests in a global security, or for maintaining, supervising or reviewing any records relating to those beneficial interests:

- us or our affiliates;
- the trustee under any indenture; or
- any agent of any of the above.

***Organization and Duration***

We were formed in Delaware in July 2007, and will remain in existence until dissolved in accordance with our operating agreement.

***Purpose***

Under our operating agreement, we are permitted to engage in any business activity that lawfully may be conducted by a limited liability company organized under Delaware law and, in connection therewith, to exercise all of the rights and powers conferred upon us pursuant to the agreements relating to such business activity; provided, however, that, except if our board of directors determines that it is no longer in our best interests, our management shall not cause us to engage, directly or indirectly, in any business activity that our board of directors determines would require us to register as an investment company under the Investment Company Act or cause us to be treated as an association or publicly traded partnership taxable as a corporation or otherwise taxable at the entity level for federal income tax purposes.

***Agreement to be Bound by our Operating Agreement; Power of Attorney***

Each purchaser of a common share will be admitted as a member of our limited liability company and will be deemed to have agreed to be bound by the terms of our operating agreement. Pursuant to this agreement, each shareholder and each person who acquires a common share from a shareholder grants to certain of our officers (and, if appointed, a liquidator) a power of attorney to, among other things, execute and file documents required for our qualification, continuance or dissolution. The power of attorney also grants certain of our officers the authority to make certain amendments to, and to make consents under and in accordance with, our operating agreement.

***Duties of Officers and Directors***

Our operating agreement provides that our business and affairs shall be managed under the direction of our board of directors, which shall have the power to appoint our officers. Our operating agreement further provides that the authority and function of our board of directors and officers shall be identical to the authority and functions of a board of directors and officers of a corporation organized under the Delaware General Corporation Law, or "DGCL," except as expressly modified by the terms of the operating agreement. Finally, our operating agreement provides that except as specifically provided therein, the fiduciary duties and obligations of our board of directors owed to us and to our members shall be the same as the respective duties and obligations owed by officers and directors of a corporation organized under the DGCL to their corporation and stockholders, respectively.

Our operating agreement does not expressly modify the duties and obligations owed by officers and directors under the DGCL. However, there are certain provisions in our operating agreement regarding exculpation and indemnification of our officers and directors that differ from the DGCL. First, our operating agreement provides that to the fullest extent permitted by applicable law our directors will not be liable to us. Under the DGCL, a director or officer would be liable to us for (1) breach of duty of loyalty to us or our shareholders; (2) intentional misconduct or knowing violations of the law that are not done in good faith; (3) improper redemption of stock or declaration of a dividend; or (4) a transaction from which the director derived an improper personal benefit.

Second, our operating agreement provides that we indemnify our directors and officers for acts or omissions to the fullest extent permitted by law. Under the DGCL, a corporation can only indemnify directors and officers for acts or omissions if the director or officer acted in good faith, in a manner he reasonably believed to be in the best interests of the corporation, and, in a criminal action, if the officer or director had no reasonable cause to believe his conduct was unlawful.

Third, our operating agreement provides that in the event a potential conflict of interest exists or arises between any of our principals, our directors or their respective affiliates, on the one hand, and us, any of our subsidiaries or any of our shareholders, on the other hand, a resolution or course of action by our board of directors shall be deemed approved by all of our shareholders, and shall not constitute a breach of the fiduciary duties of members of the board to us or our shareholders, if such resolution or course of action is (1) approved by our

nominating and corporate governance committee, which is composed of independent directors, (2) approved by shareholders holding a majority of our shares that are disinterested parties, (3) on terms no less favorable than those generally provided to or available from unrelated third parties, or (4) fair and reasonable to us. Under the DGCL, a corporation is not permitted to automatically exempt board members from claims of breach of fiduciary duty under such circumstances.

In addition, our operating agreement provides that all conflicts of interest described in this prospectus are deemed to have been specifically approved by all of our shareholders.

#### ***Election of Members of Our Board of Directors***

Since our first annual meeting of shareholders, members of our board of directors have been elected by a plurality of our shareholders. Each member of our board of directors currently serves for a one-year term expiring in 2012.

#### ***Removal of Members of Our Board of Directors***

Any director or the entire board of directors may be removed, only for cause (as defined in the operating agreement) and then only by a vote of at least two-thirds of the votes entitled to be cast in the election of directors. The vacancy in the board of directors caused by any such removal will be filled by a vote of the majority of directors then in office even if the remaining directors do not constitute a quorum.

#### ***Shareholder Meetings***

Under our operating agreement, we are required to hold an annual meeting of shareholders for the election of directors and other business during the month of May of each year on a date and time to be set by the board of directors. In addition, our operating agreement provides that a special meeting of shareholders may be called by our board of directors and certain of our officers. Our operating agreement further provides that, subject to the satisfaction of certain procedural and information requirements, a special meeting of shareholders shall be called by the Secretary of the company upon written request of shareholders entitled to cast not less than a majority of all of the votes entitled to be cast at such meeting.

#### ***Advance Notice of Nominations and Shareholder Business***

Our operating agreement establishes advance notice procedures with respect to shareholder proposals and the nomination of persons for election as directors at annual meeting of our shareholders.

#### ***Limited Liability***

Section 18-607 and Section 18-804 of the Delaware LLC Act provide that a member who receives a distribution from a Delaware limited liability company and knew at the time of the distribution that the distribution was in violation of the Delaware LLC Act shall be liable to the company for the amount of the distribution for three years. Under Section 18-607, a limited liability company may not make a distribution to a member if, after the distribution, all liabilities of the company, other than liabilities to members on account of their shares and liabilities for which the recourse of creditors is limited to specific property of the company, would exceed the fair value of the assets of the company. For the purpose of determining the fair value of the assets of a company, the Delaware LLC Act provides that the fair value of property subject to liability for which recourse of creditors is limited shall be included in the assets of the company only to the extent that the fair value of that property exceeds the nonrecourse liability. Under Section 18-804 of the Delaware LLC Act, a limited liability company that has dissolved and is winding up its affairs may not make a liquidating distribution to its members unless it has paid or made reasonable provision for the payment of all of its known liabilities, the satisfaction of all known claims against it, including contingent, conditional or unmatured claims, and the satisfaction of claims that have not been made known to it or that have not arisen but that, based on facts that are known to it, are likely to arise or become known within 10 years after the date of dissolution. Under the Delaware LLC Act, an assignee who becomes a substituted member of a company is liable for the obligations of his assignor to make contributions to the company, except the assignee is not obligated for liabilities unknown to him at the time the assignee became a member and that could not be ascertained from the operating agreement.

#### ***Limitations on Liability and Indemnification of Our Directors and Officers***

Our operating agreement provides that our directors will not be liable to us, or any subsidiary of ours, or any holder of shares, for monetary damages for any acts or omissions arising from the performance of any of such director's obligations or duties in connection with us, including breach of fiduciary duty, except as follows: (1) for any breach of the director's duty of loyalty to us or the holders of the shares; (2) for acts or omissions not in good

faith or which involve intentional misconduct or a knowing violation of law; or (3) for any transaction from which the director derived an improper personal benefit. The operating agreement provides that, to the fullest extent permitted by law, we will indemnify our directors and officers or any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of us) by reason of the fact that the person is or was our director, officer, employee, tax matters member or agent, or is or was serving at our request as a director, officer, employee or agent of another company, to the fullest extent permitted by law against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to our best interests, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the person's conduct was unlawful.

Each of the persons entitled to be indemnified for expenses and liabilities as contemplated above may, in the performance of his, her or its duties, consult with legal counsel and accountants, and any act or omission by such person on our behalf in furtherance of our interests in good faith in reliance upon, and in accordance with, the advice of such legal counsel or accountants will be full justification for any such act or omission, and such person will be fully protected for such acts and omissions; provided that such legal counsel or accountants were selected with reasonable care by or on our behalf.

### ***Amendment of Our Operating Agreement***

Amendments to our operating agreement may be proposed only by or with the consent of our board of directors. To adopt a proposed amendment, our board of directors is required to seek written approval of the holders of the number of shares required to approve the amendment or call a meeting of our shareholders to consider and vote upon the proposed amendment. Except as set forth below, an amendment must be approved by holders of a majority of the total voting power of our outstanding common shares and, to the extent that such amendment would have a material adverse effect on the holders of any class or series of shares, by the holders of a majority of the holders of such class or series.

*Prohibited Amendments.* No amendment may be made that would:

- enlarge the obligations of any shareholder without such shareholder's consent, unless approved by at least a majority of the type or class of shares so affected;
- provide that we are not dissolved upon an election to dissolve our limited liability company by our board of directors that is approved by holders of a majority of the total voting power of our outstanding common shares;
- change the term of existence of our company; or
- give any person the right to dissolve our limited liability company other than our board of directors' right to dissolve our limited liability company with the approval of holders of a majority of the total voting power of our outstanding common shares.

The provision of our operating agreement preventing the amendments having the effects described in any of the clauses above can be amended upon the approval of holders of at least two-thirds of the total voting power of our outstanding common shares.

*No Shareholder Approval.* Our board of directors may generally make amendments to our operating agreement without the approval of any shareholder or assignee to reflect:

- a change in our name, the location of our principal place of our business, our registered agent or our registered office;
- the admission, substitution, withdrawal or removal of shareholders in accordance with our operating agreement;

- the merger of our company or any of its subsidiaries into, or the conveyance of all of our assets to, a newly-formed entity if the sole purpose of that merger or conveyance is to effect a mere change in our legal form into another limited liability entity;
- a change that our board of directors determines to be necessary or appropriate for us to qualify or continue our qualification as a company in which our members have limited liability under the laws of any state or to ensure that we will not be treated as an association taxable as a corporation or otherwise taxed at the entity level for U.S. federal income tax purposes other than as our board of directors specifically so designate;
- an amendment that our board of directors determines, based upon the advice of counsel, to be necessary or appropriate to prevent us, members of our board, or our officers, agents or trustees from in any manner being subjected to the provisions of the Investment Company Act of 1940, as amended, or the “Investment Company Act,” the Advisers Act, or “plan asset” regulations adopted under the Employee Retirement Income Security Act, or “ERISA”, whether or not substantially similar to plan asset regulations currently applied or proposed;
- an amendment that our board of directors determines, based on the advice of counsel, to be necessary to cause our allocations of profit and loss to conform to the requirements of Section 704(b) of the Internal Revenue Code of 1986, as amended, or the “Code”;
- an amendment or issuance that our board of directors determines to be necessary or appropriate for the authorization of additional securities;
- any amendment expressly permitted in our operating agreement to be made by our board of directors acting alone;
- an amendment effected, necessitated or contemplated by a merger agreement that has been approved under the terms of our operating agreement;
- any amendment that our board of directors determines to be necessary or appropriate for the formation by us of, or our investment in, any corporation, partnership or other entity, as otherwise permitted by our operating agreement;
- a change in our fiscal year or taxable year and related changes; and
- any other amendments substantially similar to any of the matters described above.

In addition, our board of directors may make amendments to our operating agreement without the approval of any shareholder or assignee if our board of directors determines that those amendments:

- do not adversely affect the shareholders (including any particular class or series of shares as compared to other classes or series of shares) in any material respect;
- are necessary or appropriate to satisfy any requirements, conditions or guidelines contained in any opinion, directive, order, ruling or regulation of any federal or state agency or judicial authority or contained in any federal or state statute;
- are necessary or appropriate to facilitate the trading of shares or to comply with any rule, regulation, guideline or requirement of any securities exchange on which the shares are or will be listed for trading, compliance with any of which our board of directors deems to be in the best interests of us and our shareholders;
- are necessary or appropriate for any action taken by our board of directors relating to splits or combinations of shares under the provisions of our operating agreement; or
- are required to effect the intent expressed in our operating agreement or are otherwise contemplated by our operating agreement.

### ***Merger, Sale or Other Disposition of Assets***

Our board of directors is generally prohibited, without the prior approval of holders of a majority of the total voting power of all of our outstanding common shares, from causing us to, among other things, sell, exchange or otherwise dispose of all or substantially all of our assets in a single transaction or a series of related transactions, or approving on our behalf the sale, exchange or other disposition of all or substantially all of our assets, provided that our board of directors may mortgage, pledge, hypothecate or grant a security interest in all or substantially all of our assets without the approval of any shareholder. Our board of directors may also sell all or substantially all of our assets under a foreclosure or other realization upon the encumbrances above without that approval.

If the conditions specified in our operating agreement are satisfied, our board of directors may merge our company or any of its subsidiaries into, or convey all of our assets to, a newly-formed entity if the sole purpose of that merger or conveyance is to effect a mere change in our legal form into another limited liability entity, in each case without any approval of our shareholders. The shareholders are not entitled to dissenters' rights of appraisal under the operating agreement or applicable Delaware law in the event of a merger or consolidation, a sale of all or substantially all of our assets or any other similar transaction or event.

### ***Termination and Dissolution***

We will continue as a limited liability company until terminated under our operating agreement. We will dissolve upon: (1) the election of our board of directors to dissolve us, if approved by holders of a majority of the total voting power of all of our outstanding common shares; (2) the sale, exchange or other disposition of all or substantially all of our assets and those of our subsidiaries; (3) the entry of a decree of judicial dissolution of our limited liability company; or (4) at any time that we no longer have any shareholders, unless our business is continued in accordance with the Delaware LLC Act.

### ***Election to be Treated as a Corporation***

If the board of directors determines that it is no longer in our best interests to continue as a partnership for U.S. federal income tax purposes, the board of directors may elect to cause us to be treated as an association or as a publicly traded partnership taxable as a corporation for U.S. federal (and applicable state) income tax purposes.

In the event that the board of directors determines the company should seek relief pursuant to Section 7704(e) of the Code to preserve the treatment of the company as a partnership for U.S. federal (and applicable state) income tax purposes, the company and each shareholder shall agree to adjustments required by the tax authorities, and the company and each shareholder shall pay such amounts as required by the tax authorities.

### ***Books and Reports***

We are required to keep appropriate books of our business at our principal offices. The books will be maintained for both tax and financial reporting purposes on an accrual basis. For financial reporting and tax purposes, our fiscal year is the calendar year. We have agreed to use reasonable efforts to furnish to you tax information (including Schedule K-1s) as promptly as practicable after the end of each tax year, which describes your allocable share of our income, gain, loss and deduction for our preceding taxable year. However, we may not be able to provide holders of our common shares with tax information on a timely basis. In preparing this information, we will use various accounting and reporting conventions to determine your allocable share of income, gain, loss and deduction. In addition, delivery of this information by us may be subject to delay in the event of, among other reasons, the late receipt of any necessary tax information from an investment in which we hold an interest. It is therefore possible that, in any taxable year, holders of our common shares will need to apply for extensions of time to file their tax returns.

### ***Provisions in the Operating Agreement that may have an Anti-Takeover Effect***

Some of the provisions in the operating agreement described above could make it more difficult for a third party to acquire, or may discourage a third party from acquiring, control of us. These provisions include, among others:

- allowing only our board of directors to fill newly created directorships,
- requiring advance notice for our shareholders to nominate candidates for election to our board of directors or to propose business to be considered by our shareholders at a meeting of our shareholders;
- our ability to issue additional securities, including, but not limited to, preferred shares, without approval by our shareholders;
- the ability of our board of directors to amend the operating agreement without the approval of the shareholders except under certain specified circumstances;
- requiring that (subject to certain exceptions) no person may own, or be deemed to own by virtue of the attribution provisions of the Code, more than 9.8% of the aggregate value or number (whichever is more restrictive) of our outstanding shares (See “—Restrictions on Ownership and Transfer;”) and
- limitations on the ability of our shareholders to call special meetings of our shareholders or to act by written consent.

Certain provisions of the management agreement also could make it more difficult for third parties to acquire control of us by various means, including limitations on our right to terminate the management agreement and a requirement that, under certain circumstances, we make a substantial payment to our Manager in the event of a termination.

### ***Restrictions on Ownership and Transfer***

Our operating agreement, subject to certain exceptions, contains restrictions on the amount of our shares that a person may own and may prohibit certain entities from owning our shares. Our operating agreement provides that (subject to certain exceptions described below) no person may own, or be deemed to own by virtue of the attribution provisions of the Code, more than 9.8% of the aggregate value or number (whichever is more restrictive) of our outstanding shares.

Any person who acquires or attempts or intends to acquire beneficial or constructive ownership of our shares that will or may violate any of the foregoing restrictions on transferability and ownership, or who is the intended transferee of our common shares which are transferred to the trust (as described below), will be required to give notice immediately to us, or in the case of proposed or attempted transactions will be required to give at least 15 days written notice to us, and provide us with such other information as we may request in order to determine the effect of such transfer, including, without limitation, the effect on the qualification as a real estate investment trust (“REIT”) of any potential REIT subsidiary we may acquire or form in the future.

Our board of directors, in its sole discretion, may exempt a person from the foregoing restrictions. The person seeking an exemption must provide to our board of directors such representations, covenants and undertakings as our board of directors may deem appropriate. Our board of directors may also condition any such exemption on the receipt of a ruling from the IRS or an opinion of counsel as it deems appropriate. Our board of directors has granted an exemption from this limitation to Ellington, certain affiliated entities of Ellington and certain non-affiliates, subject to certain conditions.

Any attempted transfer of our securities which, if effective, would result in a violation of the foregoing restrictions (other than those described in the preceding paragraph) will cause the number of securities causing the violation (rounded to the nearest whole share) to be automatically transferred to a trust for the exclusive benefit of one or more charitable beneficiaries, and the proposed transferee will not acquire any rights in such securities. The automatic transfer will be deemed to be effective as of the close of business on the business day (as defined in our operating agreement) prior to the date of the transfer. If, for any reason, the transfer to the trust does not occur, our operating agreement provides that the purported transfer in violation of the restrictions will be void ab initio. Common shares held in the trust will be issued and outstanding shares. The proposed transferee will not benefit economically from ownership of any securities held in the trust, will have no rights to distributions and no rights to vote or other rights attributable to the common shares held in the trust. The trustee of the trust will have all voting rights and rights to distributions with respect to common shares held in the trust. These rights will be exercised for

the exclusive benefit of the charitable beneficiary. Any dividend or other distribution paid prior to our discovery that common shares of stock have been transferred to the trust will be paid by the recipient to the trustee upon demand. Any dividend or other distribution authorized but unpaid will be paid when due to the trustee. Any dividend or other distribution paid to the trustee will be held in trust for the charitable beneficiary. Subject to Delaware law and pursuant to our operating agreement, the trustee will have the authority (1) to rescind as void any vote cast by the proposed transferee prior to our discovery that the common shares have been transferred to the trust and (2) to recast the vote in accordance with the desires of the trustee acting for the benefit of the charitable beneficiary. However, if we have already taken irreversible corporate action, then the trustee will not have the authority to rescind and recast the vote.

Within 20 days of receiving notice from us that the securities have been transferred to the trust, the trustee will sell the securities to a person designated by the trustee, whose ownership of the securities will not violate the above ownership limitations. Upon such sale, the interest of the charitable beneficiary in the securities sold will terminate and the trustee will distribute the net proceeds of the sale to the proposed transferee and to the charitable beneficiary as follows. The proposed transferee will receive the lesser of (1) the price paid by the proposed transferee for the securities or, if the proposed transferee did not give value for the securities in connection with the event causing the securities to be held in the trust (e.g., a gift, devise or other similar transaction), the market price (as defined in our operating agreement) of the securities on the day of the event causing the securities to be held in the trust and (2) the price received by the trustee from the sale or other disposition of the securities. Any net sale proceeds in excess of the amount payable to the proposed transferee will be paid immediately to the charitable beneficiary. If, prior to our discovery that the securities have been transferred to the trust, the securities are sold by the proposed transferee, then (1) the securities shall be deemed to have been sold on behalf of the trust and (2) to the extent that the proposed transferee received an amount for the securities that exceeds the amount the proposed transferee was entitled to receive, the excess shall be paid to the trustee upon demand.

In addition, the securities held in the trust will be deemed to have been offered for sale to us, or our designee, at a price per share equal to the lesser of (1) the price per share in the transaction that resulted in the transfer to the trust (or, in the case of a devise or gift, the market price at the time of the devise or gift) and (2) the market price on the date we, or our designee, accept the offer. We will have the right to accept the offer until the trustee has sold the securities. Upon a sale to us, the interest of the charitable beneficiary in the securities sold will terminate and the trustee will distribute the net proceeds of the sale to the proposed transferee.

All certificates representing the securities bear a legend referring to the restrictions described above.

These ownership limitations could delay, defer or prevent a transaction or a change in control that might involve a premium price for the common shares or might otherwise be in the best interests of our shareholders.

**Introduction**

The following summary discusses the material U.S. federal income tax and, for certain non-U.S. holders (as defined below), estate tax consequences of the acquisition, ownership and disposition of our common shares and preferred shares. Any additional U.S. federal income tax considerations of the ownership and disposition of our preferred shares, shareholder rights, warrants or debt securities will be addressed in an applicable prospectus supplement or free writing prospectus we and any selling security holders may provide you. This summary is based on current law, is for general information only and is not tax advice. This discussion is based on the Code, applicable Treasury Regulations, judicial authority, and administrative rulings and practice, all as currently in effect and which are subject to change or differing interpretations, possibly with retroactive effect. This summary assumes that our shares will be held as capital assets for U.S. federal income tax purposes. This summary is not intended to be a complete description of all of the U.S. federal income tax consequences of the acquisition, ownership and disposition of our shares. In addition, except as specifically set forth below, this summary does not discuss any state or local income taxation or foreign income taxation or other tax consequences. This discussion does not address all of the aspects of U.S. federal income taxation that may be relevant to a particular holder of our shares in light of its personal circumstances, or to holders of our shares that are subject to special treatment under U.S. federal income tax laws, including but not limited to:

- dealers in securities or foreign currencies;
- financial institutions;
- insurance companies;
- tax-exempt organizations (except to the extent discussed in “—Taxation of Holders of Our Shares—Unrelated Business Taxable Income”);
- RICs (except to the extent discussed in “—Taxation of Holders of Our Shares—Mutual Fund Holders”);
- REITs;
- non-U.S. individuals and foreign corporations (except to the extent discussed in “—Taxation of Non-U.S. Holders of Our Shares”);
- controlled foreign corporations, or “CFCs”;
- passive foreign investment companies, or “PFICs”;
- persons who are subject to the alternative minimum tax;
- traders in securities who elect to apply a mark-to-market method of accounting;
- persons that hold our shares as part of a hedge, straddle, constructive sale, or integrated or conversion transaction;
- persons whose functional currency is not the U.S. dollar;
- persons who are, or who hold our shares through, partnerships or other pass-through entities; or
- holders of options granted by us or persons who acquired our shares as compensation.

The tax treatment of partners in a partnership (including an entity or arrangement treated as a partnership for U.S. federal income tax purposes) that holds our shares generally depends on both the status of the partner (rather than the partnership) and the activities of the partnership and is not specifically addressed herein. Partners in partnerships that hold our shares should consult their tax advisors.

As used below, a “U.S. holder” is a beneficial holder of our shares who is, for U.S. federal income tax purposes:

- a citizen or resident of the United States;
- a corporation (or other entity treated as a corporation for U.S. federal income tax purposes) created or organized under the laws of the United States, any state thereof or the District of Columbia;
- an estate, the income of which is subject to U.S. federal income tax regardless of its source; or
- a trust, if a U.S. court can exercise primary supervision over the administration of the trust and one or more U.S. persons have the authority to control all substantial decisions of the trust, or if the trust was in existence on August 20, 1996 and has elected to continue to be treated as a U.S. person.

The term “non-U.S. holder” means a beneficial owner of our shares that is not a U.S. holder or a partnership (or other entity or arrangement treated as a partnership for U.S. federal income tax purposes). The term “holders” includes both a U.S. holder and a non-U.S. holder.

The U.S. federal income tax laws are complex, and your circumstances may affect your tax consequences. Consequently, you are urged to consult your own tax advisors as to the specific tax consequences to you of the acquisition, ownership and disposition of our shares, including the applicability and effect of federal, state and local or foreign income and other tax laws to your particular circumstances.

## **Our Taxation**

### ***Classification of Ellington Financial LLC***

In the opinion of Hunton & Williams LLP, or “Hunton & Williams,” we have been and will be treated, for U.S. federal income tax purposes, as a partnership, and not as an association or a publicly traded partnership taxable as a corporation. It must be emphasized that the opinion of Hunton & Williams speaks as of the date issued and is based on various assumptions and representations relating to our organization, operations, assets, activities and income, including that all factual representations and statements set forth in all relevant documents, records and instruments are true and correct, and that we, at all times, have operated and will continue to operate in accordance with the method of operation described in our organizational documents and this prospectus, and is conditioned upon factual representations and covenants regarding our organization, assets, income, and present and future conduct of our activities and operations, and assumes that such representations and covenants are accurate and complete.

There is limited statutory, administrative and judicial authority addressing certain aspects of the treatment of instruments similar to our shares for U.S. federal income tax purposes. No assurance can be given that the IRS would not successfully assert a position contrary to any of the tax aspects set forth below. Moreover, no advance rulings have been sought from the IRS regarding any matter discussed in this prospectus. Accordingly, you are urged to consult your tax advisors with regard to the U.S. federal income tax consequences to you of acquiring, owning and disposing of our shares, as well as the effects of state, local and non-U.S. tax laws, including potential state tax filing requirements.

While we believe that we have been organized and have operated so that we have qualified, and will continue to qualify, to be treated for U.S. federal income tax purposes as a partnership, and not as an association or a publicly traded partnership taxable as a corporation, given the highly complex nature of the rules governing partnerships, the ongoing importance of factual determinations, and the possibility of future changes in our circumstances, no assurance can be given by Hunton & Williams or us that we will so qualify for any particular year. Hunton & Williams will have no obligation to advise us or you of any subsequent change in the matters stated, represented or assumed, or of any subsequent change in the applicable law. Our taxation as a partnership that is not a publicly traded partnership taxable as a corporation will depend on our ability to meet, on a continuing basis, through actual operating results, the “qualifying income exception” (as described below), the compliance with which will not be reviewed by Hunton & Williams on an ongoing basis. Accordingly, no assurance can be given that the actual results of our operations for any taxable year will satisfy the qualifying income exception. You should be

aware that opinions of counsel are not binding on the IRS, and no assurance can be given that the IRS will not challenge the conclusions set forth in such opinions.

If, for any reason, including our failure to meet the qualifying income exception, we were treated as an association or a publicly traded partnership taxable as a corporation for U.S. federal income tax purposes, items of income, gain, loss, deduction and credit would not pass through to the holders of our shares and such holders would be treated for U.S. federal (and certain state and local) income tax purposes as shareholders in a corporation. We would be required to pay income tax at regular corporate rates on all of our income. In addition, we would likely be liable for state and local income and/or franchise taxes on all of our income. Distributions to holders of our shares would constitute ordinary dividend income taxable to such holders to the extent of our earnings and profits, and these distributions would not be deductible by us. Additionally, distributions paid to non-U.S. holders of our shares would be subject to U.S. federal withholding taxes at the rate of 30% (or such lower rate provided by an applicable tax treaty). Thus, if we were treated as a corporation, such treatment would result in a material reduction in cash flow and after-tax returns for holders of our shares and thus would result in a substantial reduction in the value of our shares.

Under Section 7704 of the Code, unless certain exceptions apply, a publicly traded partnership is generally treated and taxed as a corporation, and not as a partnership, for U.S. federal income tax purposes. A partnership is a publicly traded partnership if (1) interests in the partnership are traded on an established securities market or (2) interests in the partnership are readily tradable on a secondary market or the substantial equivalent thereof. We believe that we are treated, and will continue to be treated, as a publicly traded partnership.

A publicly traded partnership will be treated as a partnership, and not as a corporation, for U.S. federal income tax purposes if (1) 90% or more of the income of such publicly traded partnership during each taxable year consists of “qualifying income,” and (2) such publicly traded partnership would not be included in the definition of a RIC in Section 851(a) of the Code if it were a domestic corporation (which generally applies to entities required to register under the Investment Company Act). We refer to this exception as the “qualifying income exception.” Qualifying income generally includes rents, dividends, interest, and capital gains from the sale or other disposition of stocks, bonds and real property. Qualifying income also includes other income derived from the business of investing in, among other things, stocks and securities. Interest is not qualifying income if it is derived in the “conduct of a financial or insurance business” or is based, directly or indirectly, on the income or profits of any person. Our income currently consists primarily of interest income, income and gain from interest rate, credit risk and other derivatives, gain from sale of securities (including income from the short sale of securities) all of which is generally qualifying income for purposes of the qualifying income exception.

We believe we satisfy the qualifying income exception and we intend to continue to conduct our activities and operations so that we will continue to qualify for this exception in each taxable year. There can be no assurance, however, that the IRS will not challenge our compliance with the qualifying income exception requirements and, therefore, assert that we are taxable as a corporation for U.S. federal income tax purposes. Such treatment would result in a material reduction in cash flow and after-tax returns for holders of our shares and thus would result in a substantial reduction in the value of our shares.

If at the end of any year we fail to meet the qualifying income exception, we may still qualify as a partnership if we are entitled to relief under the Code for an inadvertent termination of partnership status. This relief will be available if (1) the failure to meet the qualifying income exception is cured within a reasonable time after discovery, (2) the failure is determined by the IRS to be inadvertent, and (3) we and each of the holders of our shares (during the failure period) agree to make such adjustments or to pay such amounts as are required by the IRS. Under our operating agreement, each holder of our shares is obligated to make such adjustments or to pay such amounts as are required by the IRS to maintain our status as a partnership for U.S. federal (and applicable state) income tax purposes. It is not possible to state whether we would be entitled to this relief in any or all circumstances. If this relief provision is inapplicable to a particular set of circumstances involving us, we will not qualify as a partnership for U.S. federal income tax purposes. Even if this relief provision applies and we retain our partnership status, we or the holders of the shares (during the failure period) will be required to pay such amounts as are determined by the IRS.

### ***Certain State, Local and Non-U.S. Tax Matters***

We and any subsidiary of ours may be subject to state, local or non-U.S. taxation in various jurisdictions, including those in which we or they transact business, own property, or reside. We may be required to file tax returns in some or all of those jurisdictions. The state, local or non-U.S. tax treatment of us and of the holders of our shares may not conform to the U.S. federal income tax treatment discussed herein. We may pay non-U.S. taxes, and dispositions of foreign property or operations involving, or investments in, foreign property may give rise to non-U.S. income or other tax liability in amounts that could be substantial. Any non-U.S. taxes incurred by us may not pass through to holders of our shares as a credit against their federal income tax liability.

### **Taxation of Holders of Our Shares**

#### ***Taxation of Holders of Our Shares on Our Profits and Losses***

As a partnership for U.S. federal income tax purposes, we are not subject to U.S. federal income tax. Rather, in computing your U.S. federal income tax liability for a taxable year, you will be required to take into account your allocable share of our items of income, gain, loss, deduction and credit for our taxable year ending within or with your taxable year, regardless of whether you have received any distributions. It is possible that your U.S. federal income tax liability with respect to your allocable share of our earnings in a particular taxable year could exceed the cash distributions to you, thus requiring an out-of-pocket tax payment by you. See “—Nature of Our Business Activities—Non-Cash Income from Our Investments” below. The characterization of an item of our income, gain, loss, deduction or credit generally will be determined at the partnership level (rather than at the shareholder level).

#### ***Allocation of Profits and Losses***

For each of our fiscal years, items of income, gain, loss, deduction or credit recognized by us will be allocated among the holders of our shares in accordance with their allocable shares of our items of income, gain, loss, deduction and credit. The allocable share of such items for a holder of our shares will be determined by our operating agreement, provided such allocations either have “substantial economic effect” or are determined to be in accordance with such holder’s interest in us. We believe that the allocations provided by our operating agreement have “substantial economic effect” although, as discussed below, it is possible that (1) our method for allocating partnership income and deductions between transferors and transferees of our shares might not literally comply with certain proposed Treasury Regulations once they are finalized and (2) the IRS may not respect our allocations to the extent attributable to certain conventions we use for making tax basis adjustments pursuant to our election under Section 754. See “—Administrative Matters—Section 754 Election” below. If the allocations provided by our operating agreement do not have “substantial economic effect” and were successfully challenged by the IRS, the redetermination of the allocations to a particular holder for U.S. federal income tax purposes could be less favorable than the allocations set forth in our operating agreement.

In accordance with recently proposed Treasury Regulations, on which existing publicly traded partnerships currently may rely, we will apply a monthly convention pursuant to which our taxable income and losses will be determined annually and will be prorated on a monthly basis. Then the income and losses will be apportioned among the holders in proportion to the shares owned by each of them as of the first business day of the month, or the “Allocation Date.” However, certain “extraordinary items,” such as income or gain realized on a sale or other disposition of our assets other than in the ordinary course of business, will be allocated among the holders owning our shares on the Allocation Date in the month in which that gain or loss is recognized. It is not entirely clear whether certain items, such as the mark-to-market gains and losses recognized at the end of the year as a result of our election under Section 475(f) of the Code (see “—Nature of Our Business Activities—Mark-to-Market Election”), will be treated as “extraordinary items.” We do not intend to treat these mark-to-market gains and losses as “extraordinary items.” If the IRS successfully asserted a contrary position, there would be a disproportionate allocation of our income to the month in which our mark-to-market gains and losses are recognized. As a result of the monthly convention for allocating items, holders transferring our shares may be allocated items of income, gain, loss, deduction, and credit realized after the date of transfer. In addition, as a result of such allocation method, you may be allocated taxable income even if you do not receive any cash distributions. Moreover, you may be allocated differing amounts of our income, gain, loss, deduction and credit than other holders of our shares as a result of Section 704(c) of the Code and the Treasury Regulations promulgated thereunder relating to our mark-to-market

election under Section 475(f) of the Code. For example, if our shares are sold in an offering at a price that is lower than our per-share book value and our book value is equal to or greater than that value at the end of our taxable year, investors will be allocated income at least equal to the difference between the offering price and the per-share book value as of the offering, ignoring any offsetting allocations of operating losses. Conversely, if our shares are sold in an offering at a price that is higher than our per-share book value and our book value is equal to or lesser than that value at the end of our taxable year, investors will be allocated loss at least equal to the difference between the offering price and the per-share book value as of the offering, ignoring any offsetting allocations of operating income.

Section 706 of the Code generally requires that items of partnership income and deductions be allocated between transferors and transferees of partnership interests on a daily basis, and the proposed Treasury Regulations prescribing the monthly convention described in the preceding paragraph will not be effective until finalized and may be changed prior to being finalized. Accordingly, it is possible that transfers of our shares could be considered to occur for U.S. federal income tax purposes when the transfer is completed without regard to our monthly convention for allocating income and deductions. In that event, our allocation method might be considered a monthly convention that does not literally comply with that requirement. If our monthly convention is not allowed by the final Treasury Regulations, the IRS may contend that our taxable income or losses must be reallocated among the holders of our shares. If such a contention were sustained, your income or loss allocation could be adjusted, possibly to your detriment. The board of directors is authorized to revise our method of allocation between transferors and transferees (as well as among holders whose interests otherwise could vary during a taxable period), which we may do if the final Treasury Regulations do not approve the allocation method described in the preceding paragraph.

### ***Adjusted Tax Basis of Shares***

Our distributions generally will not be taxable to you to the extent of your adjusted tax basis in our shares (see “—Treatment of Distributions” below). In addition, you will be allowed to deduct your allocable share of our losses (if any) only to the extent of your adjusted tax basis in your shares at the end of the taxable year in which the losses occur. Your initial tax basis in your shares will be generally equal to the amount of cash you paid for your shares and will be generally increased by your allocable share of our profits (and items of income and gain). Your adjusted tax basis in our shares will be generally decreased (but not below zero) by your allocable share of our losses (and items of loss, deduction and expense), the amount of cash distributed to you and our tax basis in property (other than cash) distributed to you by us. Moreover, your adjusted tax basis will include your allocable share of our liabilities, if any.

To the extent a deduction of your allocable share of our losses (if any) is not allowed because you had insufficient adjusted tax basis in your shares, you would be able to carry over such disallowed losses to subsequent taxable years and such losses would be allowed to the extent of your adjusted tax basis in your shares in those subsequent taxable years.

### ***Treatment of Distributions***

Cash distributions by us with respect to our shares or in redemption of less than all of your shares generally will not be taxable to you. Instead, such distributions will be treated as a distribution from a partnership and will reduce, but not below zero, your adjusted tax basis in your shares immediately before the distribution. If such distributions exceed your adjusted tax basis in your shares, the excess will be taxable to the holder as gain from a sale or exchange of shares (as described in “—Disposition of Our Shares” below). It is possible that partial redemptions made during the taxable year could result in taxable gain to you where no gain would otherwise have resulted if the same partial redemption were made at the end of the taxable year. A reduction in your allocable share of our liabilities, and certain distributions of marketable securities by us, are treated as cash distributions for U.S. federal income tax purposes.

### ***Disposition of Our Shares***

A sale or other taxable disposition of all or a part of your shares (including in redemption for cash of all of your shares) generally will result in the recognition of gain or loss in an amount equal to the difference, if any, between the amount realized on the disposition (including any cash deemed received by reason of the reduction in

your share of our liabilities) and your adjusted tax basis in your shares (as described in “—Adjusted Tax Basis of Shares” above). Your adjusted tax basis will be adjusted for this purpose by your allocable share of our income or loss for the year of such sale or other disposition. Any gain or loss recognized with respect to such sale or other disposition generally will be treated as capital gain or loss and will be long-term capital gain or loss if your holding period for your shares exceeds one year. A portion of such gain, however, will be treated as ordinary income under the Code to the extent attributable to your allocable share of unrealized gain or loss in our assets to the extent described in Section 751 of the Code. This may include, among other things, accrued market discount on debt securities having a stated redemption price at maturity that is greater than our tax basis in those debt securities and unremitted earnings of any CFC held by us, although in the case of a holder who is an individual, the amount treated as ordinary income may be limited pursuant to Section 1248 of the Code. If you dispose of your shares at a time when we hold stock in a PFIC that is not a qualified electing fund, or “QEF,” you would be treated as disposing of an interest in such PFIC to the extent of your pro rata share of such PFIC stock held by us. We do not currently hold, and do not currently intend to acquire, stock in a CFC or a PFIC.

The IRS has ruled that a partner who acquires interests in a partnership in separate transactions must combine those interests and maintain a single adjusted tax basis for all those interests. Upon a sale or other disposition of less than all of those interests, a portion of that adjusted tax basis must be allocated to the interests sold using an “equitable apportionment” method, which generally means that the adjusted tax basis allocated to the interests sold equals an amount that bears the same relation to the partner’s adjusted tax basis in all of the partner’s interests in the partnership as the value of the interests sold bears to the value of all of the partner’s interests in the partnership. Treasury Regulations under Section 1223 of the Code allow a selling holder of our shares who can identify shares transferred with an ascertainable holding period to elect to use the actual holding period of the shares transferred. Thus, according to the IRS ruling discussed above, a holder of our shares will be unable to select high or low basis shares to sell as would be the case with corporate stock but, according to the Treasury Regulations, such holder may designate specific shares sold for purposes of determining the holding period of shares transferred. A holder electing to use the actual holding period of shares transferred must consistently use that identification method for all subsequent sales or exchanges of shares. A holder considering the purchase of additional shares or a sale of shares purchased in separate transactions is urged to consult the holder’s own tax advisor as to the possible consequences of this IRS ruling and application of the Treasury Regulations.

#### ***Limitation on Deductibility of Capital Losses***

If you are an individual, any capital losses generated by us (or upon a disposition of our shares) generally will be deductible only to the extent of your capital gains for the taxable year plus up to \$3,000 of ordinary income (\$1,500 in the case of a married individual filing a separate return). Excess capital losses may be carried forward by individuals indefinitely. If you are a corporation, any capital losses generated by us (or upon a disposition of shares) generally will be deductible to the extent of your capital gains for the taxable year. Corporations generally may carry capital losses back three years and forward five years. You should consult your tax advisors regarding the deductibility of capital losses.

#### ***Limitation on Deductibility of Certain of Our Losses***

Individuals and certain closely held subchapter C corporations will be allowed to deduct their allocable share of our losses (if any) only to the extent of each such holder’s “at risk” amount in us at the end of the taxable year in which the losses occur. The amount for which a holder is at risk with respect to its interest generally is equal to its adjusted tax basis for such interest, less any amounts borrowed (1) in connection with its acquisition of such interest for which it is not personally liable and for which it has pledged no property other than its interest; (2) from persons who have a proprietary interest in us and from certain persons related to such persons; and (3) for which the holder is protected against loss through nonrecourse financing, guarantees or similar arrangements. To the extent that a holder’s allocable share of our losses is not allowed because the holder has an insufficient amount at risk in us, such disallowed losses may be carried over by the holder to subsequent taxable years and will be allowed if and to the extent of the holder’s at risk amount in subsequent years.

We do not expect to generate any material amount of income or losses from “passive activities” for purposes of Section 469 of the Code. However, to the extent that we generate any income from passive activities, such income may not be used to offset your passive activity losses from other activities. To the extent that we generate any losses from passive activities, such losses will be suspended and will only be allowed as an offset to

passive activity income from us in future years or allowed as a loss upon the complete disposition of a holder's interest in us. Accordingly, income allocated by us to you generally will not be able to be offset by your other passive activity losses, and passive activity losses allocated to you by us generally will not be able to be used to offset your other passive activity income. You should consult your tax advisors regarding the possible application of the limitations on the deductibility of losses from certain passive activities contained in Section 469 of the Code.

### ***Investment Interest Limitation***

Individuals and other noncorporate holders of our shares will be allowed to deduct their allocable share of our "investment interest" (within the meaning of Section 163(d) of the Code and the Treasury Regulations promulgated thereunder) only to the extent of each such holder's net investment income for the taxable year. A holder's net investment income generally is the excess, if any, of the holder's investment income from all sources (which is gross income from property held for investment such as an investment in our shares) over investment expenses from all sources (which are deductions allowed that are directly connected with the production of investment income). Investment income excludes net capital gain attributable to the disposition of property held for investment, as well as "qualified dividend income" that is taxable as long-term capital gains, unless the holder elects to pay tax on such gain or income at ordinary income rates.

To the extent that your allocable share of our investment interest is not allowed as a deduction because you have insufficient net investment income, you may carry over such disallowed investment interest to subsequent taxable years and such disallowed investment interest will be allowed to the extent of your net investment income in those subsequent years. If you borrow to finance the purchase of our shares, any interest paid or accrued on the borrowing will be allocated among our assets for purposes of determining the portion of such interest that is investment interest subject to the foregoing limitations or passive activity interest subject to the passive activity rules under Section 469 of the Code. The portion of such interest allocated to property held for investment (such as bonds or other securities) will be treated as investment interest. You should consult your tax advisors regarding the application to you of the allocation of such interest among our assets. Because the amount of a holder's allocable share of our investment interest that is subject to this limitation will depend on the holder's aggregate investment interest and net investment income from all sources for any taxable year, the extent, if any, to which our investment interest will be disallowed under this rule will depend on your particular circumstances each year.

### ***Limitation on Deduction of Certain Other Expenses***

We believe that the expenses incurred by us, including base management fees and incentive fees paid to our Manager, will generally not be treated as "miscellaneous itemized deductions" and will be deductible as ordinary trade or business expenses. An individual, estate or trust may deduct miscellaneous itemized deductions only to the extent that such deductions, in the aggregate, exceed 2% of the holder's adjusted gross income. The amount of a holder's allocable share of such expenses that is subject to this disallowance rule will depend on the holder's aggregate miscellaneous itemized deductions from all sources and adjusted gross income for any taxable year. In addition, miscellaneous itemized deductions are not deductible in determining the alternative minimum tax liability of a U.S. holder. Although we believe that our expenses will not be treated as miscellaneous itemized deductions, there can be no assurance that the IRS will not successfully challenge that treatment. In that event, a holder's inability to deduct all or a portion of such expenses could result in an amount of taxable income to such holder with respect to us that exceeds the amount of cash actually distributed to such holder for the year. You are urged to consult your tax advisors regarding your ability to deduct expenses incurred by us.

Our organizational expenses are not currently deductible, but must be amortized ratably over a period of 15 years. Our syndication expenses (i.e., expenditures made in connection with the marketing and issuance of shares) are neither deductible nor amortizable.

### ***Mutual Fund Holders***

U.S. mutual funds that are treated as RICs for U.S. federal income tax purposes are required, among other things, to meet an annual 90% gross income and quarterly 50% and 25% asset value tests under Section 851(b) of the Code to maintain their favorable U.S. federal income tax treatment. The treatment of an investment by a RIC in our shares for purposes of these tests will depend on whether we will be treated as a "qualified publicly traded partnership." If we are so treated, then our shares themselves are the relevant asset for purposes of the 50% and 25%

asset value tests and the net income from our shares is the relevant gross income for purposes of the 90% gross income test. In addition, the aggregate amount that a RIC can invest in the securities of one or more “qualified publicly traded partnerships” is limited to 25% of the RIC’s total assets. If, however, we are not treated as a “qualified publicly traded partnership,” then the relevant assets are the RIC’s allocable share of the underlying assets held by us and the relevant gross income is the RIC’s allocable share of the underlying gross income earned by us. However, the 25% limitation on a RIC’s ability to invest in the securities of “qualified publicly traded partnerships” would not apply. We will qualify as a “qualified publicly traded partnership” if we derive less than 90% of our income from sources that are qualifying income for purposes of the RIC 90% gross income test. We believe that we have not been, and anticipate that we will not in the future be, treated as a “qualified publicly traded partnership.” However, because such qualification will depend on the nature of our future investments, no complete assurance can be provided that we will or will not be treated as a “qualified publicly traded partnership” in any particular year. RICs should consult their own tax advisors regarding an investment in our shares.

### ***Unrelated Business Taxable Income***

We expect that tax-exempt holders of our shares will recognize a significant amount of unrelated business taxable income (“UBTI”) as a result of our indebtedness with respect to our assets. A holder that is a tax-exempt organization for U.S. federal income tax purposes and, therefore, is generally exempt from U.S. federal income taxation, may nevertheless be subject to “unrelated business income tax” to the extent, if any, that its allocable share of our income consists of UBTI. A tax-exempt partner in a partnership (or an entity or arrangement treated as partnership for U.S. federal income tax purposes) that regularly engages in a trade or business that is unrelated to the exempt function of the tax-exempt partner must include, in computing its UBTI, its pro rata share (whether or not distributed) of such partnership’s gross income derived from such unrelated trade or business. Moreover, such tax-exempt partner could be treated as earning UBTI to the extent that such entity derives income from “debt-financed property,” or if the partnership interest itself is debt financed. Debt-financed property means property held to produce income with respect to which there is “acquisition indebtedness” (e.g., indebtedness incurred in acquiring or holding property). We expect that we will incur “acquisition indebtedness” with respect to certain of our assets.

To the extent we recognize income in the form of interest and dividends from securities with respect to which there is “acquisition indebtedness” during a taxable year, the percentage of the income that will be treated as UBTI generally will be equal to the amount of the income times a fraction, the numerator of which is the “average acquisition indebtedness” incurred with respect to the securities, and the denominator of which is the “average amount of the adjusted basis” of the securities during the period such securities are held by us during the taxable year.

To the extent we recognize gain from disposition of securities with respect to which there is “acquisition indebtedness,” the portion of the gain that will be treated as UBTI will be equal to the amount of the gain times a fraction, the numerator of which is the highest amount of the “acquisition indebtedness” with respect to the securities during the twelve-month period ending with the date of their disposition, and the denominator of which is the “average amount of the adjusted basis” of the securities during the period such securities are held by us during the taxable year.

In addition, a portion of our income from any residual interest in a real estate mortgage investment conduit, or a REMIC, or a taxable mortgage pool arrangement owned by a REIT could be treated as “excess inclusion income.” See “—Nature of Our Business Activities—Excess Inclusion Income” below. Excess inclusion income is subject to tax as UBTI in the hands of most tax-exempt holders. We do not currently own residual interests in REMICs or interests in REITs.

**For certain types of tax-exempt entities, the receipt of any UBTI might have adverse consequences. Tax-exempt holders are strongly urged to consult their tax advisors regarding the tax consequences of owning our shares.**

### ***Shares Held Offshore***

After December 31, 2013, a U.S. withholding tax at a 30% rate will be imposed on distributions on our shares received by U.S. holders who own their shares through foreign accounts or foreign intermediaries if certain disclosure requirements related to U.S. accounts or ownership are not satisfied. In addition, if those disclosure requirements are not satisfied, a U.S. withholding tax at a 30% rate will be imposed after December 31, 2014 on proceeds from the sale of our shares received by U.S. holders who own our shares through foreign accounts or foreign intermediaries. Any withholding payment, if made by us, will be treated as a distribution of cash to the holder of shares with respect to whom the payment is made, and will reduce the amount of cash to which such holder would otherwise be entitled. We will not pay any additional amounts to the holder of such shares in respect to any amounts thus withheld.

## Taxation of Non-U.S. Holders of Our Shares

A non-U.S. holder will generally be subject to U.S. federal withholding taxes at the rate of 30% (or such lower rate provided by an applicable tax treaty) on its share of our gross income from dividends, interest (other than interest that constitutes “portfolio interest” within the meaning of the Code) and certain other income that is not treated as effectively connected with a U.S. trade or business. Although the matter is not entirely clear, income from derivative transactions may also be subject to U.S. federal withholding taxes. Moreover, dividend equivalent payments from certain derivative transactions are subject to U.S. federal withholding tax. We currently intend not to withhold on derivative income allocated to non-U.S. holders, except to the extent that such income is attributable to certain dividend equivalent payments. We expect that most of our interest income will constitute “portfolio interest” that is not subject to this withholding tax. We expect that any dividend income that we earn, including actual dividends received and consent dividends deemed received from any corporate or REIT subsidiaries we may form, will be subject to this withholding tax. In certain circumstances, the amount of any withholding tax could exceed the amount of cash that would have otherwise been distributed to you. Non-U.S. holders generally are not subject to U.S. federal income tax on capital gains (including gains recognized as a result of our mark-to-market election under Section 475(f) of the Code that are treated as ordinary income for U.S. federal income tax purposes) if (1) such gains are not effectively connected income of such non-U.S. holder (or, if certain income tax treaties apply, such gains are not attributable to a permanent establishment in the United States maintained by such non-U.S. holder); and (2) if such non-U.S. holder is an individual, such holder is not present in the United States for 183 or more days during the taxable year (provided that certain other conditions are met).

Non-U.S. holders treated as engaged in a U.S. trade or business are generally subject to U.S. federal income tax at the graduated rates applicable to U.S. holders on their net income that is considered to be effectively connected with such U.S. trade or business. Non-U.S. holders that are corporations may also be subject to a 30% branch profits tax on such effectively connected income. The 30% rate applicable to branch profits may be reduced or eliminated under the provisions of an applicable income tax treaty between the United States and the country in which the non-U.S. person resides or is organized.

While we expect that our method of operation will not result in our generating significant amounts of income treated as effectively connected with the conduct of a U.S. trade or business with respect to non-U.S. holders, there can be no assurance that the IRS will not successfully assert that some portion of our income is properly treated as effectively connected income with respect to such non-U.S. holders. In addition, if any REIT which we form as a subsidiary or in which we may own an interest recognizes gain from the disposition of a “United States real property interest,” such gain will be treated as income that is effectively connected with a U.S. trade or business, unless the class of stock we own in the REIT is regularly traded on an established securities market and we did not own more than 5% of that class of stock during the one-year period prior to the payment of the dividends that paid out such gain. Although we do not currently own stock in any REIT, we may in the future form a REIT subsidiary or invest in REITs. We do not expect any REIT which we form or in which we invest to generate material amounts of gain from the disposition of United States real property interests, but no complete assurance can be provided that any REIT will not generate income that is effectively connected with a U.S. trade or business (See “—Material U.S. Federal Income Tax Considerations Relating to Investments in REITs—Taxation of Holders of REIT Shares—Taxation of Non-U.S. Holders of REIT Shares”).

If a non-U.S. holder were treated as being engaged in a U.S. trade or business in any year because an investment by us in such year constituted a U.S. trade or business, such holder generally would be required to (1) file a U.S. federal income tax return for such year reporting its allocable share, if any, of our income or loss effectively connected with such trade or business and (2) pay U.S. federal income tax at regular U.S. tax rates on any such income. Moreover, a corporate non-U.S. holder might be subject to a U.S. branch profits tax on its allocable share of our effectively connected income. In addition, a non-U.S. holder would be subject to withholding at the highest applicable tax rate to the extent of the non-U.S. holder’s allocable share of our effectively connected income. Any amount so withheld would be creditable against such non-U.S. holder’s U.S. federal income tax liability, and such non-U.S. holder could claim a refund to the extent that the amount withheld exceeded such non-U.S. person’s U.S. federal income tax liability for the taxable year. Finally, if we are engaged in a U.S. trade or business, a portion of any gain recognized by an investor who is a non-U.S. holder on the sale or exchange of its shares may be treated for U.S. federal income tax purposes as effectively connected income, and hence such non-U.S. holder may be subject to U.S. federal income tax on the sale or exchange. To the extent our income is treated as

effectively connected income, it may also be treated as non-qualifying income for purposes of the qualifying income exception discussed above under “—Our Taxation—Classification of Ellington Financial LLC.”

In general, different rules from those described above apply in the case of non-U.S. holders subject to special treatment under U.S. federal income tax law, including a non-U.S. holder (1) who has an office or fixed place of business in the United States or is otherwise carrying on a U.S. trade or business; (2) who is an individual present in the United States for 183 or more days and has a “tax home” in the United States for U.S. federal income tax purposes; or (3) who is a former citizen or resident of the United States.

After December 31, 2013, a U.S. withholding tax at a 30% rate will be imposed on distributions on our shares received by certain non-U.S. holders if certain disclosure requirements related to U.S. accounts or ownership are not satisfied. In addition, if those disclosure requirements are not satisfied, a U.S. withholding tax at a 30% rate will be imposed after December 31, 2014 on proceeds from the sale of our shares received by certain non-U.S. holders. If payment of withholding taxes is required, non-U.S. holders that are otherwise eligible for an exemption from, or reduction of, U.S. withholding taxes with respect to such distributions and proceeds will be required to seek a refund from the IRS to obtain the benefit of such exemption or reduction. That payment, if made by us, will be treated as a distribution of cash to the holder of shares with respect to whom the payment is made, and will reduce the amount of cash to which such holder would otherwise be entitled. We will not pay any additional amounts to holders of such shares in respect to any amounts thus withheld.

If you are a non-U.S. holder, you are urged to consult your tax advisors with regard to the U.S. federal income tax consequences to you of owning, receiving distributions from and disposing of your shares, as well as the effects of state, local and non-U.S. tax laws.

#### ***U.S. Federal Estate Taxes for Non-U.S. Holders***

Non-U.S. holders who are individuals may be subject to U.S. federal estate tax on the value of U.S.-situs property owned at the time of their death. It is unclear whether partnership interests (such as our shares) will be considered to be U.S.-situs property. Accordingly, non-U.S. holders may be subject to U.S. federal estate tax on all or a portion of the value of our shares owned at the time of their death. Prospective non-U.S. holders who are individuals are urged to consult their tax advisors concerning the potential U.S. federal estate tax consequences with regard to our shares.

#### **Nature of Our Business Activities**

We have or may invest, directly or indirectly, in a variety of assets, including, but not limited to, debt and equity securities of various U.S. and foreign issuers (including short positions with respect to such securities) and interest rate, credit risk, and other derivatives. Such investments have different tax consequences, which may vary depending on their particular terms and your particular circumstances. Certain of our business activities are subject to special and complex U.S. federal income tax provisions that may, among other things, (1) cause us (and thus you) to recognize income or gain without a corresponding receipt of cash, (2) adversely affect the timing as to when a purchase or sale of stock or securities is deemed to occur, and (3) adversely alter the tax characterization of certain financial transactions.

The discussion below describes the U.S. federal income tax considerations that may be relevant to some, but not to all, of our investments and contemplated investments, including the qualification of such income for purposes of the qualifying income exception. Accordingly, you are urged to consult your tax advisors with regard to the U.S. federal income tax consequences to you of our business activities.

#### ***Interest Income***

Interest income derived by us will generally be qualifying income for purposes of the qualifying income exception provided the income is not derived from “the conduct of a financial or insurance business” and is not based, directly or indirectly, on the profits of any person. Although there is no direct authority defining what constitutes “the conduct of a financial or insurance business,” we believe that our investment activities generally will not constitute “the conduct of a financial or insurance business” for purposes of the qualifying income exception. For example, we believe that we have not been engaged, and do not intend to engage, in the loan origination

business, either directly or indirectly through our Manager and its affiliates. Nevertheless, there can be no assurance that the IRS will not successfully contend that all or a portion of our interest income is related to the “conduct of a financial or insurance business,” in which case such interest income would not be treated as qualifying income for the qualifying income exception and we could fail to qualify for that exception. We intend to continue to conduct our operations so that at least 90% of our gross income in each taxable year is qualifying income for purposes of the qualifying income exception. See “—Our Taxation—Classification of Ellington Financial LLC” above.

### ***Derivative Income***

From time to time, we enter into derivative transactions, such as interest rate swaps, caps and floors, credit default swaps, total rate of return swaps, options to purchase these items, and futures and forward contracts. We expect that many of our derivative transactions will be treated as “notional principal contracts” for U.S. federal income tax purposes. For purposes of the qualifying income exception, unless we are treated as a dealer in notional principal contracts, our income from a notional principal contract will be treated as qualifying income, provided the property, income, or cash flow that measures the amounts to which we are entitled under the contract would give rise to qualifying income if held or received directly by us or the notional principal contract is related to our business of investing in stock or securities. We do not anticipate that we would be treated as a dealer in notional principal contracts. We expect that, in general, payments under our derivative instruments will be measured by reference to an interest rate or interest rate index, with a cash flow that would be treated as interest income if received directly. As stated above, interest (other than interest derived from the “conduct of a financial or insurance business” or interest that is based, directly or indirectly, on the profits of any person) is qualifying income for purposes of the qualifying income exception. In addition, we expect that all income and gain from our notional principal contracts will be related to our business of investing in stock or securities. Accordingly, we expect that the income and gain from such derivative transactions will be qualifying income for purposes of the qualifying income exception. However, the rules regarding notional principal contracts are complex, and there can be no assurance that the IRS will not successfully challenge our characterization of a derivative transaction as a notional principal contract. In addition, we may enter into derivative transactions that do not produce qualifying income for the qualifying income exception. We intend to structure our derivative transactions in a manner that does not jeopardize our satisfaction of the qualifying income exception. See “—Our Taxation —Classification of Ellington Financial LLC” above.

### ***Qualified Dividends and Certain Capital Gains***

Dividends and capital gains earned by us will generally be qualifying income for purposes of the qualifying income exception. We also believe that our income generated from short sales of securities generally constitutes qualifying income for purposes of the qualifying income exception. Tax legislation enacted in 2003, 2006 and 2010 reduced the U.S. federal income tax rates on (1) capital gains received by taxpayers taxed at individual rates and (2) “qualified dividend income” received by taxpayers taxed at individual rates from certain domestic and foreign corporations. Subject to the discussion under “—Taxation of Holders of Our Shares—Disposition of Our Shares,” the reduced rates applicable to capital gains generally will also apply to capital gains recognized by holders of our shares who sell the shares that they have held for more than one year. The reduced rates, which do not apply to short-term capital gains and income generated from short sales of securities, generally apply to qualified dividends received and long-term capital gains from sales or exchanges recognized during taxable years beginning on or prior to December 31, 2012. Any dividend income allocated to holders that are corporations generally will not be eligible for a full dividend-received deduction.

### ***Domestic Corporate Subsidiaries***

We may form domestic corporate subsidiaries to make certain investments that could generate income that would not be qualifying income if earned directly by us. For example, we may purchase loans through a domestic corporate subsidiary if we anticipate that our activities with respect to those loans could cause us to be treated as engaged in a “financial business” for purposes of the qualifying income exception. Any domestic corporate subsidiary would be subject to federal, state, and local corporate income tax on its income. To the extent that any such domestic corporate subsidiary pays any taxes, it will have less cash available for distribution to us, which would reduce the amount of cash available for distribution to holders of our shares. Our dividend income from any domestic corporate subsidiary will be qualifying income for the qualifying income exception.

## ***Foreign Corporate Subsidiaries***

Although we currently have no plans to invest in foreign corporate subsidiaries, we may in the future acquire equity interests in foreign corporate subsidiaries that are treated as corporations for U.S. federal income tax purposes (each, a “foreign corporate subsidiary”), including foreign corporate subsidiaries formed to issue CDO securities. We anticipate that any such foreign corporate subsidiary in which we would own an interest would be treated as a CFC or PFIC for U.S. federal income tax purposes and, in the case of a PFIC, we would elect to treat the PFIC as a QEF. Our income from a CFC or PFIC generally will be qualifying income for purpose of the qualifying income exception. However, each holder of our shares will generally be required to include in income a portion of the income earned by the CFC or PFIC regardless of whether we receive cash distributions from the CFC or PFIC or the holder receives a distribution from us. Moreover, such income inclusions from a CFC or PFIC will not be eligible for the favorable tax rate applicable to “qualified dividend income,” and any gain allocated to you from a disposition of stock in a CFC by us would be treated as ordinary income to the extent of your allocable share of the current and/or accumulated earnings and profits of the CFC. Net losses (if any) of a non-U.S. entity owned by us that is treated as a CFC or PFIC will not pass through to the holders of our shares.

The Code and the Treasury Regulations promulgated thereunder provide a specific exemption from U.S. federal income tax to non-U.S. corporations that restrict their activities in the United States to trading in stock and securities (or any activity closely related thereto) for their own account whether such trading (or such other activity) is conducted by the corporation or its employees through a resident broker, commission agent, custodian or other agent. We anticipate that any foreign corporate subsidiaries that we may hold in the future would either (1) rely on the exemption described above or (2) otherwise operate in a manner so that they will not be subject to U.S. federal income tax on their net income at the entity level. There can be no assurance, however, that any foreign corporate subsidiaries in which we own an interest would be able to satisfy the requirements for such exemption and, therefore, would not be subject to U.S. federal income tax on their income on a net basis.

You are urged to consult your tax advisor regarding the consequences of our future investment in non-U.S. entities.

## ***Non-U.S. Currency Gains or Losses***

If we make an investment denominated in a currency other than the U.S. dollar, then we may recognize gain or loss attributable to fluctuations in such currency relative to the U.S. dollar. We may also recognize gain or loss on such fluctuations occurring between the time we obtain and dispose of non-U.S. currency, between the time we accrue and collect income denominated in a non-U.S. currency, or between the time we accrue and pay liabilities denominated in a non-U.S. currency. Such gains or losses generally will be treated as ordinary income or loss, and such gain generally will be treated as qualifying income under the qualifying income exception.

## ***Non-Cash Income from Our Investments***

As discussed below, we make investments that cause us (and thus you) to recognize income or gain without a corresponding receipt of cash. This so-called “non-cash” or “phantom income” could arise for a variety of reasons, including:

- We recognize taxable income in advance of the related cash flow if any debt security is deemed to have original issue discount. The accrued original issue discount is treated as interest income by us and an applicable portion will be passed-through to you, even though we generally do not receive payments corresponding to this income until the maturity of or the disposition of the debt security.
- We may recognize taxable income in advance of related cash flow on our assets as a result of our mark-to-market election. See “—Mark-to-Market Election.” For example, we will recognize ordinary income at the end of each taxable year to the extent of any increase in unrealized gain on our assets.
- If we form foreign corporate subsidiaries in the future, we would be required to include in income on a current basis the earnings of certain foreign corporate subsidiaries regardless of whether there has been a cash distribution of such earnings.

- If we form a REIT subsidiary in the future, the REIT, and we, as a shareholder of the REIT, may recognize phantom income on consent dividends we are deemed to receive and/or on deemed exchanges of any distressed real estate loans in which the REIT may invest associated with modifications or foreclosures of such loans. See “—Material U.S. Federal Income Tax Considerations Relating to Investments in REITs—Taxation of a REIT.”

You will be required to take such “non-cash” or “phantom income” income into account in determining your taxable income, regardless of whether you receive a cash distribution from us. Accordingly, you may not receive cash distributions equal to your tax liability attributable to your share of our taxable income.

#### ***Mark-to-Market Election***

We intend to continue to qualify as a trader in securities and have elected to mark-to-market each year our positions in securities that we hold as a trader, in accordance with Section 475(f) of the Code. The election can only be revoked with the consent of the IRS. As a result of the election, we are required each year to mark-to-market certain securities that we hold, and thereby recognize gain or loss as if we had sold those securities for their fair market value. Our basis in the marked-to-market securities is adjusted accordingly. Our mark-to-market election also requires us to recognize any accrued market discount on our debt securities held at the end of each year. Any gain that we recognize from the mark-to-market deemed sale of the securities will be treated as qualifying income for purposes of the qualifying income exception. See “—Our Taxation—Classification of Ellington Financial LLC” above, for a discussion of this requirement.

There are limited authorities under Section 475(f) of the Code as to what constitutes a trader for U.S. federal income tax purposes. Under other sections of the Code, the status of a trader in securities depends on all of the facts and circumstances, including the nature of the income derived from the taxpayer’s activities, the frequency, extent and regularity of the taxpayer’s securities transactions, and the taxpayer’s investment intent. Therefore, there can be no assurance that we have qualified or will continue to qualify as a trader in securities eligible for the mark-to-market election. We have not received an opinion from counsel or a ruling from the IRS regarding our qualification as a trader. If our eligibility for, or our application of, the mark-to-market election were successfully challenged by the IRS, in whole or in part, it could, depending on the circumstances, result in retroactive (or prospective) changes in the amount of taxable income and the tax character of taxable income recognized by us and allocated to the holders of our shares. An inability to utilize the mark-to-market election might also have an adverse effect on our ability to provide tax information to holders of our shares on a timely basis. The IRS could also challenge any conventions that we use in computing, or in allocating among holders of our shares, any gain or loss resulting from the mark-to-market election. See “—Taxation of Holders of Our Shares—Allocation of Profits and Losses” above.

In addition, we intend to take the position that our mark-to-market gain or loss, and any gain or loss on the actual disposition of marked-to-market assets, should be treated as ordinary income or loss. However, because the law is unclear as to the treatment of assets that are held for investment, and the determination of which assets are held for investment, the IRS could take the position that the mark-to-market gain or loss attributable to certain assets should be treated as capital gain or loss and not as ordinary gain or loss. In that case, we will not be able to offset our non-cash ordinary income with capital losses from such assets, which could increase the amount of our non-cash taxable income recognized by us and allocated to the holders of our shares. The tax on such taxable income allocated to you may be in excess of our cash distributions to you.

#### ***Excess Inclusion Income***

Excess inclusion income is generated by residual interests in REMICs and taxable mortgage pool arrangements owned by REITs. Although we do not currently own any residual interests in REMICs or interests in REITs, we may acquire such investments in the future. We would be taxable at the highest corporate income tax rate on any excess inclusion income from a REMIC residual interest that is allocable to the percentage of our shares held in record name by disqualified organizations and, although the law is not clear, we may also be subject to that tax if excess inclusion income arises from a taxable mortgage pool arrangement owned by a REIT in which we invest. Disqualified organizations are generally certain cooperatives, governmental entities and tax-exempt organizations that are exempt from UBTI (including certain state pension plans and charitable remainder trusts). Disqualified organizations are permitted to own our shares. Because this tax would be imposed on us, all of our investors,

including investors that are not disqualified organizations, would bear a portion of the tax cost associated with our ownership of REMIC residual interests and with the classification of any REIT subsidiaries or a portion of the assets of any REIT subsidiaries in which we may invest as a taxable mortgage pool. A RIC or other pass-through entity owning our shares may also be subject to tax at the highest corporate rate on any excess inclusion income allocated to their record name owners that are disqualified organizations. Nominees who hold our shares on behalf of disqualified organizations also potentially may be subject to this tax. Excess inclusion income cannot be offset by losses of our holders. If the holder is a tax-exempt entity and not a disqualified organization, then this income would be fully taxable as UBTI. A non-U.S. holder would be subject to U.S. federal income tax withholding on this income without reduction or exemption pursuant to any otherwise applicable income tax treaty.

### ***“Anti-Stapling” Rules***

If we were subject to the “anti-stapling” rules of Section 269B of the Code, we would incur a significant tax liability as a result of owning (1) more than 50% of the value of both a domestic corporate subsidiary and a foreign corporate subsidiary or (2) more than 50% of both a REIT and a domestic or foreign subsidiary. When a foreign corporate subsidiary and a domestic corporate subsidiary are treated as “stapled entities,” the foreign corporation is treated as a domestic corporation subject to U.S. federal corporate income tax. When a REIT and a domestic or foreign subsidiary are treated as “stapled entities,” the REIT and the domestic or foreign subsidiary are treated as one entity for purposes of the tax requirements applicable to REITs, which could result in the REIT failing to qualify as a REIT for U.S. federal income tax purposes.

Currently, we do not have any domestic or foreign subsidiaries that are treated as regarded entities for U.S. federal income tax purposes or REIT subsidiaries, but we may acquire such subsidiaries in the future. Because we intend to continue to own a substantial proportion of our assets directly or through entities that are treated as disregarded entities for U.S. federal income tax purposes, we do not believe that the “anti-stapling” rules would apply if we were to acquire domestic or foreign subsidiaries or REIT subsidiaries in the future. However, there can be no assurance that the IRS would not successfully assert a contrary position.

### ***Personal Holding Company Tax***

We do not currently have any corporate subsidiaries, but we may acquire such subsidiaries in the future. Certain majority-owned corporate subsidiaries that we may acquire in the future could be treated as personal holding companies for U.S. federal income tax purposes. A personal holding company is a “closely-held” corporation at least 60% of whose income constitutes “personal holding company income,” which generally includes dividends, interest, certain royalties, annuities and rents. We anticipate that all of our majority-owned corporate subsidiaries will be treated as “closely-held” under the constructive ownership rules applicable to personal holding companies. In addition, substantially all of the income of certain of those subsidiaries will constitute personal holding company income. A personal holding company generally is subject to a 15% (or 35% starting January 1, 2013) corporate tax on its personal holding company income that is not distributed, or treated as distributed, during the year in which such income is earned. However, certain liquidating distributions are not treated as distributions for that purpose. We intend to cause any personal holding company subsidiaries to distribute their income so as to avoid the personal holding company tax.

## **Administrative Matters**

### ***Section 754 Election***

We have elected under Section 754 of the Code to adjust the tax basis in all or a portion of our assets in the event of a distribution of property to a holder or in the event of a transfer of an interest in us, including our shares, by sale or exchange or as a result of the death of a holder. We are also required to reduce the tax basis in our assets in connection with certain redemptions and dispositions of our shares. As a result of our election under Section 754 of the Code, each holder that purchases our shares will have an initial tax basis in our assets that reflects the fair market value of our assets at the time of each holder’s purchase. Because our holders are treated as having differing tax bases in our assets, a sale of an asset by us may cause holders to recognize different amounts of gain or loss or may cause some holders to recognize a gain and others to recognize a loss. Depending on when a holder purchases our shares and the fair market value of our assets at that time, the holder may recognize gain for U.S. federal income tax purposes from the sale of certain of our assets even though the sale would cause us to recognize a loss for financial

accounting purposes. In addition, if we redeem all of the shares of a holder, pursuant to our share repurchase program or otherwise, then our tax basis in our assets will be reduced by the amount of the holder's loss, if any, recognized on the redemption. As a result of our section 475(f) election and the rules applicable to partnerships, the remaining holders may be required to recognize additional income attributable to that reduction in our tax basis in our assets. An election under Section 754 of the Code can be revoked only with the consent of the IRS.

The calculations under Section 754 of the Code are complex, and there is little legal authority concerning the mechanics of the calculations in the context of publicly traded partnerships. To help reduce the complexity of those calculations and the resulting administrative costs to us, we will apply certain conventions in determining and allocating basis adjustments. Those conventions may cause some of our investors to be allocated more taxable income than if we had not applied these conventions. It is possible that the IRS will successfully assert that the conventions we intend to use do not satisfy the technical requirements of the Code or Treasury Regulations and, thus, will require different basis adjustments to be made. Such different basis adjustments, which may be retroactive, could adversely affect the manner and timing in which our income, gain, loss, deduction and credit is allocated to certain holders of our shares.

#### ***Technical Terminations***

Subject to the electing large partnership rules described below, we will be considered to have been terminated for U.S. federal income tax purposes if there is a sale or exchange of 50% or more of the total interests in our capital and profits within a 12-month period. Our termination for tax purposes would result in the closing of our taxable year for all holders of the shares and we would be required to mark-to-market certain securities that we hold, and thereby recognize gain or loss as if we had sold those securities for their fair market value on the date of termination. In the case of a holder that disposes of its shares during a calendar year in which we have a technical termination, the termination may cause the holder to recognize more taxable income than the holder would have had there not been a termination. In the case of a holder reporting on a taxable year other than a fiscal year ending on our year end, which is expected to continue to be the calendar year, the closing of our taxable year may result in more than 12 months of our taxable income or loss being includable in the holder's taxable income for the year of termination. We would be required to satisfy the qualifying income exception for each tax period, we would lose our current tax elections and we would be required to make new tax elections after a termination, including a new tax election under Section 754 of the Code and a new mark-to-market election under Section 475(f) of the Code. A termination could also result in penalties if we were unable to determine that the termination had occurred. In the event that we become aware of a termination, we will use commercially reasonable efforts to minimize any such penalties. Moreover, a termination might either accelerate the application of, or subject us to, any tax legislation enacted before the termination.

#### ***Information Returns***

We have agreed to use reasonable efforts to furnish to you tax information (including IRS Schedule K-1s) as promptly as practicable after the end of each taxable year, which describes your allocable share of our income, gain, loss, deduction and credit for the preceding taxable year. In preparing this information, we will use various accounting and reporting conventions to determine your allocable share of income, gain, loss, deduction and credit. Delivery of this information will be subject to delay in the event of, among other reasons, the late receipt of any necessary tax information from an investment in which we hold an interest. It is therefore possible that, in any taxable year, you will need to apply for extensions of time to file your tax returns. The IRS may successfully contend that certain of these reporting conventions are impermissible, which could result in an adjustment to your income or loss, which may be retroactive. If you are a non-U.S. holder, there can be no assurance that this information will meet your jurisdiction's tax compliance requirements.

It is possible that we may engage in transactions that subject us and, potentially, the holders of our shares to other information reporting requirements with respect to an investment in us. You may be subject to substantial penalties if you fail to comply with such information reporting requirements. You should consult with your tax advisors regarding such information reporting requirements.

### ***Nominee Reporting***

Persons who hold our shares as nominees for another person are required to furnish to us (1) the name, address and taxpayer identification number of the beneficial owner and the nominee; (2) whether the beneficial owner is (A) a person that is not a U.S. person, (B) a foreign government, an international organization or any wholly-owned agency or instrumentality of either of the foregoing, or (C) a tax-exempt entity; (3) the amount and description of shares held, acquired or transferred for the beneficial owner; and (4) specific information including the dates of acquisitions and transfers, means of acquisitions and transfers, and acquisition costs for purchases, as well as the amount of net proceeds from sales. A penalty of \$50 per failure, up to a maximum of \$100,000 per calendar year, is imposed by the Code for failure to report that information to us.

Brokers and financial institutions are required to furnish additional information about the beneficial owners, including whether they are U.S. persons and specific information on shares they acquire, hold or transfer for their own account. The nominee is required to supply the beneficial owner of the shares with the information furnished to us. If we do not receive information from these brokers, financial institutions and nominees in a timely manner, then we may not be able to provide tax information to you in a timely manner.

### ***Taxable Year***

A partnership is required to have a tax year that is the same tax year as any partner, or group of partners, that owns a majority interest (more than 50%) in the partnership. Our taxable year is currently the calendar year. A partnership also is required to change its tax year every time a group of partners with a different tax year end acquires a majority interest, unless the partnership has been forced to change its tax year during the preceding two year period. In the event the majority interest in us changes to a group of holders with a different tax year and we have not been forced to change our tax year during the preceding two year period, we would be required to change our tax year to the tax year of that group of holders.

### ***Elective Procedures for Large Partnerships***

The Code allows large partnerships to elect streamlined procedures for income tax reporting. This election, if made, would reduce the number of items that must be separately stated on IRS Schedule K-1s that are issued to the holders of our shares, and such IRS Schedules K-1s would have to be provided on or before March 15 following the close of each taxable year. In addition, this election would prevent us from suffering a “technical termination” (which would close our taxable year) if, within a 12-month period, there is a sale or exchange of 50% or more of our total interests. If an election is made, IRS audit adjustments will flow through to the holders of the shares for the year in which the adjustments take effect, rather than the holders of the shares in the year to which the adjustment relates. In addition, we, rather than the holders of our shares individually, generally will be liable for any interest and penalties that result from an audit adjustment. We have not elected and do not currently anticipate that we will elect to be subject to the large partnership procedures.

### ***Treatment of Amounts Withheld***

If we are required to withhold any U.S. tax on distributions made to any holder of our shares, we will pay such withheld amount to the IRS. That payment, if made, will be treated as a distribution of cash to the holder of the shares with respect to whom the payment was made and will reduce the amount of cash to which such holder would otherwise be entitled.

### ***Tax Audits***

Adjustments in tax liability with respect to our items generally will be made at the Ellington Financial LLC level in a partnership proceeding rather than in separate proceedings with each holder. Ellington Financial Management LLC will represent us as our “tax matters partner” during any audit and in any dispute with the IRS. If Ellington Financial Management LLC ceases to own shares or ceases to be our Manager, our board of directors may designate a replacement tax matters partner. Each holder of our shares will be informed of the commencement of an audit of us. In general, the tax matters partner may enter into a settlement agreement with the IRS on behalf of, and that is binding upon, the holders of our shares.

### ***Tax Shelter Regulations***

In certain circumstances, a holder who disposes of our shares resulting in the recognition by such holder of significant losses in excess of certain threshold amounts may be obligated to disclose its participation in such transaction, or a “reportable transaction,” in accordance with regulations governing tax shelters and other potentially tax-motivated transactions, or the “Tax Shelter Regulations.” In addition, an investment in us may be considered a “reportable transaction” if, for example, we recognize certain significant losses in the future. You should consult with your tax advisors concerning any possible disclosure obligation under the Tax Shelter Regulations with respect to the disposition of your shares or your allocable share of certain losses incurred by us.

### ***Backup Withholding***

We will be required in certain circumstances to backup withhold on certain payments paid to noncorporate holders of our shares who do not furnish us with their correct taxpayer identification number (or, in the case of individuals, their social security number) and certain certifications, or who are otherwise subject to backup withholding. Backup withholding is not an additional tax. Any amounts withheld from payments made to you may be refunded or credited against your U.S. federal income tax liability, if any, provided that the required information is timely furnished to the IRS.

### ***New Legislation or Administrative or Judicial Action***

The rules dealing with U.S. federal income taxation are constantly under review by persons involved in the legislative process, the IRS and the Treasury, frequently resulting in revised interpretations of established concepts, statutory changes, revisions to regulations and other modifications and interpretations. The IRS pays close attention to the proper application of tax laws to partnerships. The present U.S. federal income tax treatment of an investment in our shares may be modified by administrative, legislative or judicial interpretation at any time, and any such action may affect investments and commitments previously made. No assurance can be given as to whether, or in what form, any changes, revisions or proposals affecting us or our shareholders will be enacted.

The U.S. federal income tax rules relating to publicly traded partnerships are currently under review by Congress, and certain legislative proposals have been made that would affect the tax treatment of publicly traded partnerships. While we believe that the current legislative proposals would not adversely affect the manner in which we will be taxed, no assurance can be given as to whether, or in what form, such proposals will ultimately be enacted, or whether they will have an effect on us.

We and holders of our shares could be adversely affected by any such change in, or any new, tax law, regulation or interpretation. Our organizational documents and agreements permit the board of directors to modify the operating agreement from time to time, without the consent of the holders of shares, in order to address certain changes in U.S. federal income tax regulations, legislation or interpretation. In some circumstances, such revisions could have a material adverse effect on some or all of the holders of our shares.

### ***Certain State, Local and Non-U.S. Tax Matters***

Holders of our shares may be subject to various state, local and non-U.S. taxes and tax filing requirements. You are urged to consult your tax advisors with respect to the state, local and non-U.S. tax consequences of acquiring, owning and disposing of your shares, including potential state tax filing requirements.

### ***Material U.S. Federal Income Tax Considerations Relating to Investments in REITs***

#### ***General***

We do not currently own an interest in any REITs, but we may invest in REITs in the future. We may form a REIT subsidiary for a variety of reasons, including, without limitation, in order to engage in certain mortgage-related activities that generate income that might not be considered qualifying income for the publicly traded partnership gross income test, but that we believe would be considered qualifying income for the various REIT gross income tests. Any dividend income from a REIT subsidiary we may form will be qualifying income for purposes of the

qualifying income exception. In light of our potential investments in REITs and the complexity of the REIT rules, certain aspects of those rules are discussed below.

### ***Taxation of a REIT***

Under the Code, a REIT itself is generally not subject to tax to the extent that it currently distributes its income to its shareholders. To qualify as a REIT, an entity is required to meet a number of technical U.S. federal income tax requirements, including various tests regarding the sources of its income, the nature and diversification of its assets, the amounts it distributes to its shareholders and the ownership of its shares. In summary form, these technical requirements include the following:

- a REIT must have at least 100 shareholders;
- no more than 50% in value of the REIT's outstanding capital stock may be owned, directly or indirectly, by five or fewer individuals (defined to include natural persons, private foundations, some employee benefit plans and trusts, and some charitable trusts certain entities) during the last half of any calendar year (other than the first REIT taxable year);
- a REIT generally must distribute 90% of its REIT taxable income each year to its shareholders;
- 75% of a REIT's gross income must be from rents from real property, interest on mortgages and certain real estate related income, or the "75% gross income test," and 95% of the REIT's gross income must be derived from those sources together with certain types of passive investment income, including interest and dividends, or the "95% gross income test";
- at least 75% of the value of a REIT's total assets at the end of each calendar quarter must be represented by real estate assets (which generally includes interest in real property, stock or other entities that qualify as REITs, interest in mortgage loans secured by real property, investments in stock or debt instruments during the one-year period following the receipt of new capital and regular and residual interests in a REMIC), cash and cash items and government securities, or the "75% asset test"; and
- the amount of securities of a single issuer, other than a taxable REIT subsidiary, that a REIT holds at the end of each calendar quarter generally must not exceed either 5% of the value of its gross assets or 10% of the voting securities or 10% of the value of such issuer's outstanding securities, or the "10% value test."

A REIT in which we invest will generally not be subject to U.S. federal income tax on the portion of its ordinary income and capital gain it distributes currently or is deemed to distribute to its shareholders. The REIT would be subject to tax at corporate rates on any net ordinary income or capital gain not so distributed. The REIT would also be subject to a tax equal to 100% of net income from any prohibited transaction and to alternative minimum tax liability (which could arise if it has significant items of tax preference). A "prohibited transaction" is a sale of inventory or property held for sale to customers in the ordinary course of business.

If a REIT in which we invest failed to qualify as a REIT and was not able to cure such failure under the applicable provisions of the Code, it would be subject to U.S. federal income tax (including any applicable alternative minimum tax) on its taxable income at regular corporate rates, and it would not be permitted to deduct distributions to its shareholders. In addition, to the extent of current and accumulated earnings and profits, all distributions we receive would be taxable to our holders as dividend income, although, subject to certain limitations under the Code, corporate distributees could be eligible for the dividends-received deduction and individual U.S. holders could be eligible for the reduced U.S. federal income tax rate on corporate dividends (through December 2012). Unless entitled to relief under specific statutory provisions, such REIT and any "successor entity" will also be disqualified from taxation as a REIT for the four taxable years following the year in which it lost its qualification. It is not possible to state whether in all circumstances a REIT subsidiary would be entitled to this statutory relief.

The acquisition of distressed debt by a REIT may cause the REIT, and thus, Ellington Financial, as a shareholder of the REIT, to recognize phantom (or non-cash) income for U.S. federal income tax purposes. For example, if a REIT acquired non-publicly traded distressed debt and then significantly modified that debt, it would

recognize gain on the resulting deemed exchange equal to the difference between the adjusted issue price of the modified distressed debt and its adjusted tax basis in the unmodified distressed debt. Because any distressed debt would typically be acquired by a REIT at a significant discount, the REIT's adjusted tax basis in the unmodified distressed debt would likely be significantly lower than the adjusted issue price of the modified distressed debt. Accordingly, if the REIT significantly modified non-publicly traded distressed debt, it could recognize a substantial amount of taxable income without receiving any cash. Foreclosing on non-performing distressed debt acquired at a discount may also cause the REIT to recognize a substantial amount of taxable income without receiving any cash. This "phantom income" will increase the amount of taxable income that the REIT would be required to distribute to us to satisfy the REIT distribution requirement and avoid corporate income and excise taxes. To satisfy that requirement and avoid those taxes, the REIT may have to sell assets, borrow funds at inopportune times or make non-cash "consent" dividends to us.

The REIT rules likely will limit the ability of any REIT we form to invest in distressed debt. The REIT rules generally provide that a portion of the gross income from undersecured loans (*i.e.*, loans in which the principal amount of the loan outstanding exceeds the fair market value of the real property securing the loan as the date the loan is acquired) will not be qualifying income for the 75% gross income test. A portion of such loan may not be a qualifying asset for purposes of the 75% asset test. The non-qualifying portion of such a loan would be subject to, among other requirements, the 10% value test. The face amount of a distressed debt will typically exceed the fair market value of the real property securing the debt on the date the REIT commits to acquire the debt. Because distressed debt that a subsidiary REIT may acquire may produce a significant amount of non-qualifying income for purposes of the 75% gross income test and a significant portion of a distressed debt may be treated as a non-qualifying asset for the REIT asset tests, a subsidiary REIT may be limited in its ability to invest in distressed debt and maintain its qualification as a REIT.

Further, the ability of any REIT subsidiary to engage in certain transactions relating to distressed debt may be limited by the prohibited transaction rules applicable to REITs. In general, prohibited transactions are sales or other dispositions of property, other than foreclosure property, but including loans, held primarily for sale to customers in the ordinary course of business. In order to avoid the prohibited transactions tax, a REIT subsidiary may choose not to engage in certain sales of distressed loans or dispositions of real property acquired through foreclosure. Alternatively, a REIT subsidiary may engage in these transactions through a taxable REIT subsidiary. The prohibited transactions tax does not apply to assets sold through a taxable REIT subsidiary. However, any gain or income recognized by taxable REIT subsidiaries on such sales is fully taxable at regular U.S. corporate income tax rates. If we form a REIT subsidiary to acquire distressed mortgage loans, we anticipate that it would have a taxable REIT subsidiary that would hold certain assets that it intended to sell, including property acquired on foreclosure and certain of such mortgage loans.

#### ***Taxation of Holders as a Result of Our Ownership of REIT Shares***

You will be allocated a portion of the income that we realize with respect to our ownership of the equity of any REIT in which we invest. You generally will be taxed with respect to this allocated income in the same manner as if you held the REIT shares directly.

*U.S. Holders.* Distributions made by a REIT to us out of current or accumulated earnings and profits (and not designated as capital gain dividends) will be taken into account by our taxable U.S. holders as ordinary income and will not be eligible for the dividends-received deduction for corporations or the reduced rate of U.S. federal income tax on qualified dividend income for taxpayers taxed at individual rates (through December 31, 2012). Distributions that a REIT designates as capital gain dividends will be taxed as long-term capital gains (to the extent they do not exceed the REIT's actual net capital gain for the taxable year) without regard to the period for which the holder has held its shares. Corporate holders, however, may be required to treat up to 20% of certain capital gain dividends as ordinary income. Distributions in excess of current and accumulated earnings and profits will generally not be taxable to the extent that they do not exceed our adjusted basis in the REIT, but rather will reduce such adjusted basis. To the extent that such distributions exceed our adjusted basis in our shares of the REIT, they will be included in income as long-term capital gain (or short-term capital gain if the shares have been held for one year or less), assuming the shares are a capital asset in our hands. Any consent dividends deemed paid by a REIT will be taxable as ordinary income to the holders to the extent of the REIT's earnings and profits, even though no cash will be distributed by the REIT. We will not be able to pass through any net operating losses or capital losses of a REIT to our holders.

Gain on the sale of our shares in a REIT will be treated as long-term or short-term capital gain rates, depending on how long the shares were held, and assuming the shares were a capital asset in our hands. In general, however, any loss upon a sale or exchange of shares, to the extent that we held such shares for six months or less (after applying certain holding period rules) will be treated as a long-term capital loss to the extent of previous distributions from the REIT that were required to be treated as long-term capital gain.

*Tax-Exempt Holders.* Unless the REIT is a “pension-held REIT,” distributions by a REIT to us generally will not constitute UBTI to our holders that are tax-exempt entities, other than any amounts that represent excess inclusion income, provided that the REIT shares are not debt-financed in our hands or used by us in an unrelated trade or business and the holder’s shares in us are not debt-financed or used in an unrelated trade or business. Tax-exempt holders are strongly urged to consult their tax advisors regarding the tax consequences of owning shares in a REIT.

*Taxation of Non-U.S. Holders of REIT Shares.* Dividends received by us from a REIT that are not attributable to gains from the sale of “United States real property interests” and allocable to Non-U.S. holders of our shares would be subject to U.S. withholding tax at a 30% rate (subject to reduction by applicable treaty). For most types of foreign shareholders, dividends that are attributable to excess inclusion income would be subject to withholding at the maximum rate of 30%, without reduction for any otherwise applicable income tax treaty. However, if a non-U.S. holder were treated as being engaged in a U.S. trade or business in any year because an investment by us in such year constituted a U.S. trade or business, the non-U.S. holder generally will be subject to U.S. federal income tax on the distribution at graduated rates, in the same manner as U.S. shareholders are taxed on distributions and may be subject to the 30% branch profits tax in the case of corporate non-U.S. holders. (See “Taxation of Non-U.S. Holders of Our Shares”).

Dividends received by us that are attributable to gains from the sale of United States real property interests and allocable to Non-U.S. holders of our shares would be subject under the Foreign Investment in Real Property Tax Act of 1980, or “FIRPTA,” to withholding tax at a rate of 35% and would be considered income effectively connected with a U.S. trade or business (which would require the filing of U.S. federal income tax returns by non-U.S. persons and which would be subject to the branch profits tax for corporate non-U.S. holders). For these purposes, dividends paid by the REIT are first considered attributable to gains from the sale of United States real property interests, if any. The term “United States real property interest” does not include mortgage loans or mortgage-backed securities, and we anticipate that we would cause any REIT subsidiary to hold and sell real property acquired on foreclosure of a mortgage loan through a taxable REIT subsidiary. As a result, we do not anticipate that any REIT subsidiary will generate material amounts of gain that would be subject to FIRPTA, but no complete assurance can be provided that a REIT subsidiary or any other REIT in which we invest will not generate gains that are subject to FIRPTA.

If at least 50% of the assets that a REIT holds are United States real property interests, gains from the sale of the REIT shares by a non-U.S. shareholder would be subject to FIRPTA tax. We believe it is unlikely that gains from the sale of the equity in any REIT subsidiary we form will be subject to the FIRPTA tax, however, we cannot assure you that we will not hold stock in a REIT that exceeds the 50% threshold. Gains on the sale of shares in such a REIT, however, would not be subject to the FIRPTA tax, so long as the REIT was “domestically controlled.” A domestically controlled REIT is a REIT in which, at all times during a specified testing period, less than 50% in value of its shares is held directly or indirectly by non-U.S. persons.

You should consult your tax advisors regarding the application and effect of state, local and foreign income and other tax laws on the indirect investment in stock or other securities of any REIT in which we invest.

## PLAN OF DISTRIBUTION

We may sell the securities offered by this prospectus from time to time in one or more transactions, including without limitation:

- through underwriters or dealers;
- directly to purchasers;
- in a rights offering;
- in “at the market” offerings, within the meaning of Rule 415(a)(4) of the Securities Act to or through a market maker or into an existing trading market on an exchange or otherwise;
- through agents;
- through a combination of any of these methods; or
- through any other method permitted by applicable law and described in a prospectus supplement.

The prospectus supplement with respect to any offering of securities will include the following information:

- the terms of the offering;
- the names of any underwriters or agents;
- the name or names of any managing underwriter or underwriters;
- the purchase price or initial public offering price of the securities;
- the net proceeds from the sale of the securities;
- any delayed delivery arrangements;
- any underwriting discounts, commissions and other items constituting underwriters’ compensation;
- any discounts or concessions allowed or reallocated or paid to dealers;
- any commissions paid to agents; and
- any securities exchange on which the securities may be listed.

### **Sale through Underwriters or Dealers**

If underwriters are used in the sale, the underwriters may resell the securities from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale. Underwriters may offer securities to the public either through underwriting syndicates represented by one or more managing underwriters or directly by one or more firms acting as underwriters. Unless we inform you otherwise in the applicable prospectus supplement, the obligations of the underwriters to purchase the securities will be subject to certain conditions, and the underwriters will be obligated to purchase all of the offered securities if they purchase any of them. The underwriters may change from time to time any public offering price and any discounts or concessions allowed or reallocated or paid to dealers.

We will describe the name or names of any underwriters, dealers or agents and the purchase price of the securities in a prospectus supplement relating to the securities.

In connection with the sale of the securities, underwriters may receive compensation from us or from purchasers of the securities, for whom they may act as agents, in the form of discounts, concessions or commissions. Underwriters may sell the securities to or through dealers, and these dealers may receive compensation in the form of discounts, concessions or commissions from the underwriters and/or commissions from the purchasers for whom they may act as agents, which is not expected to exceed that customary in the types of transactions involved. Underwriters, dealers and agents that participate in the distribution of the securities may be deemed to be underwriters, and any discounts or commissions they receive from us, and any profit on the resale of the securities they realize may be deemed to be underwriting discounts and commissions, under the Securities Act. The prospectus supplement will identify any underwriter or agent and will describe any compensation they receive from us.

Underwriters could make sales in privately negotiated transactions and/or any other method permitted by law, including sales deemed to be an “at-the-market” offering. Sales made directly on the NYSE, the existing trading market for our common stock, or sales made to or through a market maker other than on an exchange. The name of any such underwriter or agent involved in the offer and sale of our securities, the amounts underwritten, and the nature of its obligations to take our securities will be described in the applicable prospectus supplement.

Unless otherwise specified in the prospectus supplement, each series of the securities will be a new issue with no established trading market, other than our common stock, which is currently listed on the NYSE. We currently intend to list any shares of common stock sold pursuant to this prospectus on the NYSE. We may elect to list any series of preferred shares on an exchange, but are not obligated to do so. It is possible that one or more underwriters may make a market in a series of securities, but underwriters will not be obligated to do and may discontinue any market making at any time without notice. Therefore, we can give no assurance about the liquidity of the trading market for any of the securities.

Under agreements we may enter into, we may indemnify underwriters, dealers, and agents who participate in the distribution of the securities against certain liabilities, including liabilities under the Securities Act, or contribute with respect to payments that the underwriters, dealers or agents may be required to make. Unless otherwise set forth in the accompanying prospectus supplement, the obligations of any underwriters to purchase any of the securities will be subject to certain conditions precedent.

In compliance with the guidelines of the Financial Industry Regulatory Authority, Inc. (“FINRA”), the maximum aggregate discounts, commissions, agency fees or other items constituting underwriting compensation to be received by any FINRA member or independent broker-dealer will not exceed 8% of the aggregate offering price of the securities offered pursuant to this prospectus and any applicable prospectus supplement.

To facilitate the offering of securities, certain persons participating in the offering may engage in transactions that stabilize, maintain or otherwise affect the price of the securities. This may include over-allotments or short sales of the securities, which involve the sale by persons participating in the offering of more securities than we sold to them. In these circumstances, these persons would cover such over-allotments or short positions by making purchases in the open market or by exercising their over-allotment option, if any. In addition, these persons may stabilize or maintain the price of the securities by bidding for or purchasing securities in the open market or by imposing penalty bids, whereby selling concessions allowed to dealers participating in the offering may be reclaimed if securities sold by them are repurchased in connection with stabilization transactions. The effect of these transactions may be to stabilize or maintain the market price of the securities at a level above that which might otherwise prevail in the open market. These transactions may be discontinued at any time.

From time to time, we or our affiliates may engage in transactions with these underwriters, dealers and agents in the ordinary course of business. Underwriters have from time to time in the past provided, and may from time to time in the future provide, investment banking services to us for which they have in the past received, and may in the future receive, customary fees.

If indicated in the prospectus supplement, we may authorize underwriters or other persons acting as our agents to solicit offers by institutions to purchase securities from us pursuant to contracts providing for payment and delivery on a future date. Institutions with which we may make these delayed delivery contracts include commercial and savings banks, insurance companies, pension funds, investment companies, educational and charitable institutions and others. The obligations of any purchaser under any such delayed delivery contract will be subject to the condition that the purchase of the securities shall not at the time of delivery be prohibited under the laws of the

jurisdiction to which the purchaser is subject. The underwriters and other agents will not have any responsibility with regard to the validity or performance of these delayed delivery contracts.

### **Direct Sales and Sales through Agents**

We may sell the securities directly. In this case, no underwriters or agents would be involved. We may also sell the securities through agents designated by us from time to time. In the applicable prospectus supplement, we will name any agent involved in the offer or sale of the offered securities, and we will describe any commissions payable to the agent. Unless we inform you otherwise in the applicable prospectus supplement, any agent will agree to use its reasonable best efforts to solicit purchases for the period of its appointment.

We may sell the securities directly to institutional investors or others who may be deemed to be underwriters within the meaning of the Securities Act with respect to any sale of those securities. We will describe the terms of any sales of these securities in the applicable prospectus supplement.

### **Remarketing Arrangements**

Securities may also be offered and sold, if so indicated in the applicable prospectus supplement, in connection with a remarketing upon their purchase, in accordance with a redemption or repayment pursuant to their terms, or otherwise, by one or more remarketing firms, acting as principals for their own accounts or as agents for us. Any remarketing firm will be identified and the terms of its agreements, if any, with us and its compensation will be described in the applicable prospectus supplement.

### **Delayed Delivery Contracts**

If we so indicate in the applicable prospectus supplement, we may authorize agents, underwriters or dealers to solicit offers from certain types of institutions to purchase securities from us at the public offering price under delayed delivery contracts. These contracts would provide for payment and delivery on a specified date in the future. The contracts would be subject only to those conditions described in the applicable prospectus supplement. The applicable prospectus supplement will describe the commission payable for solicitation of those contracts.

### **General Information**

We may have agreements with the underwriters, dealers, agents and remarketing firms to indemnify them against certain civil liabilities, including liabilities under the Securities Act, or to contribute with respect to payments that the underwriters, dealers, agents or remarketing firms may be required to make. Underwriters, dealers, agents and remarketing firms may be customers of, engage in transactions with or perform services for us in the ordinary course of their business.

## **LEGAL MATTERS**

Certain legal matters in connection with this offering will be passed upon for us by Hunton & Williams LLP.

## **EXPERTS**

The financial statements incorporated in this prospectus by reference to the Annual Report on Form 10-K for the year ended December 31, 2010 have been so incorporated in reliance on the report of PricewaterhouseCoopers LLP, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.

## WHERE YOU CAN FIND MORE INFORMATION

This prospectus is only part of a registration statement on Form S-3 we have filed with the SEC under the Securities Act and therefore omits some of the information contained in the registration statement. We have also filed exhibits and schedules to the registration statement which are excluded from this prospectus, and you should refer to the applicable exhibit or schedule for a complete description of any statement referring to any contract or other document. You may inspect or obtain a copy of the registration statement, including the exhibits and schedules, as described in the previous paragraph.

Copies of the registration statement, including the exhibits and schedules to the registration statement, may be examined without charge at the public reference room of the SEC, 100 F Street, N.E., Room 1580, Washington, D.C. 20549. Information about the operation of the public reference room may be obtained by calling the SEC at 1-800-SEC-0330. Copies of all or a portion of the registration statement may be obtained from the public reference room of the SEC upon payment of prescribed fees. Our SEC filings, including our registration statement, are also available to you on the SEC's website at [www.sec.gov](http://www.sec.gov). In addition, copies of our SEC filings are available free of charge through our website ([www.ellingtonfinancial.com](http://www.ellingtonfinancial.com)) as soon as reasonably practicable after filing with the SEC. The information contained on, or otherwise accessible through our website is not part of, or incorporated by reference into, this prospectus.

## DOCUMENTS INCORPORATED BY REFERENCE

We have elected to "incorporate by reference" certain information into this prospectus. By incorporating by reference, we are disclosing important information to you by referring you to documents we have filed separately with the SEC. The information incorporated by reference is deemed to be part of this prospectus, except for information incorporated by reference that is superseded by information contained in this prospectus. These documents contain important information about us, our business and our finances. The following documents previously filed with the SEC pursuant to the Securities Exchange Act of 1934, as amended, or the "Exchange Act," are incorporated by reference into this prospectus and registration statement of which this prospectus is a part except for any document or portion thereof deemed to be "furnished" and not filed in accordance with SEC rules:

- Our Annual Report on Form 10-K for the fiscal year ended December 31, 2010;
- Our Quarterly Reports on Form 10-Q for the quarters ended March 31, 2011 and June 30, 2011;
- Our Current Reports on Form 8-K filed on February 11, 2011, May 17, 2011, August 3, 2011 and November 3, 2011;
- Our Definitive Proxy Statement on Schedule 14A filed with the SEC on April 6, 2011 in connection with our Annual Meeting of Shareholders held on May 16, 2011;
- All other reports we have filed pursuant to Section 13(a), 13(c), 14 and 15(a) of the Exchange Act since December 31, 2010; and
- The description of our common shares incorporated by reference in our registration statement on Form 8-A/A filed on October 5, 2010 under the Exchange Act, including any amendment or report filed for the purpose of updating such description.

If any statement in this prospectus is inconsistent with a statement in one of the incorporated documents referred to above, then the statement in the incorporated document will be deemed to have been superseded by the statement in this prospectus.

We also incorporate by reference any of the following documents that we file with the SEC after the date of this prospectus through the date upon which we sell all the securities we offer with this prospectus and any prospectus supplement (other than any portion of these documents that is furnished or otherwise deemed not to be filed):

- Reports filed under Section 13(a) and (c) of the Exchange Act;

- Definitive proxy or information statements filed under Section 14 of the Exchange Act in connection with any subsequent shareholders' meeting; and
- Any reports filed under Section 15(d) of the Exchange Act.

To obtain a free copy of any of the documents incorporated by reference in this prospectus (other than exhibits, unless they are specifically incorporated by reference in the documents) please contact us in writing or by phone at:

Ellington Financial LLC  
53 Forest Avenue  
Old Greenwich, CT 06870  
(203) 698-1200

## PART II. INFORMATION NOT REQUIRED IN PROSPECTUS

### Item 14. Other Expenses of Issuance and Distribution.

The following table sets forth the costs and expenses of the sale and distribution of the securities being registered, all of which are being borne by the Registrant.

Securities and Exchange Commission registration fee	85,950
FINRA filing fee	75,500
Printing and engraving fees	7,000
Legal fees and expenses	25,000
Accounting fees and expenses	15,000
Miscellaneous	10,000
Total	<u>\$218,450</u>

### Item 15. Indemnification of Directors and Officers.

Section 18-108 of the Delaware Limited Liability Company Act provides that a limited liability company may indemnify any member or manager or other person from and against any and all claims and demands whatsoever. Our operating agreement provides that our directors will not be liable to us, or any subsidiary of ours, or any holder of shares, for monetary damages for any acts or omissions arising from the performance of any of such director's obligations or duties in connection with us, including breach of fiduciary duty, except as follows: (1) for any breach of the director's duty of loyalty to us or the holders of the shares; (2) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; or (3) for any transaction from which the director derived an improper personal benefit. The operating agreement provides that, to the fullest extent permitted by law, we will indemnify our directors and officers or any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of us) by reason of the fact that the person is or was our director, officer, employee, tax matters member or agent, or is or was serving at our request as a director, officer, employee or agent of another company, to the fullest extent permitted by law against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to our best interests, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the person's conduct was unlawful.

Each of the persons entitled to be indemnified for expenses and liabilities as contemplated above may, in the performance of his, her or its duties, consult with legal counsel and accountants, and any act or omission by such person on our behalf in furtherance of our interests in good faith in reliance upon, and in accordance with, the advice of such legal counsel or accountants will be full justification for any such act or omission, and such person will be fully protected for such acts and omissions; provided that such legal counsel or accountants were selected with reasonable care by or on our behalf.

We have entered into indemnification agreements with each of our directors and executive officers. The indemnification agreements require, among other things, that we indemnify our directors and executive officers to the fullest extent permitted by law and advance our directors and executive officers all related expenses, subject to reimbursement if it is subsequently determined that indemnification is not permitted.

**Item 16. Financial Statements and Exhibits.**

The following exhibits are filed as part of, or incorporated by reference into, this Registration Statement on Form S-3:

<u>Exhibit</u>	<u>Description of Document</u>
1.1*	Form of Underwriting Agreement
3.1	Second Amended and Restated Operating Agreement of Ellington Financial LLC, incorporated by reference to Exhibit 3.1 to the Company's Registration Statement on Form S-11, Commission File No. 333-160562
3.2	First Amendment to Second Amended and Restated Operating Agreement of Ellington Financial dated August 8, 2011, incorporated by reference to Exhibit 3.2 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2011
4.1	Form of Common Share Certificate of Ellington Financial LLC, incorporated by reference to Exhibit 4.1 to the Company's Registration Statement on Form S-11, Commission File No. 333-160562
4.2*	Form of certificate representing shares of preferred stock
4.3	Form of Indenture
4.4*	Form of Warrant
4.5*	Form of Warrant Agreement
4.6*	Form of Subscription Rights Agreement (including form of subscription rights certificate)
5.1	Opinion of Hunton & Williams LLP as to legality of the securities being issued
8.1	Opinion of Hunton & Williams LLP as to certain U.S. federal income tax matters
10.1	Third Amended and Restated Management Agreement, by and between Ellington Financial LLC and Ellington Financial Management LLC, effective as of August 2, 2011, incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2011
10.2†	2007 Incentive Plan for Individuals, incorporated by reference to Exhibit 10.2 to the Company's Registration Statement on Form S-11, Commission File No. 333-160562
10.3†	2007 Incentive Plan for Entities, incorporated by reference to Exhibit 10.3 to the Company's Registration Statement on Form S-11, Commission File No. 333-160562
10.4†	Form of LTIP Unit Award Agreement, incorporated by reference to Exhibit 10.4 to the Company's Registration Statement on Form S-11, Commission File No. 333-160562
10.5	Form of Indemnity Agreement (Amended and Restated), incorporated by reference to Exhibit 10.7 to the Company's Registration Statement on Form S-11, Commission File No. 333-160562
12.1	Statement re: Computation of Ratios
21.1	List of Subsidiaries, incorporated by reference to Exhibit 21.1 to the Company's Registration Statement on Form S-11, Commission File No. 333-160562
23.1	Consent of Hunton & Williams LLP (included in Exhibits 5.1 and 8.1)
23.2	Consent of PricewaterhouseCoopers LLP
24.1	Power of Attorney (included on Signature Page)
25.1*	Statement of Eligibility of Trustee on Form T-1

\* To be filed by amendment.

† Compensatory plan or arrangement.

**Item 17. Undertakings.**

(a) The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by section 10(a)(3) of the Securities Act of 1933.

- (ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement.
- (iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

*provided, however*, that paragraphs (a)(1)(i), (a)(1)(ii) and (a)(1)(iii) of this section do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of the registration statement.

- (2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.
- (4) That, for purposes of determining liability under the Securities Act of 1933 to any purchaser:
  - (i) Each prospectus filed by the registrant pursuant to rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and
  - (ii) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5) or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii) or (x) for the purpose of providing the information required by section 10(a) of the Securities Act of 1933 shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof. *Provided, however*, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed

incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.

- (5) That, for the purpose of determining liability of the registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities, the undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:
- (i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;
  - (ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;
  - (iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and
  - (iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.
- (b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (c) The undersigned registrant hereby undertakes to file an application for the purpose of determining the eligibility of the trustee to act under subsection (a) of Section 310 of the Trust Indenture Act in accordance with the rules and regulations prescribed by the Commission under Section 305(b)(2) of the Act.
- (d) The undersigned registrant hereby further undertakes that:
- (1) For purposes of determining any liability under the Securities Act of 1933 the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4), or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.
  - (2) For the purposes of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

- (e) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers or controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. If a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Old Greenwich, Connecticut, on the 4th day of November, 2011.

### ELLINGTON FINANCIAL LLC

By: /s/ Laurence Penn

**Name:** **Laurence Penn**

**Title:** **Chief Executive Officer**

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Laurence Penn and Daniel R. Margolis and each of them, his true and lawful attorney-in-fact and agent, with full power of substitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments to this Registration Statement, and any additional related registration statement filed pursuant to Rule 462 under the Securities Act of 1933, as amended (including post-effective amendments to the registration statement and any such related registration statements), and to file the same, with all exhibits thereto, and any other documents in connection therewith, granting unto said attorneys-in-fact and agents full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or their substitutes may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this registration statement has been signed below by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Laurence Penn</u> Laurence Penn	Chief Executive Officer, President and Director (Principal Executive Officer)	November 4, 2011
<u>/s/ Lisa Mumford</u> Lisa Mumford	Chief Financial Officer (Principal Financial and Accounting Officer)	November 4, 2011
<u>/s/ Michael W. Vranos</u> Michael W. Vranos	Director	November 4, 2011
<u>/s/ Thomas F. Robards</u> Thomas F. Robards	Chairman of the Board**	November 4, 2011
<u>/s/ Ronald I. Simon, Ph.D.</u> Ronald I. Simon, Ph.D.	Director**	November 4, 2011
<u>/s/ Edward Resendez</u> Edward Resendez	Director**	November 4, 2011

\*\* Independent Director

## EXHIBIT INDEX

<u>Exhibit</u>	<u>Description of Document</u>
1.1*	Form of Underwriting Agreement
3.1	Second Amended and Restated Operating Agreement of Ellington Financial LLC, incorporated by reference to Exhibit 3.1 to the Company's Registration Statement on Form S-11, Commission File No. 333-160562
3.2	First Amendment to Second Amended and Restated Operating Agreement of Ellington Financial dated August 8, 2011, incorporated by reference to Exhibit 3.2 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2011
4.1	Form of Common Share Certificate of Ellington Financial LLC, incorporated by reference to Exhibit 4.1 to the Company's Registration Statement on Form S-11, Commission File No. 333-160562
4.2*	Form of certificate representing shares of preferred stock
4.3	Form of Indenture
4.4*	Form of Warrant
4.5*	Form of Warrant Agreement
4.6*	Form of Subscription Rights Agreement (including form of subscription rights certificate)
5.1	Opinion of Hunton & Williams LLP as to legality of the securities being issued
8.1	Opinion of Hunton & Williams LLP as to certain U.S. federal income tax matters
10.1	Third Amended and Restated Management Agreement, by and between Ellington Financial LLC and Ellington Financial Management LLC, effective as of August 2, 2011, incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2011
10.2†	2007 Incentive Plan for Individuals, incorporated by reference to Exhibit 10.2 to the Company's Registration Statement on Form S-11, Commission File No. 333-160562
10.3†	2007 Incentive Plan for Entities, incorporated by reference to Exhibit 10.3 to the Company's Registration Statement on Form S-11, Commission File No. 333-160562
10.4†	Form of LTIP Unit Award Agreement, incorporated by reference to Exhibit 10.4 to the Company's Registration Statement on Form S-11, Commission File No. 333-160562
10.5	Form of Indemnity Agreement (Amended and Restated), incorporated by reference to Exhibit 10.7 to the Company's Registration Statement on Form S-11, Commission File No. 333-160562
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24.1	Power of Attorney (included on Signature Page)
25.1*	Statement of Eligibility of Trustee on Form T-1

\* To be filed by amendment or as an exhibit to a Current Report on Form 8-K and incorporated by reference into this registration statement subsequent to its effectiveness.

† Compensatory plan or arrangement.

---

ELLINGTON FINANCIAL LLC

TO

\_\_\_\_\_,  
Trustee

---

**Indenture**  
**(For [Subordinated]\* Debt Securities)**

Dated as of \_\_\_\_\_, 20\_\_

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\* Bracketed language will be inserted in the Indenture under which subordinated Debt Securities will be issued.

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† This table of contents shall not, for any purpose, be deemed to be a part of the Indenture.

\* Bracketed language will be inserted in the Indenture under which subordinated Debt Securities will be issued.

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† This table of contents shall not, for any purpose, be deemed to be a part of the Indenture.

\* Bracketed language will be inserted in the Indenture under which subordinated Debt Securities will be issued.

ELLINGTON FINANCIAL LLC

RECONCILIATION AND TIE BETWEEN TRUST INDENTURE ACT OF 1939  
AND INDENTURE, DATED AS OF \_\_\_\_\_, 20\_\_

<b>Trust Indenture Act Section</b>	<b>Indenture Section</b>
§310 (a)(1)	9.09
(a)(2)	9.09
(a)(3)	9.14
(a)(4)	Not Applicable
(b)	9.08, 9.10
§311 (a)	9.13
(b)	9.13
(c)	9.13
§312 (a)	10.01
(b)	10.01
(c)	10.01
§313 (a)	10.02
(b)	10.02
(c)	10.02
(d)	10.02
§314 (a)	10.02
(a)(4)	6.06
(b)	Not Applicable
(c)(1)	1.02
(c)(2)	1.02
(c)(3)	Not Applicable
(d)	Not Applicable
(e)	1.02
§315 (a)	9.01, 9.03
(b)	9.02
(c)	9.01
(d)	9.01
(e)	8.14
§316 (a)	8.12, 8.13
(a)(1)(A)	8.02, 8.12
(a)(1)(B)	8.13
(a)(2)	Not Applicable
(b)	8.08
(c)	1.04(g)
§317 (a)(1)	8.03
(a)(2)	8.04
(b)	6.03
§318 (a)	1.07

**INDENTURE (FOR [SUBORDINATED]\* DEBT SECURITIES)**, dated as of \_\_\_\_\_, 20\_\_, between ELLINGTON FINANCIAL LLC, a Delaware limited liability company (herein called the “**Company**”), having its principal office at 53 Forest Avenue, Old Greenwich, CT 06870, and [TRUSTEE], a \_\_\_\_\_, having its principal corporate trust office at \_\_\_\_\_, as Trustee (herein called the “**Trustee**”).

### RECITAL OF THE COMPANY

The Company has duly authorized the execution and delivery of this Indenture to provide for the issuance from time to time of certain of its [subordinated]\* debentures, notes or other evidences of indebtedness (herein called the “**Debt Securities**”), in an unlimited aggregate principal amount, to be issued in one or more series as contemplated herein; and all acts necessary to make this Indenture a valid agreement of the Company have been performed.

For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires, capitalized terms used herein shall have the meanings assigned to them in Article I of this Indenture.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

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

### ARTICLE I DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

#### Section 1.01. Definitions.

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

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

(b) all terms used herein without definition that are defined in the Trust Indenture Act, either directly or by reference therein, have the meanings assigned to them therein;

(c) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles in the United States, and, except as otherwise herein expressly provided, the term “generally accepted accounting principles” with respect to any computation required or permitted hereunder shall mean such accounting principles as are generally accepted in the United States at the date of such computation or, at the election of the Company from time to time, at the date of the execution

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\* Bracketed language throughout this Indenture will be inserted in the Indenture in the event that subordinated Debt Securities are issued.

and delivery of this Indenture; *provided, however*, that in determining generally accepted accounting principles applicable to the Company, the Company shall, to the extent required, conform to any order, rule or regulation of any administrative agency, regulatory authority or other governmental body having jurisdiction over the Company; and

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

“**Act**” when used with respect to any Holder of a Debt Security, has the meaning specified in Section 1.04.

“**Additional Interest**” means the interest, if any, that shall accrue on any interest on the Debt Securities of any series, the payment of which has not been made on the applicable Interest Payment Date and which shall accrue at the rate per annum specified or determined as specified in such Debt Security.

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

“**Authenticating Agent**” means any Person (other than the Company or an Affiliate of the Company) authorized by the Trustee pursuant to Section 9.15 to act on behalf of the Trustee to authenticate one or more series of Debt Securities or Tranche thereof.

“**Authorized Officer**” means the Chief Executive Officer and President, either Co-Chief-Investment Officer, the Chief Financial Officer, the Secretary, any Vice President or any other duly authorized officer of the Company.

“**Board of Directors**” means either the board of directors of the Company or any committee thereof duly authorized to act or any director or directors and/or officer or officers of the Company to whom that board or committee shall have duly delegated its authority in respect of matters relating to this Indenture.

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

“**Business Day**,” when used with respect to a Place of Payment or any other particular location specified in the Debt Securities or this Indenture, means any day, other than a Saturday or Sunday, which is not a day on which banking institutions or trust companies in such Place of Payment or other location are generally authorized or required by law, regulation or executive order to remain closed, except as may be otherwise specified as contemplated by Section 3.01.

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\* Bracketed language throughout this Indenture will be inserted in the Indenture in the event that subordinated Debt Securities are issued.

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

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

“**Company Request**” or “**Company Order**” means a written request or order signed in the name of the Company by an Authorized Officer and delivered to the Trustee.

“**Corporate Trust Office**” means the office of the Trustee at which at any particular time this Indenture shall be principally administered, which office at the date of execution and delivery of this Indenture is located at \_\_\_\_\_.

“**Corporation**” means a real estate investment trust, corporation, association, company, limited liability company, joint stock company or business trust.

“**Debt Securities**” has the meaning stated in the first recital of this Indenture and more particularly means any securities authenticated and delivered under this Indenture.

“**Debt Security Register**” and “**Debt Security Registrar**” have the respective meanings specified in Section 3.05.

“**Defaulted Interest**” has the meaning specified in Section 3.07.

“**Depository**” shall mean, with respect to Debt Securities of any series, for which the Company shall determine that such Debt Securities will be issued as a Global Security, The Depository Trust Company, New York, New York, another clearing agency or any successor registered as a clearing agency under the Exchange Act or other applicable statute or regulation, which, in each case, shall be designated by the Company pursuant to Section 2.03(c).

“**Discount Debt Security**” means any Debt Security that provides for an amount less than the principal amount thereof to be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 8.02.

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

“**Eligible Obligations**” means:

(a) with respect to Debt Securities denominated in Dollars, Government Obligations; or

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\* Bracketed language throughout this Indenture will be inserted in the Indenture in the event that subordinated Debt Securities are issued.

(b) with respect to Debt Securities denominated in a currency other than Dollars or in a composite currency, such other obligations or instruments as shall be specified with respect to such Debt Securities, as contemplated by Section 3.01.

“**Event of Default**” has the meaning specified in Section 8.01.

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

“**Global Security**” means, with respect to the Debt Securities, a Debt Security executed by the Company and delivered by the Trustee to the Depository or pursuant to the Depository’s instruction, all in accordance with this Indenture, which shall be registered in the name of the Depository or its nominee.

“**Governmental Authority**” means the government of the United States or of any state or territory thereof or of the District of Columbia or of any county, municipality or other political subdivision of any thereof, or any department, agency, authority or other instrumentality of any of the foregoing.

“**Government Obligations**” means:

(a) direct obligations of, or obligations the timely payment of principal of and interest on which are unconditionally guaranteed by, the United States entitled to the benefit of the full faith and credit thereof; and

(b) certificates, depositary receipts or other instruments that evidence a direct ownership interest in obligations described in clause (a) above or in any specific interest or principal payments due in respect thereof; *provided, however*, that the custodian of such obligations or specific interest or principal payments shall be a bank or trust company (which may include the Trustee or any Paying Agent) subject to federal or state supervision or examination with a combined capital and surplus of at least \$100,000,000; and *provided, further*, that except as may be otherwise required by law, such custodian shall be obligated to pay to the holders of such certificates, depositary receipts or other instruments the full amount received by such custodian in respect of such obligations or specific payments and shall not be permitted to make any deduction therefrom.

“**Holder**” means a Person in whose name a Debt Security is registered in the Debt Security Register.

“**Indenture**” means this instrument as originally executed and delivered and as it may from time to time be supplemented or amended by one or more indentures or Officer’s Certificates supplemental hereto entered into pursuant to the applicable provisions hereof and shall include the terms of particular series of Debt Securities established as contemplated by Section 3.01.

“**Interest**” with respect to a Discount Debt Security means interest, if any, borne by such Debt Security at a Stated Interest Rate.

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

**“Maturity,”** when used with respect to any Debt Security, means the date on which the principal of such Debt Security or an installment of principal becomes due and payable as provided in such Debt Security or in this Indenture, whether at the Stated Maturity, by declaration of acceleration, upon call for redemption or otherwise.

**“Officer’s Certificate”** means a certificate signed by an Authorized Officer and delivered to the Trustee.

**“Opinion of Counsel”** means a written opinion of counsel, who may be counsel for the Company, or other counsel acceptable to the Trustee.

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

(a) Debt Securities theretofore canceled by the Trustee or the Debt Security Registrar or delivered to the Trustee or the Debt Security Registrar for cancellation;

(b) Debt Securities deemed to have been paid in accordance with Section 7.01; and

(c) Debt Securities that have been paid pursuant to Section 3.06 or in exchange for or in lieu of which other Debt Securities have been authenticated and delivered pursuant to this Indenture, other than any such Debt Securities in respect of which there shall have been presented to the Trustee proof satisfactory to it and the Company that such Debt Securities are held by a bona fide purchaser or purchasers in whose hands such Debt Securities are valid obligations of the Company;

*provided, however,* that in determining whether or not the Holders of the requisite principal amount of the Debt Securities Outstanding under this Indenture, or the Outstanding Debt Securities of any series or Tranche, have given any request, demand, authorization, direction, notice, consent or waiver hereunder or whether or not a quorum is present at a meeting of Holders of Debt Securities,

(x) Debt Securities owned by the Company or any other obligor upon the Debt Securities or any Affiliate of the Company or of such other obligor (unless the Company, such Affiliate or such obligor owns all Debt Securities Outstanding under this Indenture, or all Outstanding Debt Securities of each such series and each such Tranche, as the case may be, determined without regard to this clause (x)) shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver or upon any such determination as to the presence of a quorum, only Debt Securities that the Trustee knows to be so owned shall be so disregarded; *provided, however,* that Debt Securities so owned that have been pledged in good faith may be

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regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Debt Securities and that the pledgee is not the Company or any other obligor upon the Debt Securities or any Affiliate of the Company or of such other obligor; and

(y) the principal amount of a Discount Debt Security that shall be deemed to be Outstanding for such purposes shall be the amount of the principal thereof that would be due and payable as of the date of such determination upon a declaration of acceleration of the Maturity thereof pursuant to Section 8.02;

*provided, further*, that, in the case of any Debt Security the principal of which is payable from time to time without presentment or surrender, the principal amount of such Debt Security that shall be deemed to be Outstanding at any time for all purposes of this Indenture shall be the original principal amount thereof less the aggregate amount of principal thereof theretofore paid.

**"Paying Agent"** means any Person, including the Company, authorized by the Company to pay the principal of and premium, if any, or interest (including Additional Interest), if any, on any Debt Securities on behalf of the Company.

**"Periodic Offering"** means an offering of Debt Securities of a series from time to time any or all of the specific terms of which Debt Securities, including without limitation the rate or rates of interest (including Additional Interest), if any, thereon, the Stated Maturity or Maturities thereof and the redemption provisions, if any, with respect thereto, are to be determined by the Company or its agents upon the issuance of such Debt Securities.

**"Person"** means any individual, Corporation, partnership, joint venture, trust or unincorporated organization or any Governmental Authority.

**"Place of Payment,"** when used with respect to the Debt Securities of any series, or Tranche thereof, means the place or places, specified as contemplated by Section 3.01, at which, subject to Section 6.02, principal of and premium, if any, and interest (including Additional Interest), if any, on the Debt Securities of such series or Tranche are payable.

**"Predecessor Debt Security"** of any particular Debt Security means every previous Debt Security evidencing all or a portion of the same debt as that evidenced by such particular Debt Security; and, for the purposes of this definition, any Debt Security authenticated and delivered under Section 3.06 in exchange for or in lieu of a mutilated, destroyed, lost or stolen Debt Security shall be deemed (to the extent lawful) to evidence the same debt as the mutilated, destroyed, lost or stolen Debt Security.

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

**"Redemption Price,"** when used with respect to any Debt Security to be redeemed, means the price at which it is to be redeemed pursuant to this Indenture.

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\* Bracketed language throughout this Indenture will be inserted in the Indenture in the event that subordinated Debt Securities are issued.

“**Regular Record Date**” for the interest payable on any Interest Payment Date on the Debt Securities of any series means the date specified for that purpose as contemplated by Section 3.01.

“**Required Currency**” has the meaning specified in Section 3.11.

“**Responsible Officer**,” when used with respect to the Trustee, means the officer of the Trustee at its Corporate Trust Office assigned by the Trustee to administer this Indenture, and any other duly authorized officer of the Trustee to whom a matter arising under this Indenture may be referred.

[“**Senior Indebtedness**” means all (i) obligations (other than non-recourse obligations and the indebtedness issued under this Indenture) of, or guaranteed or assumed by, the Company for borrowed money, including both senior and subordinated indebtedness for borrowed money (other than the Debt Securities), or for the payment of money relating to any lease that is capitalized on the consolidated balance sheet of the Company and its subsidiaries in accordance with generally accepted accounting principles as in effect from time to time, (ii) indebtedness evidenced by bonds, debentures, notes or other similar instruments, (iii) obligations with respect to letters of credit, bankers’ acceptances or similar facilities issued for the account of the Company, (iv) obligations issued or assumed as the deferred purchase price of property or services, but excluding trade accounts payable or accrued liabilities arising in the ordinary course of business, (v) obligations for claims, as defined in Section 101(5) of the United States Bankruptcy Code of 1978, as amended, in respect of derivative products such as interest and foreign exchange rate contracts, commodity contracts and similar arrangements; and (vi) obligations of the type referred to in each of the preceding clauses (i) through (v) of another Person, the payment of which the Company has guaranteed or is responsible or liable for directly or indirectly, as obligor or otherwise; and in each case, amendments, renewals, extensions, modifications and refundings of any such indebtedness or obligations, whether existing as of the date of this Indenture or subsequently incurred by the Company.]\*

“**Special Record Date**” for the payment of any Defaulted Interest on the Debt Securities of any series means a date fixed by the Trustee pursuant to Section 3.07.

“**Stated Interest Rate**” means a rate (whether fixed or variable) at which an obligation by its terms is stated to bear interest. Any calculation or other determination to be made under this Indenture by reference to the Stated Interest Rate on a Debt Security shall be made without regard to the effective interest cost to the Company of such Debt Security and without regard to the Stated Interest Rate on, or the effective cost to the Company of, any other indebtedness in respect of which the Company’s obligations are evidenced or secured in whole or in part by such Debt Security.

“**Stated Maturity**,” when used with respect to any obligation or any installment of principal thereof or interest thereon, means the date on which the principal of such obligation or such installment of principal or interest is stated to be due and payable (without regard to any provisions for redemption, prepayment, acceleration, purchase or extension).

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\* Bracketed language throughout this Indenture will be inserted in the Indenture in the event that subordinated Debt Securities are issued.

“**Tranche**” means a group of Debt Securities that (a) are of the same series and (b) have identical terms except as to principal amount.

“**Trust Indenture Act**” means the Trust Indenture Act of 1939, as amended, as in force and effect as of the date of execution of this Indenture; *provided, however,* that in the event the Trust Indenture Act of 1939 is succeeded by another statute or is amended after such date, “Trust Indenture Act” shall mean such successor statute or the Trust Indenture Act of 1939, as so amended, to the extent such successor statute or amendment is applicable to this Indenture or to the actions of the Company or the Trustee under or pursuant to this Indenture.

“**Trustee**” means the Person named as the “Trustee” in the first paragraph of this Indenture until a successor Trustee shall have become such with respect to one or more series of Debt Securities pursuant to the applicable provisions of this Indenture, and thereafter “Trustee” shall mean or include each Person who is then a Trustee hereunder, and if at any time there is more than one such Person, “Trustee” as used with respect to the Debt Securities of any series shall mean the Trustee with respect to Debt Securities of that series.

“**United States**” means the United States of America, its territories, its possessions and other areas subject to its political jurisdiction.

#### Section 1.02. Compliance Certificates and Opinions.

Except as otherwise expressly provided in this Indenture, upon any application or request by the Company to the Trustee to take any action under any provision of this Indenture, the Company shall furnish to the Trustee an Officer’s Certificate stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent, if any, have been complied with, except that in the case of any such application or request as to which the furnishing of such documents is specifically required by any provision of this Indenture relating to such particular application or request, no additional certificate or opinion need be furnished.

Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture shall include:

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

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

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

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

Section 1.03. Form of Documents Delivered to Trustee.

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

Any certificate or opinion of an officer of the 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 are 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 that the information with respect to such factual matters is in the possession of the Company, 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.

Whenever, subsequent to the receipt by the Trustee of any Board Resolution, Officer's Certificate, Opinion of Counsel or other document or instrument, a clerical, typographical or other inadvertent or unintentional error or omission shall be discovered therein, a new document or instrument may be substituted therefor in corrected form with the same force and effect as if originally filed in the corrected form and, irrespective of the date or dates of the actual execution and/or delivery thereof, such substitute document or instrument shall be deemed to have been executed and/or delivered as of the date or dates required with respect to the document or instrument for which it is substituted. Anything in this Indenture to the contrary notwithstanding, if any such corrective document or instrument indicates that action has been taken by or at the request of the Company which could not have been taken had the original document or instrument not contained such error or omission, the action so taken shall not be invalidated or otherwise rendered ineffective but shall be and remain in full force and effect (except to the extent that such action was a result of willful misconduct or bad faith or had or could be expected to have a material adverse effect on the Holders of any Debt Securities issued hereunder).

Without limiting the generality of the foregoing, any Debt Securities issued under the authority of such defective document or instrument shall nevertheless be the valid obligations of

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the Company entitled to the benefits of this Indenture equally and ratably with all other Outstanding Debt Securities.

Section 1.04. Acts of Holders.

(a) Any request, demand, authorization, direction, notice, consent, election, waiver or other action provided by this Indenture to be made, given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing or, alternatively, may be embodied in and evidenced by the record of Holders voting in favor thereof, either in person or by proxies duly appointed in writing, at any meeting of Holders duly called and held in accordance with the provisions of Article XIII, or a combination of such instruments and any such record. Except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments or record or both are delivered to the Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments and any such record (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the “Act” of the Holders signing such instrument or instruments and so voting at any such meeting. Proof of execution of any such instrument or of a writing appointing any such agent, or of the holding by any Person of a Debt Security, shall be sufficient for any purpose of this Indenture and (subject to Section 9.01) conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section. The record of any meeting of Holders shall be proved in the manner provided in Section 13.06.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof or may be proved in any other manner that the Trustee and the Company deem sufficient. Where such execution is by a signer acting in a capacity other than his individual capacity, such certificate or affidavit shall also constitute sufficient proof of his authority.

(c) The principal amount (except as otherwise contemplated in clause (y) of the proviso to the definition of Outstanding) and serial numbers of Debt Securities held by any Person, and the date of holding the same, shall be proved by the Debt Security Register.

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

(e) Until such time as written instruments shall have been delivered to the Trustee with respect to the requisite percentage of principal amount of Debt Securities for the action contemplated by such instruments, any such instrument executed and delivered by or on behalf of a Holder may be revoked with respect to any or all of such Debt Securities by written notice

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by such Holder or any subsequent Holder, proven in the manner in which such instrument was proven.

(f) Debt Securities of any series, or any Tranche thereof, authenticated and delivered after any Act of Holders may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any action taken by such Act of Holders. If the Company shall so determine, new Debt Securities of any series, or any Tranche thereof, so modified as to conform, in the opinion of the Trustee and the Company, to such action may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for Outstanding Debt Securities of such series or Tranche.

(g) If the Company shall solicit from Holders any request, demand, authorization, direction, notice, consent, waiver or other Act, the Company may, at its option, fix in advance a record date for the determination of Holders entitled to give such request, demand, authorization, direction, notice, consent, waiver or other Act, but the Company shall have no obligation to do so. If such a record date is fixed, such request, demand, authorization, direction, notice, consent, waiver or other Act may be given before or after such record date, but only the Holders of record at the close of business on the record date shall be deemed to be Holders for the purposes of determining whether Holders of the requisite proportion of the Outstanding Debt Securities have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, waiver or other Act, and for that purpose the Outstanding Debt Securities shall be computed as of the record date.

Section 1.05. Notices, Etc. to Trustee and Company.

Any request, demand, authorization, direction, notice, consent, election, waiver or Act of Holders or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with, the Trustee by any Holder or by the Company, or the Company by the Trustee or by any Holder, shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if in writing and delivered personally to an officer or other responsible employee of the addressee, or transmitted by facsimile transmission or other direct written electronic means to such telephone number or other electronic communications address as the parties hereto shall from time to time designate, or transmitted by certified or registered mail, charges prepaid, to the applicable address set opposite such party's name below or to such other address as either party hereto may from time to time designate:

If to the Trustee, to:

[Trustee]

[Address]

Attention:

Telephone:

Facsimile:

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\* Bracketed language throughout this Indenture will be inserted in the Indenture in the event that subordinated Debt Securities are issued.

If to the Company, to:  
Ellington Financial LLC  
53 Forest Avenue  
Old Greenwich, CT 06870

Attention:  
Telephone:  
Facsimile:

With copy to:

Attention:  
Telephone:  
Facsimile:

Any communication contemplated herein shall be deemed to have been made, given, furnished and filed if personally delivered, on the date of delivery, if transmitted by facsimile transmission or other direct written electronic means, upon date of receipt of the transmission, and if transmitted by certified or registered mail, on the date of receipt.

Section 1.06. Notice to Holders of Debt Securities; Waiver.

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

In case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice to Holders by mail, then such notification as shall be made with the approval of the Trustee shall constitute a sufficient notification for every purpose hereunder. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders.

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

Section 1.07. Conflict with Trust Indenture Act.

If any provision of this Indenture limits, qualifies or conflicts with another provision hereof that is required or deemed to be included in this Indenture by, or is otherwise governed by, any of the provisions of the Trust Indenture Act, such other provision shall control; and if any provision hereof otherwise conflicts with the Trust Indenture Act, the Trust Indenture Act shall control.

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\* Bracketed language throughout this Indenture will be inserted in the Indenture in the event that subordinated Debt Securities are issued.

Section 1.08. Effect of Headings and Table of Contents.

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

Section 1.09. Successors and Assigns.

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

Section 1.10. Separability Clause.

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

Section 1.11. Benefits of Indenture.

Nothing in this Indenture or the Debt Securities, express or implied, shall give to any Person, other than the parties hereto, their successors hereunder, the Holders, [and so long as the notice described in Section 15.14 hereof has not been given, the holders of Senior Indebtedness,]\* any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 1.12. Governing Law.

This Indenture and the Debt Securities shall be governed by and construed in accordance with the laws of the State of New York, without regard to conflicts of law principles thereof, except to the extent that the law of any other jurisdiction shall be mandatorily applicable.

Section 1.13. Legal Holidays.

In any case where any Interest Payment Date, Redemption Date or Stated Maturity of any Debt Security shall not be a Business Day at any Place of Payment, then (notwithstanding any other provision of this Indenture or of the Debt Securities other than a provision in Debt Securities of any series, or any Tranche thereof, or in the indenture supplemental hereto, Board Resolution or Officer's Certificate that establishes the terms of the Debt Securities of such series or Tranche, which specifically states that such provision shall apply in lieu of this Section) payment of interest or principal and premium, if any, need not be made at such Place of Payment on such date, but may be made on the next succeeding Business Day at such Place of Payment with the same force and effect as if made on the Interest Payment Date or Redemption Date, or at the Stated Maturity, and, if such payment is made or duly provided for on such Business Day, no interest shall accrue on the amount so payable for the period from and after such Interest Payment Date, Redemption Date or Stated Maturity, as the case may be, to such Business Day.

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**ARTICLE II**  
**DEBT SECURITY FORMS**

Section 2.01. Forms Generally.

The definitive Debt Securities of each series shall be in substantially the form or forms thereof established in the indenture supplemental hereto establishing such series or in a Board Resolution establishing such series, or in an Officer's Certificate pursuant to such supplemental indenture or Board Resolution, in each case with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture, and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may be required to comply with the rules of any securities exchange or as may, consistently herewith, be determined by the officers executing such Debt Securities, as evidenced by their execution of the Debt Securities. If the form or forms of Debt Securities of any series are established in a Board Resolution or in an Officer's Certificate pursuant to an indenture supplement hereto or to a Board Resolution, such Board Resolution and Officer's Certificate, if any, shall be delivered to the Trustee at or prior to the delivery of the Company Order contemplated by Section 3.03 for the authentication and delivery of such Debt Securities.

Unless otherwise specified as contemplated by Sections 3.01 or 12.01(g), the Debt Securities of each series shall be issuable in registered form without coupons. The definitive Debt Securities shall be produced in such manner as shall be determined by the officers executing such Debt Securities, as evidenced by their execution thereof.

Section 2.02. Form of Trustee's Certificate of Authentication.

The Trustee's certificate of authentication shall be in substantially the form set forth below:

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

Dated:

\_\_\_\_\_, as Trustee

By: \_\_\_\_\_  
Authorized Representative

Section 2.03. Debt Securities Issuable in the Form of a Global Security.

(a) If the Company shall establish pursuant to Section 3.01 that the Debt Securities of a particular series are to be issued in whole or in part in the form of one or more Global Securities, then the Company shall execute and the Trustee shall, in accordance with Section 3.03 and the Company Order delivered to the Trustee thereunder, authenticate and deliver such Global Security or Securities, which (i) shall represent, and shall be denominated in

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an amount equal to the aggregate principal amount of the Outstanding Debt Securities of such series to be represented by such Global Security or Securities, (ii) may provide that the aggregate amount of Outstanding Debt Securities represented thereby may from time to time be increased or reduced to reflect exchanges, (iii) shall be registered in the name of the Depository for such Global Security or Securities or its nominee, (iv) shall be delivered by the Trustee to the Depository or pursuant to the Depository's instruction and (v) shall bear a legend in accordance with the requirements of the Depository. The Trustee shall enter into any agreement with the Depository related to such Global Securities as the Company may direct in such Company Order.

(b) Notwithstanding any other provision of this Section or of Section 3.05, except as contemplated by the provisions of paragraph (c) below, unless the terms of a Global Security expressly permit such Global Security to be exchanged in whole or in part for individual Debt Securities, a Global Security may be transferred, in whole but not in part and in the manner provided in Section 3.05, only to a nominee of the Depository for such Global Security, or to the Depository, or to a successor Depository for such Global Security selected or approved by the Company, or to a nominee of such successor Depository.

(c)(1) If at any time the Depository for a Global Security notifies the Company that it is unwilling or unable to continue as the Depository for such Global Security or if at any time the Depository for the Debt Securities for such series shall no longer be eligible or in good standing under the Exchange Act, or other applicable statute or regulation, the Company shall appoint a successor Depository with respect to such Global Security. If a successor Depository for such Global Security is not appointed by the Company within 90 days after the Company receives such notice or becomes aware of such ineligibility, the Company will execute, and the Trustee, upon receipt of a Company Order for the authentication and delivery of Debt Securities of such series in the form of definitive certificates in exchange for such Global Security, will authenticate and deliver Debt Securities of such series in the form of definitive certificates of like tenor and terms in an aggregate principal amount equal to the principal amount of the Global Security in exchange for such Global Security. Such Debt Securities will be issued to and registered in the name of such Person or Persons as are specified by the Depository.

(2) To the extent legally permitted and subject to the rules and regulations of the acting Depository, the Company may at any time and in its sole discretion determine that the Debt Securities of any series issued or issuable in the form of one or more Global Securities shall no longer be represented by such Global Security or Securities. In any such event the Company will execute, and the Trustee, upon receipt of a Company Request for the authentication and delivery of Debt Securities in the form of definitive certificates in exchange in whole or in part for such Global Security, will authenticate and deliver without service charge to each Person specified by the Depository Debt Securities in the form of definitive certificates of like tenor and terms in an aggregate principal amount equal to the principal amount of such Global Security representing such series, or the aggregate principal amount of such Global Securities representing such series, in exchange for such Global Security or Securities.

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\* Bracketed language throughout this Indenture will be inserted in the Indenture in the event that subordinated Debt Securities are issued.

(3) If specified by the Company pursuant to Section 3.01 with respect to Debt Securities issued or issuable in the form of a Global Security, the Depository for such Global Security may surrender such Global Security in exchange in whole or in part for Debt Securities in the form of definitive certificates of like tenor and terms on such terms as are acceptable to the Company and such Depository. Thereupon the Company shall execute, and the Trustee shall authenticate and deliver, without service charge, (A) to each Person specified by such Depository a new Debt Security or Securities of the same series of like tenor and terms and any authorized denomination as requested by such Person in an aggregate principal amount equal to and in exchange for such Person's beneficial interest in the Global Security and (B) to such Depository a new Global Security of like tenor and terms and in an authorized denomination equal to the difference, if any, between the principal amount of the surrendered Global Security and the aggregate principal amount of Debt Securities delivered to Holders thereof.

(4) In any exchange provided for in any of the preceding three subparagraphs, the Company shall execute and the Trustee shall authenticate and deliver Debt Securities in the form of definitive certificates in authorized denominations. Upon the exchange of the entire principal amount of a Global Security for Debt Securities in the form of definitive certificates, such Global Security shall be canceled by the Trustee. Except as provided in the immediately preceding subparagraph, Debt Securities issued in exchange for a Global Security pursuant to this Section shall be registered in such names and in such authorized denominations as the Depository for such Global Security, acting pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Trustee. Provided that the Company and the Trustee have so agreed, the Trustee shall deliver such Debt Securities to the Persons in whose names the Debt Securities are so to be registered.

(5) Any endorsement of a Global Security to reflect the principal amount thereof, or any increase or decrease in such principal amount, or changes in the rights of Holders of Outstanding Debt Securities represented thereby shall be made in such manner and by such Person or Persons as shall be specified in or pursuant to any applicable letter of representations or other arrangement entered into with, or procedures of, the Depository with respect to such Global Security or in the Company Order delivered or to be delivered pursuant to Section 3.03 with respect thereto. Subject to the provisions of Section 3.03, the Trustee shall deliver and redeliver any such Global Security in the manner and upon instructions given by the Person or Persons specified in or pursuant to any applicable letter of representations or other arrangement entered into with, or procedures of, the Depository with respect to such Global Security or in any applicable Company Order. If a Company Order pursuant to Section 3.03 is so delivered, any instructions by the Company with respect to such Global Security contained therein shall be in writing but need not be accompanied by or contained in an Officer's Certificate and need not be accompanied by an Opinion of Counsel.

(6) The Depository or, if there be one, its nominee, shall be the Holder of a Global Security for all purposes under this Indenture; and beneficial owners with respect

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to such Global Security shall hold their interests pursuant to applicable procedures of such Depositary. The Company, the Trustee and the Debt Security Registrar shall be entitled to deal with such Depositary for all purposes of this Indenture relating to such Global Security (including the payment of principal, premium, if any, and interest (including Additional Interest) and the giving of instructions or directions by or to the beneficial owners of such Global Security as the sole Holder of such Global Security, and shall have no obligations to the beneficial owners thereof (including any direct or indirect participants in such Depositary)). None of the Company, the Trustee, any Paying Agent or the Debt Security Registrar shall have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a Global Security in or pursuant to any applicable letter of representations or other arrangement entered into with, or procedures of, the Depositary with respect to such Global Security or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

### **ARTICLE III THE DEBT SECURITIES**

#### **Section 3.01. Amount Unlimited; Issuable in Series.**

The aggregate principal amount of Debt Securities that may be authenticated and delivered under this Indenture is unlimited.

The Debt Securities may be issued in one or more series. Subject to the last paragraph of this Section, prior to the authentication and delivery of Debt Securities of any series there shall be established by specification in a supplemental indenture or in a Board Resolution, or in an Officer's Certificate pursuant to a supplemental indenture or a Board Resolution:

(a) the title of the Debt Securities of such series (which shall distinguish the Debt Securities of such series from Debt Securities of all other series);

(b) any limit upon the aggregate principal amount of the Debt Securities of such series that may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Debt Securities of the series pursuant to Section 3.04, 3.05, 3.06, 4.06 or 12.06 and, except for any Debt Securities that, pursuant to Section 3.03, are deemed never to have been authenticated and delivered hereunder);

(c) the Person or Persons (without specific identification) to whom interest on Debt Securities of such series, or any Tranche thereof, shall be payable on any Interest Payment Date, if other than the Persons in whose names such Debt Securities (or one or more Predecessor Debt Securities) are registered at the close of business on the Regular Record Date for such interest;

(d) the date or dates on which the principal of the Debt Securities of such series, or any Tranche thereof, is payable or any formulary or other method or other means by which such date or dates shall be determined, by reference to an index or other fact or event ascertainable

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outside of this Indenture or otherwise (without regard to any provisions for redemption, prepayment, acceleration, purchase or extension);

(e) the rate or rates at which the Debt Securities of such series, or any Tranche thereof, shall bear interest, if any (including the rate or rates at which overdue principal shall bear interest, if different from the rate or rates at which such Debt Securities shall bear interest prior to Maturity, (ii) and, if applicable, the rate or rates at which overdue premium shall bear interest, if any, and (iii) the rate or rates and the extent to which Additional Interest, if any, shall be payable), the period or periods during which such rate or rates shall be applicable, or any formulary or other method or other means by which such rate or rates, and any period or periods, shall be determined, by reference to an index or other fact or event ascertainable outside of this Indenture or otherwise; the date or dates from which such interest shall accrue; the Interest Payment Dates on which such interest shall be payable and the Regular Record Date, if any, for the interest payable on such Debt Securities on any Interest Payment Date; the right of the Company, if any, to extend the interest payment periods and the duration of any such extension as contemplated by Section 3.12\*; and the basis of computation of interest, if other than as provided in Section 3.10;

(f) the place or places at which or methods by which (1) the principal of and premium, if any, and interest (including Additional Interest), if any, on Debt Securities of such series, or any Tranche thereof, shall be payable, (2) registration of transfer of Debt Securities of such series, or any Tranche thereof, may be effected, (3) exchanges of Debt Securities of such series, or any Tranche thereof, may be effected and (4) notices and demands to or upon the Company in respect of the Debt Securities of such series, or any Tranche thereof, and this Indenture may be served; the Debt Security Registrar for such series; and if such is the case, that the principal of such Debt Securities shall be payable without presentment or surrender thereof;

(g) the period or periods within which, or the date or dates on which, the price or prices at which and the terms and conditions upon which the Debt Securities of such series, or any Tranche thereof, may be redeemed, in whole or in part, at the option of the Company and any restrictions on such redemptions, including but not limited to a restriction on a partial redemption by the Company of the Debt Securities of any series, or any Tranche thereof, resulting in delisting of such Debt Securities from any national exchange;

(h) the obligation or obligations, if any, of the Company to redeem or purchase the Debt Securities of such series, or any Tranche thereof, pursuant to any sinking fund or other mandatory redemption or tender provisions or at the option of a Holder thereof and the period or periods within which or the date or dates on which, the price or prices at which and the terms and conditions upon which such Debt Securities shall be redeemed or purchased, in whole or in part, pursuant to such obligation, and applicable exceptions to the requirements of Section 4.04 in the case of mandatory redemption or redemption at the option of the Holder;

(i) the denominations in which Debt Securities of such series, or any Tranche thereof, shall be issuable if other than denominations of \$1,000 and any integral multiple thereof;

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(j) the currency or currencies, including composite currencies, in which payment of the principal of and premium, if any, and interest (including Additional Interest), if any, on the Debt Securities of such series, or any Tranche thereof, shall be payable (if other than in Dollars);

(k) if the principal of or premium, if any, or interest (including Additional Interest), if any, on the Debt Securities of such series, or any Tranche thereof, are to be payable, at the election of the Company or a Holder thereof, in a coin or currency other than that in which the Debt Securities are stated to be payable, the period or periods within which and the terms and conditions upon which, such election may be made;

(l) if the principal of or premium, if any, or interest (including Additional Interest), if any, on the Debt Securities of such series, or any Tranche thereof, are to be payable, or are to be payable at the election of the Company or a Holder thereof, in securities or other property, the type and amount of such securities or other property, or the formulary or other method or other means by which such amount shall be determined, and the period or periods within which, and the terms and conditions upon which, any such election may be made;

(m) if the amount payable in respect of principal of or premium, if any, or interest, if any, on the Debt Securities of such series, or any Tranche thereof, may be determined with reference to an index or other fact or event ascertainable outside this Indenture, the manner in which such amounts shall be determined to the extent not established pursuant to clause (e) of this paragraph;

(n) if other than the principal amount thereof, the portion of the principal amount of Debt Securities of such series, or any Tranche thereof, that shall be payable upon declaration of acceleration of the Maturity thereof pursuant to Section 8.02;

(o) any Events of Default, in addition to those specified in Section 8.01, with respect to the Debt Securities of such series, and any covenants of the Company for the benefit of the Holders of the Debt Securities of such series, or any Tranche thereof, in addition to those set forth in Article VI;

(p) the terms, if any, pursuant to which the Debt Securities of such series, or any Tranche thereof, may be converted into or exchanged for shares of beneficial interest or other securities of the Company or any other Person;

(q) the obligations or instruments, if any, that shall be considered to be Eligible Obligations in respect of the Debt Securities of such series, or any Tranche thereof, denominated in a currency other than Dollars or in a composite currency, and any additional or alternative provisions for the reinstatement of the Company's indebtedness in respect of such Debt Securities after the satisfaction and discharge thereof as provided in Section 7.01;

(r) whether the Debt Securities of the series shall be issued in whole or in part in the form of a Global Security or Securities; the terms and conditions, if any, upon which such Global Security or Securities may be exchanged in whole or in part for certificated Debt Securities of such series and of like tenor of any authorized denomination and the circumstances under which

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such exchange may occur, if other than in the manner provided for in Section 2.03; the Depositary for such Global Security or Securities; and the form of any legend or legends to be borne by any such Global Security in addition to or in lieu of the legend referred to in Section 2.03;

(s) if the Debt Securities of such series, or any Tranche thereof, are to be issuable in bearer form, any and all matters incidental thereto that are not specifically addressed in a supplemental indenture as contemplated by Section 12.01(g);

(t) to the extent not established pursuant to clause (r) of this paragraph, any limitations on the rights of the Holders of the Debt Securities of such series, or any Tranche thereof, to transfer or exchange such Debt Securities or to obtain the registration of transfer thereof; and if a service charge will be made for the registration of transfer or exchange of Debt Securities of such series, or any Tranche thereof, the amount or terms thereof;

(u) any exceptions to Section 1.13, or variation in the definition of Business Day, with respect to the Debt Securities of such series, or any Tranche thereof;

(v) any collateral security, assurance or guarantee for such series of Debt Securities;

(w) any credit enhancement applicable to the Debt Securities of such series; and

(x) any other terms of the Debt Securities of such series, or any Tranche thereof, not inconsistent with the provisions of this Indenture.

[The Debt Securities of each series, or any Tranche thereof, shall be subordinated in the right of payment to Senior Indebtedness as provided in Article XV.]\*

With respect to Debt Securities of a series subject to a Periodic Offering, the indenture supplemental hereto or the Board Resolution that establishes such series, or the Officer's Certificate pursuant to such supplemental indenture or Board Resolution, as the case may be, may provide general terms or parameters for Debt Securities of such series and provide either that the specific terms of Debt Securities of such series, or any Tranche thereof, shall be specified in a Company Order or that such terms shall be determined by the Company or its agents in accordance with procedures specified in a Company Order as contemplated by clause (b) of the third paragraph of Section 3.03.

#### Section 3.02. Denominations.

Unless otherwise provided as contemplated by Section 3.01 with respect to any series of Debt Securities, or any Tranche thereof, the Debt Securities of each series shall be issuable in denominations of \$1,000 and any integral multiple thereof.

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Section 3.03. Execution, Authentication, Delivery and Dating.

Unless otherwise provided as contemplated by Section 3.01 with respect to any series of Debt Securities, or any Tranche thereof, the Debt Securities shall be executed on behalf of the Company by an Authorized Officer and may have the corporate seal of the Company affixed thereto or reproduced thereon attested by any other Authorized Officer. The signature of any or all of these officers on the Debt Securities may be manual or facsimile.

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

The Trustee shall authenticate and deliver Debt Securities of a series, for original issue, at one time or from time to time in accordance with the Company Order referred to below, upon receipt by the Trustee of:

(a) the instrument or instruments establishing the form or forms and terms of such series, as provided in Sections 2.01 and 3.01;

(b) a Company Order requesting the authentication and delivery of such Debt Securities and, to the extent that the terms of such Debt Securities shall not have been established in an indenture supplemental hereto or in a Board Resolution, or in an Officer's Certificate pursuant to a supplemental indenture or Board Resolution, all as contemplated by Sections 2.01 and 3.01, either (i) establishing such terms or (ii) in the case of Debt Securities of a series subject to a Periodic Offering, specifying procedures, acceptable to the Trustee, by which such terms are to be established (which procedures may provide, to the extent acceptable to the Trustee, for authentication and delivery pursuant to oral or electronic instructions from the Company or any agent or agents thereof, which oral instructions are to be promptly confirmed electronically or in writing), in either case in accordance with the instrument or instruments delivered pursuant to clause (a) above;

(c) the Debt Securities of such series, executed on behalf of the Company by an Authorized Officer;

(d) an Opinion of Counsel to the effect that:

(i) the form or forms of such Debt Securities have been duly authorized by the Company and have been established in conformity with the provisions of this Indenture;

(ii) the terms of such Debt Securities have been duly authorized by the Company and have been established in conformity with the provisions of this Indenture; and

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(iii) assuming authentication and delivery by the Trustee and subject to any conditions specified in such Opinion of Counsel, such Debt Securities will have been duly issued under this Indenture and will be legal, valid and binding obligations of the Company, enforceable in accordance with their terms, subject, as to enforcement, to laws relating to or affecting generally the enforcement of creditors' rights, including, without limitation, bankruptcy and insolvency laws and to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law);

*provided, however*, that, with respect to Debt Securities of a series subject to a Periodic Offering, the Trustee shall be entitled to receive such Opinion of Counsel only once at or prior to the time of the first authentication of such Debt Securities (provided that such Opinion of Counsel addresses the authentication and delivery of all Debt Securities of such series) and that in lieu of the opinions described in clauses (ii) and (iii) above Counsel may opine that:

(x) when the terms of such Debt Securities shall have been established pursuant to a Company Order or Orders or pursuant to such procedures (acceptable to the Trustee) as may be specified from time to time by a Company Order or Orders, all as contemplated by and in accordance with the instrument or instruments delivered pursuant to clause (a) above, such terms will have been duly authorized by the Company and will have been established in conformity with the provisions of this Indenture; and

(y) such Debt Securities, when authenticated and delivered by the Trustee in accordance with this Indenture and the Company Order or Orders or specified procedures referred to in paragraph (x) above and issued and delivered by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will have been duly issued under this Indenture and will constitute valid and legally binding obligations of the Company, entitled to the benefits provided by the Indenture, and enforceable in accordance with their terms, subject, as to enforcement, to laws relating to or affecting generally the enforcement of creditors' rights, including, without limitation, bankruptcy and insolvency laws and to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

With respect to Debt Securities of a series subject to a Periodic Offering, the Trustee may conclusively rely, as to the authorization by the Company of any of such Debt Securities, the form and terms thereof and the legality, validity, binding effect and enforceability thereof, upon the Opinion of Counsel and other documents delivered pursuant to Sections 2.01 and 3.01 and this Section, as applicable, at or prior to the time of the first authentication of Debt Securities of such series unless and until such opinion or other documents have been superseded or revoked or expire by their terms. In connection with the authentication and delivery of Debt Securities of a series subject to a Periodic Offering, the Trustee shall be entitled to assume that the Company's instructions to authenticate and deliver such Debt Securities do not violate any rules, regulations or orders of any Governmental Authority having jurisdiction over the Company.

If the form or terms of the Debt Securities of any series have been established by or pursuant to a Board Resolution or an Officer's Certificate as permitted by Sections 2.01 or 3.01, the Trustee shall not be required to authenticate such Debt Securities if the issuance of such Debt

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Securities pursuant to this Indenture will materially or adversely affect the Trustee's own rights, duties or immunities under the Debt Securities and this Indenture or otherwise in a manner that is not reasonably acceptable to the Trustee.

Unless otherwise specified as contemplated by Section 3.01 with respect to any series of Debt Securities, or any Tranche thereof, each Debt Security shall be dated the date of its authentication.

Unless otherwise specified as contemplated by Section 3.01 with respect to any series of Debt Securities, or any Tranche thereof, no Debt Security shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Debt Security a certificate of authentication substantially in the form provided for herein executed by the Trustee or its agent by manual signature, and such certificate upon any Debt Security shall be conclusive evidence, and the only evidence, that such Debt Security has been duly authenticated and delivered hereunder and is entitled to the benefits of this Indenture. Notwithstanding the foregoing, if any Debt Security shall have been authenticated and delivered hereunder to the Company, or any Person acting on its behalf, but shall never have been issued and sold by the Company, and the Company shall deliver such Debt Security to the Debt Security Registrar for cancellation as provided in Section 3.09 together with a written statement (which need not comply with Section 1.02 and need not be accompanied by an Opinion of Counsel) stating that such Debt Security has never been issued and sold by the Company, for all purposes of this Indenture such Debt Security shall be deemed never to have been authenticated and delivered hereunder and shall never be entitled to the benefits hereof.

#### Section 3.04. Temporary Debt Securities.

Pending the preparation of definitive Debt Securities of any series, or any Tranche thereof, the Company may execute, and upon Company Order the Trustee shall authenticate and deliver, temporary Debt Securities that are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Debt Securities in lieu of which they are issued, with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Debt Securities may determine, as evidenced by their execution of such Debt Securities; *provided, however*, that temporary Debt Securities need not recite specific redemption, sinking fund, conversion or exchange provisions.

Unless otherwise specified as contemplated by Section 3.01 with respect to the Debt Securities of any series, or any Tranche thereof, after the preparation of definitive Debt Securities of such series or Tranche, the temporary Debt Securities of such series or Tranche shall be exchangeable, without charge to the Holder thereof, for definitive Debt Securities of such series or Tranche, upon surrender of such temporary Debt Securities at the office or agency of the Company maintained pursuant to Section 6.02 in a Place of Payment for such Debt Securities. Upon such surrender of temporary Debt Securities, the Company shall, except as aforesaid, execute and the Trustee shall authenticate and deliver in exchange therefor definitive Debt Securities of the same series and Tranche, of authorized denominations and of like tenor and aggregate principal amount.

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Until exchanged in full as hereinabove provided, temporary Debt Securities shall in all respects be entitled to the same benefits under this Indenture as definitive Debt Securities of the same series and Tranche and of like tenor authenticated and delivered hereunder.

Section 3.05. Registration, Registration of Transfer and Exchange.

The Company shall cause to be kept in each office designated pursuant to Section 6.02, with respect to the Debt Securities of each series or any Tranche thereof, a register (all registers kept in accordance with this Section being collectively referred to as the “**Debt Security Register**”) in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Debt Securities of such series or Tranche and the registration of transfer thereof. The Company shall designate one Person to maintain the Debt Security Register for the Debt Securities of each series on a consolidated basis, and such Person is referred to herein, with respect to such series, as the “**Debt Security Registrar**.” Anything herein to the contrary notwithstanding, the Company may designate one or more of its offices as an office in which the Debt Security Register shall be maintained, and the Company may designate itself the Debt Security Registrar with respect to one or more of such series. The Debt Security Register shall be open for inspection by the Trustee and the Company at all reasonable times.

Except as otherwise specified as contemplated by Section 3.01 with respect to the Debt Securities of any series, or any Tranche thereof, upon surrender for registration of transfer of any Debt Security of such series or Tranche at the office or agency of the Company maintained pursuant to Section 6.02 in a Place of Payment for such series or Tranche, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Debt Securities of the same series and Tranche, of authorized denominations and of like tenor and aggregate principal amount.

Except as otherwise specified as contemplated by Section 3.01 with respect to the Debt Securities of any series, or any Tranche thereof, any Debt Security of such series or Tranche may be exchanged at the option of the Holder for one or more new Debt Securities of the same series and Tranche, of authorized denominations and of like tenor and aggregate principal amount, upon surrender of the Debt Securities to be exchanged at any such office or agency. Whenever any Debt Securities are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Debt Securities that the Holder making the exchange is entitled to receive.

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

Every Debt Security presented or surrendered for registration of transfer or for exchange shall (if so required by the Company, the Trustee or the Debt Security Registrar) be duly endorsed or shall be accompanied by a written instrument of transfer in form satisfactory to the

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Company, the Trustee or the Debt Security Registrar, as the case may be, duly executed by the Holder thereof or his attorney duly authorized in writing.

Unless otherwise specified as contemplated by Section 3.01 with respect to Debt Securities of any series, or any Tranche thereof, no service charge shall be made for any registration of transfer or exchange of Debt Securities, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Debt Securities, other than exchanges pursuant to Section 3.04, 4.06 or 12.06 not involving any transfer.

The Company shall not be required to execute or to provide for the registration of transfer of or the exchange of (a) Debt Securities of any series, or any Tranche thereof, during a period of 15 days immediately preceding the day the mailing of a notice of redemption of the Debt Securities of such series or Tranche is to be made or (b) any Debt Security so selected for redemption in whole or in part, except the unredeemed portion of any Debt Security being redeemed in part.

None of the Company, the Trustee, any Paying Agent or the Debt Security Registrar will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a Global Security or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

Section 3.06. Mutilated, Destroyed, Lost and Stolen Debt Securities.

If any mutilated Debt Security is surrendered to the Trustee, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a new Debt Security of the same series, and of like tenor and principal amount and bearing a number not contemporaneously outstanding.

If there shall be delivered to the Company and the Trustee (a) evidence to their satisfaction of the ownership of and the destruction, loss or theft of any Debt Security and (b) such security or indemnity as may be reasonably required by them to save each of them and any agent of either of them harmless, then, in the absence of notice to the Company or the Trustee that such Debt Security is held by a Person purporting to be the owner of such Debt Security, the Company shall execute and the Trustee shall authenticate and deliver, in lieu of any such destroyed, lost or stolen Debt Security, a new Debt Security of the same series and Tranche, and of like tenor and principal amount and bearing a number not contemporaneously outstanding.

Notwithstanding the foregoing, in case any such mutilated, destroyed, lost or stolen Debt Security has become or is about to become due and payable, the Company in its discretion may, instead of issuing a new Debt Security, pay such Debt Security.

Upon the issuance of any new Debt Security under this Section, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may

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be imposed in relation thereto and any other reasonable expenses (including the fees and expenses of the Trustee) connected therewith.

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

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

Section 3.07. Payment of Interest and Additional Interest; Interest Rights Preserved.

Unless otherwise specified as contemplated by Section 3.01 with respect to the Debt Securities of any series, or any Tranche thereof, interest and Additional Interest, if any, on any Debt Security that is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name that Debt Security (or one or more Predecessor Debt Securities) is registered at the close of business on the Regular Record Date for such interest.

[Subject to Section 3.12]\* any interest on any Debt Security of any series that 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 on the related Regular Record Date by virtue of having been such Holder, and such Defaulted Interest may be paid by the Company, at its election in each case, as provided in clause (a) or (b) below:

(a) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names the Debt Securities of such series (or their respective Predecessor Debt Securities) are registered at the close of business on a date (herein called 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 Debt Security of such series and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit 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 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company of such Special Record Date and, in the name and at the expense of the Company, shall promptly cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first-class postage prepaid, to each Holder of

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Debt Securities of such series at the address of such Holder as it appears in the Debt Security Register, not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been so mailed, such Defaulted Interest shall be paid to the Persons in whose names the Debt Securities of such series (or their respective Predecessor Debt Securities) are registered at the close of business on such Special Record Date.

(b) The Company may make payment of any Defaulted Interest on the Debt Securities of any series in any other lawful manner not inconsistent with the requirements of any securities exchange on which such Debt Securities may be listed, and upon such notice as may be required by such exchange, 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.

Subject to the foregoing provisions of this Section and Section 3.05, each Debt Security delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Debt Security shall carry the rights to interest (including any Additional Interest) accrued and unpaid, and to accrue, that were carried by such other Debt Security.

Section 3.08. Persons Deemed Owners.

Prior to due presentment of a Debt Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name such Debt Security is registered as the absolute owner of such Debt Security for the purpose of receiving payment of principal of and premium, if any, and (subject to Sections 3.05 and 3.07) interest, if any, on such Debt Security and for all other purposes whatsoever, whether or not such Debt Security is overdue, and neither the Company, the Trustee nor any agent of the Company or the Trustee shall be affected by notice to the contrary.

Section 3.09. Cancellation by Debt Security Registrar.

All Debt Securities surrendered for payment, redemption, registration of transfer or exchange shall, if surrendered to any Person other than the Debt Security Registrar, be delivered to the Debt Security Registrar and, if not theretofore canceled, shall be promptly canceled by the Debt Security Registrar. The Company may at any time deliver to the Debt Security Registrar for cancellation any Debt Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever or which the Company shall not have issued and sold, and all Debt Securities so delivered shall be promptly canceled by the Debt Security Registrar. No Debt Securities shall be authenticated in lieu of or in exchange for any Debt Securities canceled as provided in this Section, except as expressly permitted by this Indenture. All certificates representing canceled Debt Securities held by the Debt Security Registrar shall be disposed of in accordance with the customary practices of the Debt Security Registrar at the time in effect, and the Debt Security Registrar shall not be required to destroy any such certificates. The Debt Security Registrar, if other than the Trustee, shall promptly deliver a certificate of disposition with respect to such disposed certificates to the Trustee and the Company unless, by a Company Order, similarly delivered, the Company shall direct that

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canceled Debt Securities be returned to it. The Debt Security Registrar shall promptly deliver evidence of any cancellation of a Debt Security in accordance with this Section to the Trustee and the Company. If the Trustee is the entity acting as Debt Security Registrar, it shall promptly deliver to the Company a certificate of disposition with respect to any certificates disposed of and/or evidence of any cancellation of a Debt Security, in each case in accordance with this Section, if so requested by a Company Order.

Section 3.10. Computation of Interest.

Except as otherwise specified as contemplated by Section 3.01 for Debt Securities of any series, or any Tranche thereof, interest on the Debt Securities of each series shall be computed on the basis of a 360-day year consisting of twelve 30-day months and on the basis of the actual number of days elapsed within any month in relation to the deemed 30 days of such month.

Section 3.11. Payment to be in Proper Currency.

In the case of the Debt Securities of any series, or any Tranche thereof, denominated in any currency other than Dollars or in a composite currency (the “**Required Currency**”), except as otherwise specified with respect to such Debt Securities as contemplated by Section 3.01, the obligation of the Company to make any payment of the principal thereof, or the premium or interest thereon, shall not be discharged or satisfied by any tender by the Company, or recovery by the Trustee, in any currency other than the Required Currency, except to the extent that such tender or recovery shall result in the Trustee timely holding the full amount of the Required Currency then due and payable. If any such tender or recovery is in a currency other than the Required Currency, the Trustee may take such actions as it considers appropriate to exchange such currency for the Required Currency. The costs and risks of any such exchange, including without limitation the risks of delay and exchange rate fluctuation, shall be borne by the Company, the Company shall remain fully liable for any shortfall or delinquency in the full amount of Required Currency then due and payable, and in no circumstances shall the Trustee be liable therefor except in the case of its negligence or willful misconduct.

Section 3.12. [Extension of Interest Payment]\*.

[The Company shall have the right at any time, so long as the Company is not in default in the payment of interest on the Debt Securities of any series hereunder, to extend interest payment periods on all Debt Securities of one or more series, or Tranches thereof, if so specified as contemplated by Section 3.01 with respect to such Debt Securities and upon such terms as may be specified as contemplated by Section 3.01 with respect to such Debt Securities.]\*

**ARTICLE IV  
REDEMPTION OF DEBT SECURITIES**

Section 4.01. Applicability of Article.

Debt Securities of any series, or any Tranche thereof, that are redeemable before their Stated Maturity shall be redeemable in accordance with their terms and (except as otherwise

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specified as contemplated by Section 3.01 for Debt Securities of such series or Tranche) in accordance with this Article.

Section 4.02. Election to Redeem; Notice to Trustee.

The election of the Company to redeem any Debt Securities shall be evidenced by a Board Resolution and/or an Officer's Certificate. The Company shall, at least 45 days prior to the Redemption Date fixed by the Company (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee in writing of such Redemption Date and of the principal amount of such Debt Securities to be redeemed. In the case of any redemption of Debt Securities (a) prior to the expiration of any restriction on such redemption provided in the terms of such Debt Securities or elsewhere in this Indenture or (b) pursuant to an election of the Company that is subject to a condition specified in the terms of such Debt Securities, the Company shall furnish the Trustee with an Officer's Certificate evidencing compliance with such restriction or condition.

Section 4.03. Selection of Debt Securities to be Redeemed.

If less than all the Debt Securities of any series, or any Tranche thereof, are to be redeemed, the particular Debt Securities to be redeemed shall be selected by the Trustee from the Outstanding Debt Securities of such series or Tranche not previously called for redemption, by such method as shall be provided for any particular series, or, in the absence of any such provision, by such method of random selection as the Trustee shall deem fair and appropriate and which may, in any case, provide for the selection for redemption of portions (equal to the minimum authorized denomination for Debt Securities of such series or Tranche or any integral multiple thereof) of the principal amount of Debt Securities of such series or Tranche of a denomination larger than the minimum authorized denomination for Debt Securities of such series or Tranche; *provided, however*, that if, as indicated in an Officer's Certificate, the Company shall have offered to purchase all or any principal amount of the Debt Securities then Outstanding of any series, or any Tranche thereof, and less than all of such Debt Securities as to which such offer was made shall have been tendered to the Company for such purchase, the Trustee, if so directed by Company Order, shall select for redemption all or any principal amount of such Debt Securities that have not been so tendered.

If the Debt Securities are then held in the form of a Global Security, the Debt Securities to be redeemed shall be selected in accordance with the customary procedures of the Depository.

The Trustee shall promptly notify the Company and the Debt Security Registrar in writing of the Debt Securities selected for redemption and, in the case of any Debt Securities selected to be redeemed in part, the principal amount thereof to be redeemed.

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

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Section 4.04. Notice of Redemption.

Notice of redemption shall be given in the manner provided in Section 1.06 to the Holders of the Debt Securities to be redeemed not less than 30 nor more than 60 days prior to the Redemption Date.

All notices of redemption shall state:

(a) the Redemption Date,

(b) the Redemption Price,

(c) if less than all the Debt Securities of any series or Tranche are to be redeemed, the identification of the particular Debt Securities to be redeemed and the portion of the principal amount of any Debt Security to be redeemed in part,

(d) that on the Redemption Date, the Redemption Price, together with accrued interest (including Additional Interest), if any, to the Redemption Date, will become due and payable upon each such Debt Security to be redeemed and, if applicable and provided that the Redemption Price is received by the Paying Agent or Agents on or prior to the Redemption Date, that interest (including any Additional Interest) thereon will cease to accrue on and after said date,

(e) the place or places where such Debt Securities are to be surrendered for payment of the Redemption Price and accrued interest, if any, unless it shall have been specified as contemplated by Section 3.01 with respect to such Debt Securities that such surrender shall not be required,

(f) that the redemption is for a sinking or other fund, if such is the case, and

(g) such other matters as the Company shall deem desirable or appropriate (including CUSIP numbers with respect to such Debt Securities, if the Company shall so elect, in which event such notice of redemption may contain a disclaimer as to the correctness of such numbers either as printed on the Debt Securities or on such notice of redemption).

Unless otherwise specified with respect to any Debt Securities in accordance with Section 3.01, with respect to any notice of redemption of Debt Securities at the election of the Company, unless, upon the giving of such notice, such Debt Securities shall be deemed to have been paid in accordance with Section 7.01, such notice may state that such redemption shall be conditional upon the receipt by the Paying Agent or Agents for such Debt Securities, on or prior to the date fixed for such redemption, of money sufficient to pay the principal of and premium, if any, and interest (including Additional Interest), if any, on such Debt Securities and that if such money shall not have been so received such notice shall be of no force or effect and the Company shall not be required to redeem such Debt Securities. In the event that such notice of redemption contains such a condition and such money is not so received, the redemption shall not be made and within a reasonable time thereafter notice shall be given, in the manner in which

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the notice of redemption was given, that such money was not so received and such redemption was not required to be made, and the Paying Agent or Agents for the Debt Securities otherwise to have been redeemed shall promptly return to the Holders thereof any of such Debt Securities that had been surrendered for payment upon such redemption.

Notice of redemption of Debt Securities to be redeemed at the election of the Company, and any notice of non-satisfaction of a condition for redemption as aforesaid, shall be given by the Company or, at the Company's request, by the Debt Security Registrar in the name and at the expense of the Company. Notice of mandatory redemption of Debt Securities shall be given by the Debt Security Registrar in the name and at the expense of the Company.

Section 4.05. Debt Securities Payable on Redemption Date.

Notice of redemption having been given as aforesaid, and the conditions, if any, set forth in such notice having been satisfied, the Debt Securities or portions thereof so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified, and from and after such date (unless, in the case of an unconditional notice of redemption, the Company shall default in the payment of the Redemption Price and accrued interest (including Additional Interest), if any) such Debt Securities or portions thereof, if interest-bearing, shall cease to bear interest. Upon surrender of any such Debt Security for redemption in accordance with such notice, such Debt Security or portion thereof shall be paid by the Company at the Redemption Price, together with accrued interest (including Additional Interest), if any, to the Redemption Date; *provided, however*, that no such surrender shall be a condition to such payment if so specified as contemplated by Section 3.01 with respect to such Debt Security; and *provided, further*, that except as otherwise specified as contemplated by Section 3.01 with respect to such Debt Security, any installment of interest on any Debt Security the Stated Maturity of which installment is on or prior to the Redemption Date shall be payable to the Holder of such Debt Security, or one or more Predecessor Debt Securities, registered as such at the close of business on the related Regular Record Date according to the terms of such Debt Security and subject to the provisions of Section 3.07.

Section 4.06. Debt Securities Redeemed in Part.

Upon the surrender of any Debt Security that is to be redeemed only in part at a Place of Payment therefor (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or his attorney duly authorized in writing), the Company shall execute, and the Trustee shall authenticate and deliver to the Holder of such Debt Security, without service charge, a new Debt Security or Debt Securities of the same series and Tranche, of any authorized denomination requested by such Holder and of like tenor and in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Debt Security so surrendered.

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**ARTICLE V**  
**SINKING FUNDS**

Section 5.01. Applicability of Article.

The provisions of this Article shall be applicable to any sinking fund for the retirement of the Debt Securities of any series, or any Tranche thereof, except as otherwise specified as contemplated by Section 3.01 for Debt Securities of such series or Tranche.

The minimum amount of any sinking fund payment provided for by the terms of Debt Securities of any series, or any Tranche thereof, is herein referred to as a “mandatory sinking fund payment,” and any payment in excess of such minimum amount provided for by the terms of Debt Securities of any series, or any Tranche thereof, is herein referred to as an “optional sinking fund payment.” If provided for by the terms of Debt Securities of any series, or any Tranche thereof, the cash amount of any sinking fund payment may be subject to reduction as provided in Section 5.02. Each sinking fund payment shall be applied to the redemption of Debt Securities of the series or Tranche in respect of which it was made as provided for by the terms of such Debt Securities.

Section 5.02. Satisfaction of Sinking Fund Payments with Debt Securities.

The Company (a) may deliver to the Trustee Outstanding Debt Securities (other than any previously called for redemption) of a series or Tranche in respect of which a mandatory sinking fund payment is to be made and (b) may apply as a credit Debt Securities of such series or Tranche that have been purchased by the Company or redeemed either at the election of the Company pursuant to the terms of such Debt Securities or through the application of permitted optional sinking fund payments pursuant to the terms of such Debt Securities, in each case in satisfaction of all or any part of such mandatory sinking fund payment; *provided, however,* that no Debt Securities shall be applied in satisfaction of a mandatory sinking fund payment if such Debt Securities shall have been previously so applied. Debt Securities so applied shall be received and credited for such purpose by the Trustee at the Redemption Price specified in such Debt Securities for redemption through operation of the sinking fund and the amount of such mandatory sinking fund payment shall be reduced accordingly.

Section 5.03. Redemption of Debt Securities for Sinking Fund.

Not less than 45 days prior to each sinking fund payment date for the Debt Securities of any series, or any Tranche thereof, the Company shall deliver to the Trustee an Officer’s Certificate specifying:

- (a) the amount of the next succeeding mandatory sinking fund payment for such series or Tranche;
- (b) the amount, if any, of the optional sinking fund payment to be made together with such mandatory sinking fund payment;
- (c) the aggregate sinking fund payment;

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(d) the portion, if any, of such aggregate sinking fund payment that is to be satisfied by the payment of cash; and

(e) the portion, if any, of such aggregate sinking fund payment that is to be satisfied by delivering and crediting Debt Securities of such series or Tranche pursuant to Section 5.02 and stating the basis for such credit and that such Debt Securities have not previously been so credited, and, if it has not already done so, the Company shall also deliver to the Trustee any Debt Securities to be so delivered.

If the Company shall not have delivered such Officer's Certificate and, to the extent applicable, all such Debt Securities, on or prior to the 45th day prior to such sinking fund payment date, the sinking fund payment for such series or Tranche in respect of such sinking fund payment date shall be made entirely in cash in the amount of the mandatory sinking fund payment. Not less than 30 days before each such sinking fund payment date the Trustee shall select the Debt Securities to be redeemed upon such sinking fund payment date in the manner specified in Section 4.03 and the Debt Security Registrar shall cause notice of the redemption thereof to be given in the name of and at the expense of the Company in the manner provided in Section 4.04. Such notice having been duly given, the redemption of such Debt Securities shall be made upon the terms and in the manner stated in Sections 4.05 and 4.06.

## ARTICLE VI COVENANTS

### Section 6.01. Payment of Principal, Premium and Interest.

The Company shall pay the principal of and premium, if any, and interest, if any, on the Debt Securities of each series in accordance with the terms of such Debt Securities and this Indenture.

### Section 6.02. Maintenance of Office or Agency.

The Company shall maintain in each Place of Payment for the Debt Securities of each series, or any Tranche thereof, an office or agency where payment of such Debt Securities shall be made, where the registration of transfer or exchange of such Debt Securities may be effected and where notices and demands to or upon the Company in respect of such Debt Securities and this Indenture may be served. The Company shall give prompt written notice to the Trustee of the location, and any change in the location, of each such office or agency and prompt notice to the Holders of any such change in the manner specified in Section 1.06. If at any time the Company shall fail to maintain any such required office or agency in respect of Debt Securities of any series, or any Tranche thereof, or shall fail to furnish the Trustee with the address thereof, payment of such Debt Securities shall be made, registration of transfer or exchange thereof may be effected and notices and demands in respect thereof may be served at the Corporate Trust Office of the Trustee, and the Company hereby appoints the Trustee as its agent for all such purposes in any such event.

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The Company may also from time to time designate one or more other offices or agencies with respect to the Debt Securities of one or more series, or any Tranche thereof, for any or all of the foregoing purposes and may from time to time rescind such designations; *provided, however*, that, unless otherwise specified as contemplated by Section 3.01 with respect to the Debt Securities of such series or Tranche no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency for such purposes in each Place of Payment for such Debt Securities in accordance with the requirements set forth above. The Company shall give prompt written notice to the Trustee, and prompt notice to the Holders in the manner specified in Section 1.06, of any such designation or rescission and of any change in the location of any such other office or agency.

Anything herein to the contrary notwithstanding, any office or agency required by this Section may be maintained at an office of the Company, in which event the Company shall perform all functions to be performed at such office or agency.

Section 6.03. Money for Debt Securities Payments to be Held in Trust.

If the Company shall at any time act as its own Paying Agent with respect to the Debt Securities of any series, or any Tranche thereof, it shall, on or before each due date of the principal of and premium, if any, and interest (including Additional Interest), if any, on any of such Debt Securities, segregate and hold in trust for the benefit of the Persons entitled thereto a sum sufficient to pay the principal and premium or interest (including Additional Interest) so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided. The Company shall promptly notify the Trustee of any failure by the Company (or any other obligor on such Debt Securities) to make any payment of principal of or premium, if any, or interest (including Additional Interest), if any, on such Debt Securities.

Whenever the Company shall have one or more Paying Agents for the Debt Securities of any series, or any Tranche thereof, it shall, on or before each due date of the principal of and premium, if any, and interest (including Additional Interest), if any, on such Debt Securities, deposit with such Paying Agents sums sufficient (without duplication) to pay the principal and premium or interest (including Additional Interest) so becoming due, such sum to be held in trust for the benefit of the Persons entitled to such principal, premium or interest (including Additional Interest), and (unless such Paying Agent is the Trustee) the Company shall promptly notify the Trustee of any failure by it so to act.

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

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

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(b) give the Trustee notice of any failure by the Company (or any other obligor upon such Debt Securities) to make any payment of principal of or premium, if any, or interest, (including Additional Interest) if any, on such Debt Securities; and

(c) at any time during the continuance of any such default, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such Paying Agent and furnish to the Trustee such information as it possesses regarding the names and addresses of the Persons entitled to such sums.

The Company may at any time pay, or by Company Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Company or such Paying Agent, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by the Company or such Paying Agent and, if so stated in a Company Order delivered to the Trustee, in accordance with the provisions of Article VII; and, upon such payment by any Paying Agent to the Trustee, such Paying Agent shall be released from all further liability with respect to such money.

Any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of and premium, if any, or interest (including Additional Interest), if any, on any Debt Security and remaining unclaimed for two years after such principal and premium, if any, or interest (including Additional Interest) has become due and payable shall be paid to the Company on Company Request, or, if then held by the Company, shall be discharged from such trust; and, upon such payment or discharge, the Holder of such Debt Security shall, as an unsecured general creditor and not as a Holder of an Outstanding Debt Security, look only to the Company for payment of the amount so due and payable and remaining unpaid, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; *provided, however*, that the Trustee or such Paying Agent, before being required to make any such payment to the Company, may at the expense of the Company cause to be mailed, on one occasion only, notice to such Holder that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such mailing, any unclaimed balance of such money then remaining will be paid to the Company.

#### Section 6.04. Corporate Existence.

Subject to the rights of the Company under Article XI, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence.

#### Section 6.05. Maintenance of Properties.

The Company shall cause (or, with respect to property owned in common with others, make reasonable effort to cause) all its properties used or useful in the conduct of its business to be maintained and kept in good condition, repair and working order and shall cause (or, with respect to property owned in common with others, make reasonable effort to cause) to be made all necessary repairs, renewals, replacements, betterments and improvements thereof, all as, in the judgment of the Company, may be necessary so that the business carried on in connection

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therewith may be properly conducted; *provided, however*, that nothing in this Section shall prevent the Company from discontinuing, or causing the discontinuance of, the operation and maintenance of any of its properties if such discontinuance is, in the judgment of the Company, desirable in the conduct of its business.

Section 6.06. Annual Officer's Certificate as to Compliance.

Not later than \_\_\_\_\_ in each year, commencing \_\_\_\_\_, the Company shall deliver to the Trustee an Officer's Certificate, which need not comply with Section 1.02, executed by the principal executive officer, the principal financial officer or the principal accounting officer of the Company, stating whether, to such officer's knowledge, the Company is in compliance with all conditions and covenants under this Indenture, such compliance to be determined without regard to any period of grace or requirement of notice under this Indenture, and making any other statements as may be required by the provisions of Section 314(a)(4) of the Trust Indenture Act.

Section 6.07. Waiver of Certain Covenants.

The Company may omit in any particular instance to comply with any term, provision or condition set forth in (a) Section 6.02 or any additional covenant or restriction specified with respect to the Debt Securities of any series, or any Tranche thereof, as contemplated by Section 3.01 if before the time for such compliance the Holders of at least a majority in aggregate principal amount of the Outstanding Debt Securities of all series and Tranches with respect to which compliance with Section 6.02 or such additional covenant or restriction is to be omitted, considered as one class, shall, by Act of such Holders, either waive such compliance in such instance or generally waive compliance with such term, provision or condition and (b) Sections 6.04, 6.05, 6.06 or Article XI if before the time for such compliance the Holders of at least a majority in principal amount of Debt Securities Outstanding under this Indenture shall, by Act of such Holders, either waive such compliance in such instance or generally waive compliance with such term, provision or condition; but, in the case of (a) or (b), no such waiver shall extend to or affect such term, provision or condition except to the extent so expressly waived, and, until such waiver shall become effective, the obligations of the Company and the duties of the Trustee in respect of any such term, provision or condition shall remain in full force and effect.

**ARTICLE VII  
SATISFACTION AND DISCHARGE**

Section 7.01. Satisfaction and Discharge of Debt Securities.

Any Debt Security or Debt Securities, or any portion of the principal amount thereof, shall be deemed to have been paid for all purposes of this Indenture, and the entire indebtedness of the Company in respect thereof shall be deemed to have been satisfied and discharged, if there shall have been irrevocably deposited with the Trustee or any Paying Agent (other than the Company), in trust:

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(a) money in an amount that shall be sufficient, or

(b) in the case of a deposit made prior to the Maturity of such Debt Securities or portions thereof, Eligible Obligations, which shall not contain provisions permitting the redemption or other prepayment thereof at the option of the issuer thereof, the principal of and the interest on that when due, without any regard to reinvestment thereof, will provide moneys which, together with the money, if any, deposited with or held by the Trustee or such Paying Agent, shall be sufficient, or

(c) a combination of (a) or (b) that shall be sufficient,

to pay when due the principal of and premium, if any, and interest (including Additional Interest), if any, due and to become due on such Debt Securities or portions thereof on or prior to Maturity; *provided, however*, that in the case of the provision for payment or redemption of less than all the Debt Securities of any series or Tranche, such Debt Securities or portions thereof shall have been selected by the Trustee as provided herein and, in the case of a redemption, the notice requisite to the validity of such redemption shall have been given or irrevocable authority shall have been given by the Company to the Trustee to give such notice, under arrangements satisfactory to the Trustee; and *provided, further*, that the Company shall have delivered to the Trustee and such Paying Agent:

(x) if such deposit shall have been made prior to the Maturity of such Debt Securities, a Company Order stating that the money and Eligible Obligations deposited in accordance with this Section shall be held in trust, as provided in Section 7.03;

(y) if Eligible Obligations shall have been deposited, an Opinion of Counsel that the obligations so deposited constitute Eligible Obligations and do not contain provisions permitting the redemption or other prepayment at the option of the issuer thereof, and an opinion of an independent public accountant of nationally recognized standing, selected by the Company, to the effect that the requirements set forth in clause (b) above have been satisfied; and

(z) if such deposit shall have been made prior to the Maturity of such Debt Securities, an Officer's Certificate stating the Company's intention that, upon delivery of such Officer's Certificate, its indebtedness in respect of such Debt Securities or portions thereof will have been satisfied and discharged as contemplated in this Section.

If the Company shall make any deposit of money and/or Eligible Obligations with respect to any Debt Securities, or any portion of the principal amount thereof, as contemplated by this section, the Company shall not deliver an Officer's Certificate described in clause (z) above unless the Company shall also deliver to the Trustee, together with such Officer's Certificate, an Opinion of Counsel to the effect that, as a result of a change in law occurring after the date of this Indenture, the Holders of such Debt Securities, or portions thereof, will not recognize income, gain or loss for United States federal income tax purposes as a result of the satisfaction and discharge of the Company's indebtedness in respect thereof and will be subject to United

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States federal income tax on the same amounts, at the same times and in the same manner as if such satisfaction and discharge had not been effected.

Upon the deposit of money or Eligible Obligations, or both, in accordance with this Section, together with the documents required by clauses (x), (y) and (z) above, the Trustee shall, upon receipt of a Company Request, acknowledge in writing that the Debt Security or Debt Securities or portions thereof with respect to which such deposit was made are deemed to have been paid for all purposes of this Indenture and that the entire indebtedness of the Company in respect thereof has been satisfied and discharged as contemplated in this Section. In the event that all of the conditions set forth in the first paragraph of this Section shall have been satisfied in respect of any Debt Securities or portions thereof except that, for any reason, the Officer's Certificate specified in clause (z) shall not have been delivered, such Debt Securities or portions thereof shall nevertheless be deemed to have been paid for all purposes of this Indenture, and the Holders of such Debt Securities or portions thereof shall nevertheless be no longer entitled to the benefits of this Indenture or of any of the covenants of the Company under Article VI (except the covenants contained in Sections 6.02 and 6.03) or any other covenants made in respect of such Debt Securities or portions thereof as contemplated by Section 3.01, but the indebtedness of the Company in respect of such Debt Securities or portions thereof shall not be deemed to have been satisfied and discharged prior to Maturity for any other purpose, and the Holders of such Debt Securities or portions thereof shall continue to be entitled to look to the Company for payment of the indebtedness represented thereby; and, upon receipt of a Company Request, the Trustee shall acknowledge in writing that such Debt Securities or portions thereof are deemed to have been paid for all purposes of this Indenture.

If payment at Stated Maturity of less than all of the Debt Securities of any series, or any Tranche thereof, is to be provided for in the manner and with the effect provided in this Section, the Trustee shall select such Debt Securities, or portions of principal amount thereof, in the manner specified by Section 4.03 for selection for redemption of less than all the Debt Securities of a series or Tranche.

In the event that Debt Securities that shall be deemed to have been paid for purposes of this Indenture, and, if such is the case, in respect of which the Company's indebtedness shall have been satisfied and discharged, all as provided in this Section, do not mature and are not to be redeemed within the 60-day period commencing with the date of the deposit of moneys or Eligible Obligations, as aforesaid, the Company shall, as promptly as practicable, give a notice, in the same manner as a notice of redemption with respect to such Debt Securities, to the Holders of such Debt Securities to the effect that such deposit has been made and the effect thereof.

Notwithstanding that any Debt Securities shall be deemed to have been paid for purposes of this Indenture, as aforesaid, the obligations of the Company and the Trustee in respect of such Debt Securities under Sections 3.04, 3.05, 3.06, 4.04, 5.03 (as to notice of redemption), 6.02, 6.03, 9.07, 9.14 and 9.15 and this Article shall survive.

The Company shall pay, and shall indemnify the Trustee or any Paying Agent with which Eligible Obligations shall have been deposited as provided in this Section against any tax, fee or other charge imposed on or assessed against such Eligible Obligations or the principal or interest

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received in respect of such Eligible Obligations, including, but not limited to, any such tax payable by any entity deemed, for tax purposes, to have been created as a result of such deposit.

Anything herein to the contrary notwithstanding, (a) if, at any time after a Debt Security would be deemed to have been paid for purposes of this Indenture, and, if such is the case, the Company's indebtedness in respect thereof would be deemed to have been satisfied or discharged, pursuant to this Section (without regard to the provisions of this paragraph), the Trustee or any Paying Agent, as the case may be, shall be required to return the money or Eligible Obligations, or combination thereof, deposited with it as aforesaid to the Company or its representative under any applicable federal or state bankruptcy, insolvency or other similar law, such Debt Security shall thereupon be deemed retroactively not to have been paid and any satisfaction and discharge of the Company's indebtedness in respect thereof shall retroactively be deemed not to have been effected, and such Debt Security shall be deemed to remain Outstanding and (b) any satisfaction and discharge of the Company's indebtedness in respect of any Debt Security shall be subject to the provisions of the last paragraph of Section 6.03.

Section 7.02. Satisfaction and Discharge of Indenture.

This Indenture shall upon Company Request cease to be of further effect (except as hereinafter expressly provided), and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when

- (a) no Debt Securities remain Outstanding hereunder; and
- (b) the Company has paid or caused to be paid all other sums payable hereunder by the Company;

*provided, however,* that if, in accordance with the last paragraph of Section 7.01, any Debt Security, previously deemed to have been paid for purposes of this Indenture, shall be deemed retroactively not to have been so paid, this Indenture shall thereupon be deemed retroactively not to have been satisfied and discharged, as aforesaid, and to remain in full force and effect, and the Company shall execute and deliver such instruments as the Trustee shall reasonably request to evidence and acknowledge the same.

Notwithstanding the satisfaction and discharge of this Indenture as aforesaid, the obligations of the Company and the Trustee under Sections 3.04, 3.05, 3.06, 4.04, 5.03 (as to notice of redemption), 6.02, 6.03, 9.07, 9.14 and 9.15 and this Article shall survive.

Upon satisfaction and discharge of this Indenture as provided in this Section, the Trustee shall assign, transfer and turn over to the Company, subject to the lien provided by Section 9.07, any and all money, securities and other property then held by the Trustee for the benefit of the Holders of the Debt Securities other than money and Eligible Obligations held by the Trustee pursuant to Section 7.03.

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Section 7.03. Application of Trust Money.

Neither the Eligible Obligations nor the money deposited pursuant to Section 7.01, nor the principal or interest payments on any such Eligible Obligations, shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal of, and premium, if any, and interest (including Additional Interest), if any, on, the Debt Securities or portions of principal amount thereof in respect of which such deposit was made, all subject, however, to the provisions of Section 6.03; *provided, however*, that, so long as there shall not have occurred and be continuing an Event of Default, or an event that, with the giving of notice or the passage of time, would become an Event of Default, any cash received from such principal or interest payments on such Eligible Obligations, if not then needed for such purpose, shall, to the extent practicable, be invested in Eligible Obligations of the type described in Section 7.01(b) maturing at such times and in such amounts as shall be sufficient to pay when due the principal of and premium, if any, and interest (including Additional Interest), if any, due and to become due on such Debt Securities or portions thereof on and prior to the Maturity thereof, and interest earned from such reinvestment shall be paid over to the Company as received, free and clear of any trust, lien or pledge under this Indenture except the lien provided by Section 9.07; and *provided, further*, that, so long as there shall not have occurred and be continuing an Event of Default, or an event that, with the giving of notice or the passage of time, would become an Event of Default, any moneys held in accordance with this Section on the Maturity of all such Debt Securities in excess of the amount required to pay the principal of and premium, if any, and interest (including Additional Interest), if any, then due on such Debt Securities shall be paid over to the Company free and clear of any trust, lien or pledge under this Indenture except the lien provided by Section 9.07; and *provided, further*, that if an Event of Default, or an event that, with the giving of notice or the passage of time, would become an Event of Default, shall have occurred and be continuing, moneys to be paid over to the Company pursuant to this Section shall be held until such Event of Default, or event that, with the giving of notice or the passage of time, would become an Event of Default, shall have been waived or cured.

**ARTICLE VIII  
EVENTS OF DEFAULT; REMEDIES**

Section 8.01. Events of Default.

“**Event of Default,**” wherever used herein with respect to Debt Securities of any series, means any one of the following events:

(a) failure to pay interest (including Additional Interest), if any, on any Debt Security of such series within 30 days after the same becomes due and payable [(whether or not payment is prohibited by the provisions of Article XV hereof);]\* [*provided, however*, that a valid extension of the interest payment period by the Company as contemplated in Section 3.12 of this Indenture shall not constitute a failure to pay interest for this purpose]\*; or

(b) failure to pay the principal of or premium, if any, on any Debt Security of such series when due and payable under this Indenture [(whether or not payment is prohibited by the provisions of Article XV hereof)];\*; or

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(c) failure to make any sinking fund payment with respect to such series when due; or

(d) failure to perform or breach of any covenant or warranty of the Company in this Indenture (other than a covenant or warranty a default in the performance of which or breach of which is elsewhere in this Section specifically dealt with or which has expressly been included in this Indenture solely for the benefit of one or more series of Debt Securities other than such series) for a period of 60 days after there has been given, by registered or certified mail, to the Company by the Trustee, or to the Company and the Trustee by the Holders of at least 33% in principal amount of the Outstanding Debt Securities of such series, a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder, unless the Trustee, or the Trustee and the Holders of a principal amount of Debt Securities of such series not less than the principal amount of Debt Securities the Holders of which gave such notice, as the case may be, shall agree in writing to an extension of such period prior to its expiration; *provided, however*, that the Trustee, or the Trustee and the Holders of such principal amount of Debt Securities of such series, as the case may be, shall be deemed to have agreed to an extension of such period for a maximum of one hundred twenty (120) days if corrective action is initiated by the Company within such period and is being diligently pursued; or

(e) the entry by a court having jurisdiction in the premises of (1) a decree or order for relief in respect of the Company in an involuntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law or (2) a decree or order adjudging the Company a bankrupt or insolvent, or approving as properly filed a petition by one or more Persons other than the Company seeking reorganization, arrangement, adjustment or composition of or in respect of the Company under any applicable federal or state law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official for the Company or for any substantial part of its property, or ordering the winding up or liquidation of its affairs, and any such decree or order for relief or any such other decree or order shall have remained unstayed and in effect for a period of 90 consecutive days; or

(f) the commencement by the Company of a voluntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by it to the entry of a decree or order for relief in respect of the Company in a case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under any applicable federal or state law, or the consent by it to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or similar official of the Company or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the authorization of such action by the Board of Trustees; or

(g) any other Event of Default specified with respect to Debt Securities of such series.

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Section 8.02. Acceleration of Maturity; Rescission and Annulment.

If an Event of Default due to the default in payment of principal of, or premium, if any, or interest (including Additional Interest) on, any series of Debt Securities or due to the default in the performance or breach of any other covenant or warranty of the Company applicable to the Debt Securities of such series but not applicable to all Outstanding Debt Securities shall have occurred and be continuing, either the Trustee or the Holders of not less than 33% in principal amount of the Debt Securities of such series may then declare the principal amount (or, if any of the Debt Securities of such series are Discount Debt Securities, such portion of the principal amount as may be specified in the terms thereof as contemplated by Section 3.01) of all Debt Securities of such series and premium, if any, and interest (including Additional Interest) accrued thereon to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by the Holders). If an Event of Default due to default in the performance of any other of the covenants or warranties herein applicable to all Outstanding Debt Securities or an Event of Default specified in Sections 8.01(e) or (f) shall have occurred and be continuing, either the Trustee or the Holders of not less than 33% in principal amount of all Debt Securities then Outstanding (considered as one class), and not the Holders of the Debt Securities of any one of such series, may declare the principal amount (or, if any of the Debt Securities are Discount Debt Securities, such portion of the principal amount of such Debt Securities as may be specified in the terms thereof as contemplated by Section 3.01) of all Debt Securities and premium, if any, and interest accrued thereon to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by the Holders). As a consequence of each such declaration (herein referred to as a declaration of acceleration) with respect to Debt Securities of any series, the principal amount (or portion thereof in the case of Discount Debt Securities) of such Debt Securities, premium, if any, and interest (including Additional Interest) accrued thereon shall become due and payable immediately [(provided that the payment of principal of such Debt Securities shall remain subordinated to the extent provided in Article XV hereof)]\*.

With respect to a series of Debt Securities to which a credit enhancement is applicable, the applicable supplemental indenture may provide that the provider of such credit enhancement may, if default has occurred and is continuing with respect to such series, and subject to certain conditions, have all the rights with respect to remedies that would otherwise have been exercisable by the Holders of Debt Securities of that series.

At any time after such a declaration of acceleration with respect to Debt Securities of any series shall have been made and before a judgment or decree for payment of the money due shall have been obtained by the Trustee as hereinafter in this Article provided, the Event or Events of Default giving rise to such declaration of acceleration shall, without further act, be deemed to have been waived, and such declaration and its consequences shall, without further act, be deemed to have been rescinded and annulled, if

- (a) the Company shall have paid or deposited with the Trustee a sum sufficient to pay
  - (1) all overdue interest on all Debt Securities of such series;

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(2) the principal of and premium, if any, on any Debt Securities of such series that have become due otherwise than by such declaration of acceleration and interest (including Additional Interest) thereon at the rate or rates prescribed therefor in such Debt Securities;

(3) to the extent that payment of such interest is lawful, interest upon overdue interest at the rate or rates prescribed therefor in such Debt Securities;

(4) all amounts due to the Trustee under Section 9.07; and

(b) any other Event or Events of Default with respect to Debt Securities of such series, other than the non-payment of the principal of Debt Securities of such series that shall have become due solely by reason of such declaration of acceleration, shall have been cured or waived as provided in Section 8.13.

No such rescission shall affect any subsequent Event of Default or impair any right consequent thereon.

Section 8.03. Collection of Indebtedness and Suits for Enforcement by Trustee.

If an Event of Default described in clause (a), (b) or (c) of Section 8.01 shall have occurred and be continuing, the Company shall, upon demand of the Trustee, pay to it, for the benefit of the Holders of the Debt Securities of the series with respect to which such Event of Default shall have occurred, the whole amount then due and payable on such Debt Securities for principal and premium, if any, and interest, if any, and, to the extent permitted by law, (i) interest on premium, if any, (ii) interest on any overdue principal and (iii) Additional Interest, at the rate or rates prescribed therefor in such Debt Securities, and, in addition thereto, such further amount as shall be sufficient to cover any amounts due to the Trustee under Section 9.07.

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

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

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Section 8.04. Trustee May File Proofs of Claim.

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Company or any other obligor upon the Debt Securities or the property of the Company or of such other obligor or their creditors, the Trustee (irrespective of whether the principal of the Debt Securities 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 on the Company for the payment of overdue principal or interest (including Additional Interest)) shall be entitled and empowered, by intervention in such proceeding or otherwise,

(a) to file and prove a claim for the whole amount of principal, premium, if any, and interest (including Additional Interest), if any, owing and unpaid in respect of the Debt Securities and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for amounts due to the Trustee under Section 9.07) and of the Holders allowed in such judicial proceeding, and

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

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amounts due it under Section 9.07.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Debt Securities or the rights of any Holder thereof or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

Section 8.05. Trustee May Enforce Claims without Possession of Debt Securities.

All rights of action and claims under this Indenture or the Debt Securities may be prosecuted and enforced by the Trustee without the possession of any of the Debt Securities or the production thereof in any proceeding relating thereto, and any such 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 in respect of which such judgment has been recovered.

Section 8.06. Application of Money Collected.

[Subject to the provisions of Article XV,]\* any money collected by the Trustee pursuant to this Article shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal or premium, if any, or interest (including Additional Interest), if any, upon presentation of the Debt Securities in respect

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of which or for the benefit of which such money shall have been collected and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee under Section 9.07:

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

THIRD: To the payment of the remainder, if any, to the Company, or to whomsoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct.

Section 8.07. Limitation on Suits.

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

(a) such Holder shall have previously given written notice to the Trustee of a continuing Event of Default with respect to the Debt Securities of such series;

(b) the Holders of not less than a majority in aggregate principal amount of the Outstanding Debt Securities of all series in respect of which an Event of Default shall have occurred and be continuing, considered as one class, shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;

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

(d) the Trustee for 60 days after its receipt of such notice, request and offer of indemnity shall have failed to institute any such proceeding; and

(e) no direction inconsistent with such written request shall have been given to the Trustee during such 60-day period by the Holders of a majority in aggregate principal amount of the Outstanding Debt Securities of all series in respect of which an Event of Default shall have occurred and be continuing, considered as one class;

it being understood and intended that no one or more of such Holders shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other of such Holders or to obtain or to seek to obtain priority or preference over any other of such Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all of such Holders.

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Section 8.08. Unconditional Right of Holders to Receive Principal, Premium and Interest.

Notwithstanding any other provision in this Indenture, the Holder of any Debt Security shall have the right, which is absolute and unconditional, to receive payment of the principal of and premium, if any, and (subject to Section 3.07 [and 3.12])\* interest (including Additional Interest), if any, on such Debt Security on the Stated Maturity or Maturities expressed in such Debt Security (or, in the case of redemption, on the Redemption Date) and to institute suit for the enforcement of any such payment, and such rights shall not be impaired without the consent of such Holder.

Section 8.09. Restoration of Rights and Remedies.

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

Section 8.10. Rights and Remedies Cumulative.

Except as otherwise provided in the last paragraph of Section 3.06, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 8.11. Delay or Omission Not Waiver.

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

Section 8.12. Control by Holders of Debt Securities.

If an Event of Default shall have occurred and be continuing in respect of a series of Debt Securities, the Holders of a majority in principal amount of the Outstanding Debt Securities of such series shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee, with respect to the Debt Securities of such series; *provided, however*, that if an Event of Default shall have occurred and be continuing with respect to more than one series of

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Debt Securities, the Holders of a majority in aggregate principal amount of the Outstanding Debt Securities of all such series, considered as one class, shall have the right to make such direction, and not the Holders of the Debt Securities of any one of such series; and *provided, further*, that

(a) such direction shall not be in conflict with any rule of law or with this Indenture, and may not involve the Trustee in personal liability in circumstances where indemnity would not in the Trustee's reasonable discretion be adequate, and

(b) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction.

Before proceeding to exercise any right or power hereunder at the direction of such Holders, the Trustee shall be entitled to receive from such Holders reasonable security or indemnity against the costs, expenses and liabilities that might be incurred by it in compliance with any such direction.

#### Section 8.13. Waiver of Past Defaults.

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

(a) in the payment of the principal of or premium, if any, or interest (including Additional Interest), if any, on any Debt Security of such series, or

(b) in respect of a covenant or provision hereof that under Section 12.02 cannot be modified or amended without the consent of the Holder of each Outstanding Debt Security of such series affected.

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

#### Section 8.14. Undertaking for Costs.

The Company and the Trustee agree, and each Holder by his acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken, suffered 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, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section shall not apply to any suit instituted by the Company, to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders,

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holding in the aggregate more than 10% in aggregate principal amount of the Outstanding Debt Securities of all series in respect of which such suit may be brought, considered as one class, 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 Additional Interest), if any, on any Debt Security on or after the Stated Maturity or Maturities expressed in such Debt Security (or, in the case of redemption, on or after the Redemption Date).

Section 8.15. Waiver of Stay or Extension Laws.

The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law and covenants that it will not 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.

**ARTICLE IX  
THE TRUSTEE**

Section 9.01. Certain Duties and Responsibilities.

(a) The Trustee shall have and be subject to all the duties and responsibilities specified with respect to an indenture trustee in the Trust Indenture Act, and no implied covenants or obligations shall be read into this Indenture against the Trustee.

(b) The Trustee, prior to the occurrence of an Event of Default and after the curing or waiving of all Events of Default that 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 of which a Responsible Officer of the Trustee has knowledge has occurred and is continuing, 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.

(c) No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that prior to the occurrence of an Event of Default and after the curing or waiving of all Events of Default that may have occurred

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

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(ii) in the absence of bad faith 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 that by any provision 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.

(d) 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 direction of the Holders of Debt Securities pursuant to Section 8.12, 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.

(e) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that it is not reasonably assured of receiving (i) repayment of such funds or (ii) indemnity, in an amount deemed adequate to the Trustee in its reasonable judgment, against such risk or liability.

(f) Notwithstanding anything contained in this Indenture to the contrary, the duties and responsibilities of the Trustee under this Indenture shall be subject to the protections, exculpations and limitations on liability afforded to the Trustee under the provisions of the Trust Indenture Act, including those provisions of such Act deemed by such Act to be included herein.

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

#### Section 9.02. Notice of Defaults.

The Trustee shall give the Holders notice of any default hereunder with respect to the Debt Securities of any series to the Holders of Debt Securities of such series of which it has knowledge (within the meaning of Section 9.03(h)) in the manner and to the extent required to do so by the Trust Indenture Act, unless such default shall have been cured or waived; *provided, however*, that in the case of any default of the character specified in Section 8.01(d), no such notice to Holders shall be given until at least 60 days after the occurrence thereof. For the purpose of this Section, the term “default” means any event that is, or after notice or lapse of time, or both, would become, an Event of Default.

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Section 9.03. Certain Rights of Trustee.

Subject to the provisions of Section 9.01 and to the applicable provisions of the Trust Indenture Act:

(a) the Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) any request or direction of the Company mentioned herein shall be sufficiently evidenced by a Company Request or Company Order, or as otherwise expressly provided herein, and any resolution of the Board of Trustees may be sufficiently evidenced by a Board Resolution;

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

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

(e) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any Holder pursuant to this Indenture, unless such Holder shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities that might be incurred by it in compliance with such request or direction;

(f) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall (subject to applicable legal requirements) be entitled to examine, during normal business hours, the books, records and premises of the Company, personally or by agent or attorney;

(g) 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 with due care by it hereunder; and

(h) the Trustee shall not be charged with knowledge of any default or Event of Default with respect to the Debt Securities of any series for which it is acting as Trustee unless

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either (1) a Responsible Officer of the Trustee shall have knowledge of the default or Event of Default or (2) written notice of such default or Event of Default shall have been given to the Trustee by the Company, any other obligor on such Debt Securities or by any Holder of such Debt Securities.

Section 9.04. Not Responsible for Recitals or Issuance of Debt Securities.

The recitals contained herein and in the Debt Securities (except the Trustee's certificates of authentication) shall be taken as the statements of the Company, and neither the Trustee nor any Authenticating Agent assumes responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Debt Securities. Neither the Trustee nor any Authenticating Agent shall be accountable for the use or application by the Company of Debt Securities or the proceeds thereof. The Trustee shall not incur any liability for non-performance or breach of any obligation hereunder to the extent that the Trustee is delayed in performing, unable to perform or breaches such obligation because of acts of God, war, terrorism, fire, floods, electrical outages or other causes reasonably beyond its control; *provided, however*, that the Trustee shall use commercially reasonable efforts consistent with accepted practices for corporate trustees to maintain performance without delay or resume performance as soon as reasonably practicable under the circumstances.

Section 9.05. May Hold Debt Securities.

Each of the Trustee, any Authenticating Agent, any Paying Agent, any Debt Security Registrar or any other agent of the Company, in its individual or any other capacity, may become the owner or pledgee of Debt Securities and, subject to Sections 9.08 and 9.13, may otherwise deal with the Company with the same rights it would have if it were not the Trustee, Authenticating Agent, Paying Agent, Debt Security Registrar or such other agent.

Section 9.06. Money Held in Trust.

Money held by the Trustee in trust hereunder need not be segregated from other funds, except to the extent required by law. The Trustee shall be under no liability for interest on investment of any money received by it hereunder except as expressly provided herein or otherwise agreed with, and for the sole benefit of, the Company.

Section 9.07. Compensation and Reimbursement.

The Company shall

(a) pay to the Trustee from time to time reasonable compensation for all services rendered by it hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(b) except as otherwise expressly provided herein, reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances reasonably incurred or made by the Trustee in accordance with any provision of this Indenture, including the costs of collection

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(including the reasonable compensation and the expenses and disbursements of its agents and counsel), except to the extent that any such expense, disbursement or advance may be attributable to its negligence, willful misconduct or bad faith; and

(c) indemnify the Trustee and hold it harmless from and against any and all losses, demands, claims, liabilities, causes of action or expenses (including reasonable attorneys' fees and expenses) incurred by it arising out of or in connection with the acceptance or administration of the trust or trusts hereunder or the performance of its duties hereunder, including the reasonable costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder, except to the extent any such loss, demand, claim, liability, cause of action or expense may be attributable to its negligence, willful misconduct or bad faith and may assume the defense of the Trustee with counsel acceptable to the Trustee, unless the Trustee shall have been advised by counsel that there may be one or more legal defenses available to it that are different from or additional to those available to the Company, in which case the Trustee may engage separate counsel, and the fees and expenses of such counsel shall be assumed by the Company.

As security for the performance of the obligations of the Company under this Section, the Trustee shall have a lien prior to the Debt Securities upon all property and funds held or collected by the Trustee as such other than property and funds held in trust for the payment of principal, premium, if any, and interest on Debt Securities. "**Trustee**" for purposes of this Section shall include any predecessor Trustee; *provided, however*, that the negligence, willful misconduct or bad faith of any Trustee hereunder shall not affect the rights of any other Trustee hereunder. When a Trustee incurs expenses or renders services in connection with an Event of Default specified in Sections 8.01(e) or (f), the expenses (including the reasonable charges and expenses of its counsel) and the compensation for the services are intended to constitute expenses of administration under any applicable federal or state bankruptcy, insolvency or other similar law. The provisions of this Section shall survive termination of this Indenture and the resignation or removal of the Trustee.

Section 9.08. Disqualification; Conflicting Interests.

If the Trustee shall have or acquire any conflicting interest within the meaning of the Trust Indenture Act, it shall either eliminate such conflicting interest or resign to the extent, in the manner and with the effect, and subject to the conditions, provided in the Trust Indenture Act and this Indenture. For purposes of Section 310(b)(1) of the Trust Indenture Act and to the extent permitted thereby, the Trustee shall not be deemed to have a conflicting interest by virtue of being a Trustee under (i) this Indenture with respect to Debt Securities of one or more series or (ii) any other indenture to which the Trustee and the Company are a party, if any, or with respect to the securities issued thereunder, if any.

Section 9.09. Corporate Trustee Required; Eligibility.

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

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(a) a corporation organized and doing business under the laws of the United States, any state or territory thereof or the District of Columbia, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least \$100,000,000 and subject to supervision or examination by federal or state authority, or

(b) if and to the extent permitted by the Commission by rule, regulation or order upon application, a corporation or other Person organized and doing business under the laws of a foreign government, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least \$100,000,000 or the Dollar equivalent of the applicable foreign currency and subject to supervision or examination by authority of such foreign government or a political subdivision thereof substantially equivalent to supervision or examination applicable to United States institutional trustees,

and, in either case, qualified and eligible under this Article and the Trust Indenture Act. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of such supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

Section 9.10. Resignation and Removal; Appointment of Successor.

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee in accordance with the applicable requirements of Section 9.11.

(b) The Trustee may resign at any time with respect to the Debt Securities of one or more series by giving written notice thereof to the Company. If the instrument of acceptance by a successor Trustee required by Section 9.11 shall not have been delivered to the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Debt Securities of such series.

(c) The Trustee may be removed at any time with respect to the Debt Securities of any series by Act of the Holders of a majority in principal amount of the Outstanding Debt Securities of such series delivered to the Trustee and to the Company.

(d) If at any time:

(1) the Trustee shall fail to comply with Section 9.08 after written request therefor by the Company or by any Holder who has been a bona fide Holder for at least six months, or

(2) the Trustee shall cease to be eligible under Section 9.09 and shall fail to resign after written request therefor by the Company or by any such Holder, or

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(3) 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, (x) the Company by a Board Resolution may remove the Trustee with respect to all Debt Securities or (y) subject to Section 8.14, any Holder who has been a bona fide Holder for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee with respect to all Debt Securities and the appointment of a successor Trustee or Trustees.

(e) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any cause (other than as contemplated in clause (y) in Subsection (d) of this Section), with respect to the Debt Securities of one or more series, the Company, by a Board Resolution, shall promptly appoint a successor Trustee or Trustees with respect to the Debt Securities of that or those series (it being understood that any such successor Trustee may be appointed with respect to the Debt Securities of one or more or all of such series and that at any time there shall be only one Trustee with respect to the Debt Securities of any particular series) and shall comply with the applicable requirements of Section 9.11. If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee with respect to the Debt Securities of any series shall be appointed by Act of the Holders of a majority in principal amount of the Outstanding Debt Securities of such series delivered to the Company and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment in accordance with the applicable requirements of Section 9.11, become the successor Trustee with respect to the Debt Securities of such series and to that extent supersede the successor Trustee appointed by the Company. If no successor Trustee with respect to the Debt Securities of any series shall have been so appointed by the Company or the Holders and accepted appointment in the manner required by Section 9.11, any Holder who has been a bona fide Holder of a Debt Security of such series for at least six months may, on behalf of itself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Debt Securities of such series.

(f) So long as no event that is, or after notice or lapse of time, or both, would become, an Event of Default shall have occurred and be continuing, and except with respect to a Trustee appointed by Act of the Holders of a majority in principal amount of the Outstanding Debt Securities pursuant to Subsection (e) of this Section, if the Company shall have delivered to the Trustee (i) a Board Resolution appointing a successor Trustee, effective as of a date specified therein, and (ii) an instrument of acceptance of such appointment, effective as of such date, by such successor Trustee in accordance with Section 9.11, the Trustee shall be deemed to have resigned as contemplated in Subsection (b) of this Section, the successor Trustee shall be deemed to have been appointed by the Company pursuant to Subsection (e) of this Section and such appointment shall be deemed to have been accepted as contemplated in Section 9.11, all as of such date, and all other provisions of this Section and Section 9.11 shall be applicable to such

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resignation, appointment and acceptance except to the extent inconsistent with this Subsection (f).

(g) The Company or, should the Company fail so to act promptly, the successor Trustee, at the expense of the Company, shall give notice of each resignation and each removal of the Trustee with respect to the Debt Securities of any series and each appointment of a successor Trustee with respect to the Debt Securities of any series by mailing written notice of such event by first-class mail, postage prepaid, to all Holders of Debt Securities of such series as their names and addresses appear in the Debt Security Register. Each notice shall include the name of the successor Trustee with respect to the Debt Securities of such series and the address of its corporate trust office.

Section 9.11. Acceptance of Appointment by Successor.

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

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

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retiring Trustee with respect to the Debt Securities of that or those series to which the appointment of such successor Trustee relates; but, on request of the Company or any successor Trustee, such retiring Trustee, upon payment of all sums owed to it, shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder with respect to the Debt Securities of that or those series to which the appointment of such successor Trustee relates.

(c) Upon request of any such successor Trustee, the Company shall execute any instruments that fully vest in and confirm to such successor Trustee all such rights, powers and trusts referred to in Subsection (a) or (b) of this Section, as the case may be.

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

Section 9.12. Merger, Conversion, Consolidation or Succession to Business.

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 the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such corporation shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Debt Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Debt Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Debt Securities.

Section 9.13. Preferential Collection of Claims Against Company.

If the Trustee shall be or become a creditor of the Company or any other obligor upon the Debt Securities (other than by reason of a relationship described in Section 311(b) of the Trust Indenture Act), the Trustee shall be subject to any and all applicable provisions of the Trust Indenture Act regarding the collection of claims against the Company or such other obligor. For purposes of Section 311(b) of the Trust Indenture Act:

(a) the term “cash transaction” means any transaction in which full payment for goods or securities sold is made within seven days after delivery of the goods or securities in currency or in checks or other orders drawn upon banks or bankers and payable upon demand; and

(b) the term “self-liquidating paper” means any draft, bill of exchange, acceptance or obligation that is made, drawn, negotiated or incurred by the Company for the purpose of financing the purchase, processing, manufacturing, shipment, storage or sale of goods, wares or merchandise and that is secured by documents evidencing title to, possession of, or a lien upon, the goods, wares or merchandise or the receivables or proceeds arising from the sale of the goods, wares or merchandise previously constituting the security, provided the security is

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received by the Trustee simultaneously with the creation of the creditor relationship with the Company arising from the making, drawing, negotiating or incurring of the draft, bill of exchange, acceptance or obligation.

Section 9.14. Co-Trustees and Separate Trustees.

At any time or times, for the purpose of meeting the legal requirements of any applicable jurisdiction, the Company and the Trustee shall have power to appoint, and, upon the written request of the Trustee or of the Holders of at least 33% in principal amount of the Debt Securities then Outstanding, the Company shall for such purpose join with the Trustee in the execution and delivery of all instruments and agreements necessary or proper to appoint, one or more Persons approved by the Trustee either to act as co-trustee, jointly with the Trustee, or to act as separate trustee, in either case with such powers as may be provided in the instrument of appointment, and to vest in such Person or Persons, in the capacity aforesaid, any property, title, right or power deemed necessary or desirable, subject to the other provisions of this Section. If the Company does not join in such appointment within 15 days after the receipt by it of a request so to do, or if an Event of Default shall have occurred and be continuing, the Trustee alone shall have power to make such appointment.

Should any written instrument or instruments from the Company be required by any co-trustee or separate trustee so appointed to more fully confirm to such co-trustee or separate trustee such property, title, right or power, any and all such instruments shall, on request, be executed, acknowledged and delivered by the Company.

Every co-trustee or separate trustee shall, to the extent permitted by law, but to such extent only, be appointed subject to the following conditions:

(a) the Debt Securities shall be authenticated and delivered, and all rights, powers, duties and obligations hereunder in respect of the custody of securities, cash and other personal property held by, or required to be deposited or pledged with, the Trustee hereunder, shall be exercised solely, by the Trustee;

(b) the rights, powers, duties and obligations hereby conferred or imposed upon the Trustee in respect of any property covered by such appointment shall be conferred or imposed upon and exercised or performed either by the Trustee or by the Trustee and such co-trustee or separate trustee jointly, as shall be provided in the instrument appointing such co-trustee or separate trustee, except to the extent that under any law of any jurisdiction in which any particular act is to be performed, the Trustee shall be incompetent or unqualified to perform such act, in which event such rights, powers, duties and obligations shall be exercised and performed by such co-trustee or separate trustee;

(c) the Trustee at any time, by an instrument in writing executed by it, with the concurrence of the Company, may accept the resignation of or remove any co-trustee or separate trustee appointed under this Section, and, if an Event of Default shall have occurred and be continuing, the Trustee shall have power to accept the resignation of, or remove, any such co-trustee or separate trustee without the concurrence of the Company. Upon the written request of

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the Trustee, the Company shall join with the Trustee in the execution and delivery of all instruments and agreements necessary or proper to effectuate such resignation or removal. A successor to any co-trustee or separate trustee so resigned or removed may be appointed in the manner provided in this Section;

(d) no co-trustee or separate trustee hereunder shall be personally liable by reason of any act or omission of the Trustee, or any other such trustee hereunder, and the Trustee shall have no liability, personally or in its capacity as Trustee, for any act or omission of any co-trustee or separate trustee hereunder; and

(e) any Act of Holders delivered to the Trustee shall be deemed to have been delivered to each such co-trustee and separate trustee.

Section 9.15. Appointment of Authenticating Agent.

The Trustee may appoint an Authenticating Agent or Agents with respect to the Debt Securities of one or more series, or any Tranche thereof, which shall be authorized to act on behalf of the Trustee to authenticate Debt Securities of such series or Tranche issued upon original issuance, exchange, registration of transfer or partial redemption thereof or pursuant to Section 3.06, and Debt Securities so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Wherever reference is made in this Indenture to the authentication and delivery of Debt Securities by the Trustee or the Trustee's certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent and a certificate of authentication executed on behalf of the Trustee by an Authenticating Agent. Each Authenticating Agent shall be acceptable to the Company and shall at all times be a corporation organized and doing business under the laws of the United States, any state or territory thereof or the District of Columbia or the Commonwealth of Puerto Rico, authorized under such laws to act as Authenticating Agent, having a combined capital and surplus of not less than \$50,000,000 and subject to supervision or examination by federal or state authority. If such Authenticating Agent publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such Authenticating Agent shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, such Authenticating Agent shall resign immediately in the manner and with the effect specified in this Section.

Any corporation into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which such Authenticating Agent shall be a party, or any corporation succeeding to the corporate agency or corporate trust business of an Authenticating Agent, shall continue to be an Authenticating Agent, provided such corporation shall be otherwise eligible under this Section, without the execution or filing of any paper or any further act on the part of the Trustee or the Authenticating Agent.

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An Authenticating Agent may resign at any time by giving 45 days written notice thereof to the Trustee and to the Company. The Trustee may at any time terminate the agency of an Authenticating Agent by giving written notice thereof to such Authenticating Agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, the Trustee may appoint a successor Authenticating Agent that shall be acceptable to the Company. Any successor Authenticating Agent, upon acceptance of its appointment hereunder, shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent. No successor Authenticating Agent shall be appointed unless eligible under the provisions of this Section.

The Company agrees to pay to each Authenticating Agent from time to time reasonable compensation for its services under this Section.

The provisions of Sections 3.08, 9.04 and 9.05 shall be applicable to each Authenticating Agent.

If an appointment with respect to the Debt Securities of one or more series, or any Tranche thereof, shall be made pursuant to this Section, the Debt Securities of such series or Tranche may have endorsed thereon, in addition to the Trustee's certificate of authentication, an alternate certificate of authentication substantially in the following form:

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

Date:

By: \_\_\_\_\_  
As Trustee

By: \_\_\_\_\_  
As Authenticating Agent

By: \_\_\_\_\_  
Authorized Signatory

If all of the Debt Securities of a series may not be originally issued at one time, and if the Trustee does not have an office capable of authenticating Debt Securities upon original issuance located in a Place of Payment where the Company wishes to have Debt Securities of such series authenticated upon original issuance, the Trustee, if so requested by the Company in writing (which writing need not comply with Section 1.02 and need not be accompanied by an Opinion of Counsel), shall appoint, in accordance with this Section and in accordance with such

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procedures as shall be acceptable to the Trustee, an Authenticating Agent having an office in a Place of Payment designated by the Company with respect to such series of Debt Securities.

**ARTICLE X**  
**HOLDERS' LISTS AND REPORTS BY TRUSTEE AND COMPANY**

**Section 10.01. Lists of Holders.**

Semiannually, not later than \_\_\_\_\_ and \_\_\_\_\_ in each year, commencing with the year 20\_\_, and at such other times as the Trustee may request in writing, the Company shall furnish or cause to be furnished to the Trustee information as to the names and addresses of the Holders, and the Trustee shall preserve such information and similar information received by it in any other capacity and afford to the Holders access to information so preserved by it, all to such extent, if any, and in such manner as shall be required by the Trust Indenture Act; *provided, however*, that no such list need be furnished so long as the Trustee shall be the Debt Security Registrar. Every holder of Debt Securities, by receiving and holding the same, 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 the disclosure of any such information as to the names and addresses of the Holders of Debt Securities in accordance with Section 312 of the Trust Indenture Act, or any successor Section of such Act, regardless of the source from which such information was derived, and that the Trustee shall not be held accountable by reason of mailing any material pursuant to a request made under Section 312(b) of the Trust Indenture Act, or any successor Section of such Act.

**Section 10.02. Reports by Trustee and Company.**

Annually, not later than \_\_\_\_\_ in each year, commencing \_\_\_\_\_, the Trustee shall transmit to the Holders, the Commission and each securities exchange upon which any Debt Securities are listed, a report, dated as of the next preceding \_\_\_\_\_, with respect to any events and other matters described in Section 313(a) of the Trust Indenture Act, in such manner and to the extent required by the Trust Indenture Act. The Trustee shall transmit to the Holders, the Commission and each securities exchange upon which any Debt Securities are listed, and the Company shall file with the Trustee (within 30 days after filing with the Commission in the case of reports that pursuant to the Trust Indenture Act must be filed with the Commission and furnished to the Trustee) and transmit to the Holders, such other information, reports and other documents, if any, at such times and in such manner, as shall be required by the Trust Indenture Act.

The Company shall notify the Trustee of the listing of any Debt Securities on any securities exchange. Delivery of such reports, information and documents by the Company to the Trustee is for informational purposes only, and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officer's Certificates).

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**ARTICLE XI**  
**CONSOLIDATION, MERGER, CONVEYANCE OR OTHER TRANSFER**

**Section 11.01. Company May Consolidate, Etc., Only on Certain Terms.**

The Company shall not consolidate with or merge into any other corporation, or convey or otherwise transfer or lease its properties and assets substantially as an entirety to any Person, unless

(a) the corporation formed by such consolidation or into which the Company is merged or the Person that acquires by conveyance or transfer, or that leases, the properties and assets of the Company substantially as an entirety shall be a Person organized and existing under the laws of the United States, any state thereof or the District of Columbia, and shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form satisfactory to the Trustee, the due and punctual payment of the principal of, and premium, if any, and interest (including Additional Interest), if any, on all Outstanding Debt Securities and the performance of every covenant of this Indenture on the part of the Company to be performed or observed;

(b) immediately after giving effect to such transaction and treating any indebtedness for borrowed money that becomes an obligation of the Company as a result of such transaction as having been incurred by the Company at the time of such transaction, no Event of Default, and no event that, after notice or lapse of time or both, would become an Event of Default, shall have occurred and be continuing; and

(c) the Company shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, merger, conveyance, or other transfer or lease and such supplemental indenture comply with this Article and that all conditions precedent herein provided for relating to such transactions have been complied with.

**Section 11.02. Successor Corporation Substituted.**

Upon any consolidation by the Company with or merger by the Company into any other corporation or any conveyance or other transfer or lease of the properties and assets of the Company substantially as an entirety in accordance with Section 11.01, the successor corporation formed by such consolidation or into which the Company is merged or the Person to which such conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein, and thereafter, except in the case of a lease, the predecessor Person shall be relieved of all obligations and covenants under this Indenture and the Debt Securities Outstanding hereunder.

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**ARTICLE XII**  
**SUPPLEMENTAL INDENTURES**

Section 12.01. Supplemental Indentures Without Consent of Holders.

Without the consent of any Holders, the Company and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form satisfactory to the Trustee, for any of the following purposes:

(a) to evidence the succession of another Person to the Company and the assumption by any such successor of the covenants of the Company herein and in the Debt Securities, all as provided in Article XI; or

(b) to add one or more covenants of the Company or other provisions for the benefit of all Holders or for the benefit of the Holders of, or to remain in effect only so long as there shall be Outstanding, Debt Securities of one or more specified series, or one or more specified Tranches thereof, or to surrender any right or power herein conferred upon the Company; or

(c) to add any additional Events of Default with respect to all or any series of Debt Securities Outstanding hereunder; or

(d) to change or eliminate any provision of this Indenture or to add any new provision to this Indenture; *provided, however*, that if such change, elimination or addition shall adversely affect the interests of the Holders of Debt Securities of any series or Tranche Outstanding on the date of such indenture supplemental hereto in any material respect, such change, elimination or addition shall become effective with respect to such series or Tranche only pursuant to the provisions of Section 12.02 hereof or when no Debt Security of such series or Tranche remains Outstanding; or

(e) to provide collateral security for the Debt Securities of any series or Tranche; or

(f) to establish the form or terms of Debt Securities of any series or Tranche as contemplated by Sections 2.01 and 3.01; or

(g) to provide for the authentication and delivery of bearer securities and coupons appertaining thereto representing interest, if any, thereon and for the procedures for the registration, exchange and replacement thereof and for the giving of notice to, and the solicitation of the vote or consent of, the holders thereof, and for any and all other matters incidental thereto; or

(h) to evidence and provide for the acceptance of appointment hereunder by a separate or successor Trustee with respect to the Debt Securities of one or more series and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, pursuant to the requirements of Section 9.11(b); or

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\* Bracketed language throughout this Indenture will be inserted in the Indenture in the event that subordinated Debt Securities are issued.

(i) to provide for the procedures required to permit the Company to utilize, at its option, a non-certificated system of registration for all, or any series or Tranche of, the Debt Securities; or to provide for the authentication and delivery of bearer securities and coupons appertaining thereto representing interest, if any, thereon and for the procedures for the registration, exchange and replacement thereof and for the giving of notice to, and the solicitation of the vote or consent of, the holders thereof, and for any and all other matters incidental thereto; or

(j) to change any place or places where (1) the principal of and premium, if any, and interest (including Additional Interest), if any, on all or any series of Debt Securities, or any Tranche thereof, shall be payable, (2) all or any series of Debt Securities, or any Tranche thereof, may be surrendered for registration of transfer, (3) all or any series of Debt Securities, or any Tranche thereof, may be surrendered for exchange and (4) notices and demands to or upon the Company in respect of all or any series of Debt Securities, or any Tranche thereof, and this Indenture may be served; or

(k) to cure any ambiguity or to correct or supplement any provision herein that may be defective or inconsistent with any other provision herein; provided that no such changes or additions shall adversely affect the interests of the Holders of Debt Securities of any series or Tranche in any material respect.

Without limiting the generality of the foregoing, if the Trust Indenture Act as in effect at the date of the execution and delivery of this Indenture or at any time thereafter shall be amended and

(x) if any such amendment shall require one or more changes to any provisions hereof or the inclusion herein of any additional provisions, or shall by operation of law be deemed to effect such changes or incorporate such provisions by reference or otherwise, this Indenture shall be deemed to have been amended so as to conform to such amendment to the Trust Indenture Act, and the Company and the Trustee may, without the consent of any Holders, enter into an indenture supplemental hereto to effect or evidence such changes or additional provisions; or

(y) if any such amendment shall permit one or more changes to, or the elimination of, any provisions hereof that, at the date of the execution and delivery hereof or at any time thereafter, are required by the Trust Indenture Act to be contained herein, this Indenture shall be deemed to have been amended to effect such changes or elimination, and the Company and the Trustee may, without the consent of any Holders, enter into an indenture supplemental hereto to evidence such amendment hereof, provided such amendment does not have a material adverse effect on any Holders.

#### Section 12.02. Supplemental Indentures With Consent of Holders.

With the consent of the Holders of not less than a majority in aggregate principal amount of the Debt Securities of all series then Outstanding under this Indenture, considered as one class, by Act of said Holders delivered to the Company and the Trustee, the Company, when

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authorized by a Board Resolution, and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to, or changing in any manner or eliminating any of the provisions of, this Indenture; *provided, however*, that if there shall be Debt Securities of more than one series Outstanding hereunder and if a proposed supplemental indenture shall directly affect the rights of the Holders of Debt Securities of one or more, but less than all, of such series, then the consent only of the Holders of a majority in aggregate principal amount of the Outstanding Debt Securities of all series so directly affected, considered as one class, shall be required; and *provided, further*, that if the Debt Securities of any series shall have been issued in more than one Tranche and if the proposed supplemental indenture shall directly affect the rights of the Holders of Debt Securities of one or more, but less than all, of such Tranches, then the consent only of the Holders of a majority in aggregate principal amount of the Outstanding Debt Securities of all Tranches so directly affected, considered as one class, shall be required; and *provided, further*, that no such supplemental indenture shall:

(a) change the Stated Maturity of the principal of, or any installment of principal of or interest (including Additional Interest) on [(except as provided in Section 3.12)]\* any Debt Security, or reduce the principal amount thereof or the rate of interest thereon (or the amount of any installment of interest thereon) or change the method of calculating such rate or reduce any premium payable upon the redemption thereof, or reduce the amount of the principal of a Discount Debt Security that would be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 8.02, or change the coin or currency (or other property) in which any Debt Security or any premium or the interest (including Additional Interest) thereon is payable, or impair the right to institute suit for the enforcement of any such payment on or after the Stated Maturity of any Debt Security (or, in the case of redemption, on or after the Redemption Date), without, in any such case, the consent of the Holder of such Debt Security, or

(b) reduce the percentage in principal amount of the Outstanding Debt Securities of any series or any Tranche thereof, the consent of the Holders of which is required for any such supplemental indenture, or the consent of the Holders of which is required for any waiver of compliance with any provision of this Indenture or of any default hereunder and its consequences, or reduce the requirements of Section 13.04 for quorum or voting, without, in any such case, the consent of the Holders of each Outstanding Debt Security of such series or Tranche, or

(c) modify any of the provisions of this Section, Section 6.07 or Section 8.13 with respect to the Debt Securities of any series, or any Tranche thereof (except to increase the percentages in principal amount referred to in this Section or such other Sections or to provide that other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Debt Security affected thereby); *provided, however*, that this clause shall not be deemed to require the consent of any Holder with respect to changes in the references to “the Trustee” and concomitant changes in this Section, or the deletion of this proviso, in accordance with the requirements of Sections 9.11(b), 9.14 and 12.01(h).

A supplemental indenture that changes or eliminates any covenant or other provision of this Indenture that has expressly been included solely for the benefit of one or more particular

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series of Debt Securities, or of one or more Tranches thereof, or that modifies the rights of the Holders of Debt Securities of such series or Tranches with respect to such covenant or other provision, shall be deemed not to affect the rights under this Indenture of the Holders of Debt Securities of any other series or Tranche.

Upon the request of the Company, accompanied by a copy of the Board Resolution authorizing the execution of any such supplemental indenture, compliance by the Company with Section 12.03 hereof, and the filing with the Trustee of evidence of the consent of the Holders of the Debt Securities required hereunder with respect to the proposed supplemental indenture, the Trustee shall join with the Company in the execution of such supplemental indenture unless the supplemental indenture affects the Trustee's own rights, duties or immunities under this Indenture, or otherwise, in which case the Trustee may in its discretion but shall not be obligated to enter into such supplemental indenture.

It shall not be necessary for any Act of Holders under this Section to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof. A waiver by a Holder of such Holder's right to consent under this Section shall be deemed to be a consent of such Holder.

Section 12.03. Execution of Supplemental Indentures.

In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article or the modifications thereby of the trusts created by this Indenture, the Trustee shall be provided and (subject to Section 9.01) shall be fully protected in relying upon an Officer's Certificate and Opinion of Counsel, each stating that the execution of such supplemental indenture is authorized or permitted by this Indenture.

Section 12.04. Effect of Supplemental Indentures.

Upon the execution of any supplemental indenture under this Article, 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 Debt Securities theretofore or thereafter authenticated and delivered hereunder shall be bound thereby. Any supplemental indenture permitted by this Article may restate this Indenture in its entirety, and, upon the execution and delivery thereof, any such restatement shall supersede this Indenture as theretofore in effect for all purposes.

Section 12.05. Conformity With Trust Indenture Act.

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

Section 12.06. Reference in Debt Securities to Supplemental Indentures.

Debt Securities of any series, or any Tranche thereof, authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and shall if required by

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the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Debt Securities of any series, or any Tranche thereof, so modified as to conform, in the opinion of the Trustee and the Company, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for Outstanding Debt Securities of such series or Tranche.

Section 12.07. Modification without Supplemental Indenture.

If the terms of any particular series of Debt Securities shall have been established in a Board Resolution or an Officer's Certificate pursuant to a Board Resolution as contemplated by Section 3.01, and not in an indenture supplemental hereto, additions to, changes in or the elimination of any of such terms may be effected by means of a supplemental Board Resolution or Officer's Certificate, as the case may be, delivered to, and accepted by, the Trustee; *provided, however*, that such supplemental Board Resolution or Officer's Certificate shall not be accepted by the Trustee or otherwise be effective unless all conditions set forth in this Indenture that would be required to be satisfied if such additions, changes or elimination were contained in a supplemental indenture shall have been appropriately satisfied. Upon the acceptance thereof by the Trustee, any such supplemental Board Resolution or Officer's Certificate shall be deemed to be a "supplemental indenture" for purposes of Sections 12.04 and 12.06.

**ARTICLE XIII**  
**MEETINGS OF HOLDERS; ACTION WITHOUT MEETING**

Section 13.01. Purposes for which Meetings may be Called.

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

Section 13.02. Call, Notice and Place of Meetings.

(a) The Trustee may at any time call a meeting of Holders of Debt Securities of one or more, or all, series, or any Tranche or Tranches thereof, for any purpose specified in Section 13.01, to be held at such time and at such place in the Borough of Manhattan, The City of New York, as the Trustee shall determine, or, with the approval of the Company, at any other place. Notice of every such meeting, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting, shall be given, in the manner provided in Section 1.06, not less than 21 nor more than 180 days prior to the date fixed for the meeting.

(b) If the Trustee shall have been requested to call a meeting of the Holders of Debt Securities of one or more, or all, series, or any Tranche or Tranches thereof, by the Company or by the Holders of at least 33% in aggregate principal amount of all of such series and Tranches,

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considered as one class, for any purpose specified in Section 13.01, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have given the notice of such meeting within 21 days after receipt of such request or shall not thereafter proceed to cause the meeting to be held as provided herein, then the Company or the Holders of Debt Securities of such series and Tranches in the amount above specified, as the case may be, may determine the time and the place in the Borough of Manhattan, The City of New York, or in such other place as shall be determined or approved by the Company, for such meeting and may call such meeting for such purposes by giving notice thereof as provided in Subsection (a) of this Section.

(c) Any meeting of Holders of Debt Securities of one or more, or all, series, or any Tranche or Tranches thereof, shall be valid without notice if the Holders of all Outstanding Debt Securities of such series or Tranches are present in person or by proxy and if representatives of the Company and the Trustee are present, or if notice is waived in writing before or after the meeting by the Holders of all Outstanding Debt Securities of such series, or by such of them as are not present at the meeting in person or by proxy, and by the Company and the Trustee.

#### Section 13.03. Persons Entitled to Vote at Meetings.

To be entitled to vote at any meeting of Holders of Debt Securities of one or more, or all, series, or any Tranche or Tranches thereof, a Person shall be (a) a Holder of one or more Outstanding Debt Securities of such series or Tranches, or (b) a Person appointed by an instrument in writing as proxy for a Holder or Holders of one or more Outstanding Debt Securities of such series or Tranches by such Holder or Holders. The only Persons who shall be entitled to attend any meeting of Holders of Debt Securities of any series or Tranche shall be the Persons entitled to vote at such meeting and their counsel, any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

#### Section 13.04. Quorum; Action.

The Persons entitled to vote a majority in aggregate principal amount of the Outstanding Debt Securities of the series and Tranches with respect to which a meeting shall have been called as hereinbefore provided, considered as one class, shall constitute a quorum for a meeting of Holders of Debt Securities of such series and Tranches; *provided, however*, that if any action is to be taken at such meeting that this Indenture expressly provides may be taken by the Holders of a specified percentage, which is less than a majority, in principal amount of the Outstanding Debt Securities of such series and Tranches, considered as one class, the Persons entitled to vote such specified percentage in principal amount of the Outstanding Debt Securities of such series and Tranches, considered as one class, shall constitute a quorum. In the absence of a quorum within one hour of the time appointed for any such meeting, the meeting shall, if convened at the request of Holders of Debt Securities of such series and Tranches, be dissolved. In any other case the meeting may be adjourned for such period as may be determined by the chairman of the meeting prior to the adjournment of such meeting. In the absence of a quorum at any such adjourned meeting, such adjourned meeting may be further adjourned for such period as may be determined by the chairman of the meeting prior to the adjournment of such adjourned meeting. Except as provided by Section 13.05(e), notice of the reconvening of any meeting adjourned for

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more than 30 days shall be given as provided in Section 13.02(a) not less than ten days prior to the date on which the meeting is scheduled to be reconvened. Notice of the reconvening of an adjourned meeting shall state expressly the percentage, as provided above, of the principal amount of the Outstanding Debt Securities of such series and Tranches that shall constitute a quorum.

Except as limited by Section 12.02, any resolution presented to a meeting or adjourned meeting duly reconvened at which a quorum is present as aforesaid may be adopted only by the affirmative vote of the Holders of a majority in aggregate principal amount of the Outstanding Debt Securities of the series and Tranches with respect to which such meeting shall have been called, considered as one class; *provided, however*, that, except as so limited, any resolution with respect to any action that this Indenture expressly provides may be taken by the Holders of a specified percentage, which is less than a majority, in principal amount of the Outstanding Debt Securities of such series and Tranches, considered as one class, may be adopted at a meeting or an adjourned meeting duly reconvened and at which a quorum is present as aforesaid by the affirmative vote of the Holders of such specified percentage in principal amount of the Outstanding Debt Securities of such series and Tranches, considered as one class.

Any resolution passed or decision taken at any meeting of Holders of Debt Securities duly held in accordance with this Section shall be binding on all the Holders of Debt Securities of the series and Tranches with respect to which such meeting shall have been held, whether or not present or represented at the meeting.

Section 13.05. Attendance at Meetings; Determination of Voting Rights; Conduct and Adjournment of Meetings.

(a) Attendance at meetings of Holders of Debt Securities may be in person or by proxy; and, to the extent permitted by law, any such proxy shall remain in effect and be binding upon any future Holder of the Debt Securities with respect to which it was given unless and until specifically revoked by the Holder or future Holder of such Debt Securities before being voted.

(b) Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Holders of Debt Securities in regard to proof of the holding of such Debt Securities and of the appointment of proxies and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall deem appropriate. Except as otherwise permitted or required by any such regulations, the holding of Debt Securities shall be proved in the manner specified in Section 1.04 and the appointment of any proxy shall be proved in the manner specified in Section 1.04. Such regulations may provide that written instruments appointing proxies, regular on their face, may be presumed valid and genuine without the proof specified in Section 1.04 or other proof.

(c) The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by Holders as provided in Section 13.02(b), in which case the Company or the Holders of Debt Securities of

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the series and Tranches calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the Persons entitled to vote a majority in aggregate principal amount of the Outstanding Debt Securities of all series and Tranches represented at the meeting, considered as one class.

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

(e) Any meeting duly called pursuant to Section 13.02 at which a quorum is present may be adjourned from time to time by Persons entitled to vote a majority in aggregate principal amount of the Outstanding Debt Securities of all series and Tranches represented at the meeting, considered as one class; and the meeting may be held as so adjourned without further notice.

#### Section 13.06. Counting Votes and Recording Action of Meetings.

The vote upon any resolution submitted to any meeting of Holders shall be by written ballots on which shall be subscribed the signatures of the Holders or of their representatives by proxy and the principal amounts and serial numbers of the Outstanding Debt Securities, of the series and Tranches with respect to which the meeting shall have been called, held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports of all votes cast at the meeting. A record of the proceedings of each meeting of Holders shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was given as provided in Section 13.02 and, if applicable, Section 13.04. Each copy shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one such copy shall be delivered to the Company, and another to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting. Any record so signed and verified shall be conclusive evidence of the matters therein stated.

#### Section 13.07. Action Without Meeting.

In lieu of a vote of Holders at a meeting as hereinbefore contemplated in this Article, any request, demand, authorization, direction, notice, consent, waiver or other action may be made, given or taken by Holders by written instruments as provided in Section 1.04.

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**ARTICLE XIV  
IMMUNITY OF INCORPORATORS, SHAREHOLDERS, OFFICERS AND TRUSTEES**

Section 14.01. Liability Solely Corporate.

No recourse shall be had for the payment of the principal of or premium, if any, or interest (including Additional Interest), if any, on any Debt Securities, or any part thereof, or for any claim based thereon or otherwise in respect thereof, or of the indebtedness represented thereby, or upon any obligation, covenant or agreement under this Indenture, against any incorporator, shareholder, officer or director, as such, past, present or future, of the Company or of any predecessor or successor corporation (either directly or through the Company or a predecessor or successor corporation), whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly agreed and understood that this Indenture and all the Debt Securities are solely corporate obligations, and that no personal liability whatsoever shall attach to, or be incurred by, any incorporator, shareholder, officer or director, past, present or future, of the Company or of any predecessor or successor corporation, either directly or indirectly through the Company or any predecessor or successor corporation, because of the indebtedness hereby authorized or under or by reason of any of the obligations, covenants or agreements contained in this Indenture or in any of the Debt Securities or to be implied herefrom or therefrom, and that any such personal liability is hereby expressly waived and released as a condition of, and as part of the consideration for, the execution of this Indenture and the issuance of the Debt Securities.

**ARTICLE XV  
[SUBORDINATION OF SECURITIES]\***

Section 15.01. Securities Subordinate to Senior Indebtedness.

[The Company, for itself, its successors and assigns, covenants and agrees, and each Holder of the Debt Securities of each series, by its acceptance thereof, likewise covenants and agrees, that the payment of the principal of and premium, if any, and interest, if any, on each and all of the Debt Securities is hereby expressly subordinated, to the extent and in the manner set forth in this Article, in right of payment to the prior payment in full of all Senior Indebtedness.

Each Holder of the Debt Securities of each series, by its acceptance thereof, authorizes and directs the Trustee on its behalf to take such action as may be necessary or appropriate to effectuate the subordination as provided in this Article, and appoints the Trustee its attorney-in-fact for any and all such purposes.

Without limiting the generality of the foregoing, nothing contained in this Article shall restrict the right of the Trustee or the Holders of Debt Securities to take any action to declare the Debt Securities to be due and payable prior to their stated maturity pursuant to Section 8.02 or to pursue any rights or remedies hereunder; *provided, however*, that all Senior Indebtedness then due and payable shall first be paid in full before the Holders of the Debt Securities or the Trustee are entitled to receive any direct or indirect payment from the Company of principal of, or premium, if any, or interest on the Debt Securities.

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Section 15.02. Payment Over of Proceeds of Securities.

In the event (a) of any insolvency or bankruptcy proceedings or any receivership, liquidation, reorganization or other similar proceedings in respect of the Company or a substantial part of its property, or of any proceedings for liquidation, dissolution or other winding up of the Company, whether or not involving insolvency or bankruptcy, whether voluntary or involuntary or (b) subject to the provisions of Section 15.03, that (i) a default shall have occurred with respect to the payment of principal of or interest on or other monetary amounts due and payable on any Senior Indebtedness, or (ii) there shall have occurred a default (other than a default in the payment of principal or interest or other monetary amounts due and payable) in respect of any Senior Indebtedness, as defined therein or in the instrument under which the same is outstanding, permitting the holder or holders thereof to accelerate the maturity thereof (with notice or lapse of time, or both), and such default shall have continued beyond the period of grace, if any, in respect thereof, and, in the cases of subclauses (i) and (ii) of this clause (b), such default shall not have been cured or waived or shall not have ceased to exist, and, in the case of subclause (ii) of this clause (b), the maturity of such Senior Indebtedness shall have been accelerated in accordance with the default provisions thereof or (c) that the principal of and accrued interest on the Debt Securities of any series shall have been declared due and payable pursuant to Section 8.01 and such declaration shall not have been rescinded and annulled as provided in Section 8.02, then:

(1) the holders of all Senior Indebtedness shall first be entitled to receive payment of the full amount due thereon, or provision shall be made for such payment in money or money's worth, before the Holders of any of the Debt Securities are entitled to receive a payment on account of the principal of or interest on the indebtedness evidenced by the Debt Securities, including, without limitation, any payments made pursuant to Articles IV and V;

(2) any payment by, or distribution of assets of, the Company of any kind or character, whether in cash, property or securities, to which any Holder or the Trustee would be entitled except for the provisions of this Article, shall be paid or delivered by the person making such payment or distribution, whether a trustee in bankruptcy, a receiver or liquidating trustee or otherwise, directly to the holders of such Senior Indebtedness or their representative or representatives or to the trustee or trustees under any indenture under which any instruments evidencing any of such Senior Indebtedness may have been issued, ratably according to the aggregate amounts remaining unpaid on account of such Senior Indebtedness held or represented by each, to the extent necessary to make payment in full of all Senior Indebtedness remaining unpaid after giving effect to any concurrent payment or distribution (or provision therefor) to the holders of such Senior Indebtedness, before any payment or distribution is made to the Holder of the indebtedness evidenced by the Debt Securities or to the Trustee under this Indenture; and

(3) in the event that, notwithstanding the foregoing, any payment by, or distribution of assets of, the Company of any kind or character, whether in cash, property or securities, in respect of principal of or interest on the Debt Securities or in connection

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with any repurchase by the Company of the Debt Securities, shall be received by the Trustee or any Holder before all Senior Indebtedness is paid in full to the extent required by Subsection (1) of this Section 15.02, or provision is made for such payment in money or money's worth, such payment or distribution in respect of principal of or interest on the Debt Securities or in connection with any repurchase by the Company of the Debt Securities shall be paid over to the holders of such Senior Indebtedness or their representative or representatives or to the trustee or trustees under any indenture under which any instruments evidencing any such Senior Indebtedness may have been issued, ratably as aforesaid, for application to the payment of all Senior Indebtedness remaining unpaid until all such Senior Indebtedness shall have been paid in full, after giving effect to any concurrent payment or distribution (or provision therefor) to the holders of such Senior Indebtedness.

Notwithstanding the foregoing, at any time after the 123rd day following the date of deposit of cash or Eligible Obligations pursuant to Section 7.01 (provided all conditions set out in such Section shall have been satisfied), the funds so deposited and any interest thereon will not be subject to any rights of holders of Senior Indebtedness, including, without limitation, those arising under this Article; provided that no event described in clauses (e) and (f) of Section 8.01 with respect to the Company has occurred during such 123-day period.

For purposes of this Article only, the words "cash, property or securities" shall not be deemed to include shares of beneficial interest of the Company as reorganized or readjusted, or securities of the Company or any other corporation provided for by a plan of reorganization or readjustment that are subordinate in right of payment to all Senior Indebtedness that may at the time be outstanding to the same extent as, or to a greater extent than, the Debt Securities are so subordinated as provided in this Article. The consolidation of the Company with, or the merger of the Company into, another corporation or the liquidation or dissolution of the Company following the conveyance or transfer of its property as an entirety, or substantially as an entirety, to another corporation upon the terms and conditions provided for in Article XI hereof shall not be deemed a dissolution, winding-up, liquidation or reorganization for the purposes of this Section 15.02 if such other corporation shall, as a part of such consolidation, merger, conveyance or transfer, comply with the conditions stated in Article XI hereof. Nothing in Section 15.01 or in this Section 15.02 shall apply to claims of, or payments to, the Trustee under or pursuant to Section 9.07.

#### Section 15.03. Disputes with Holders of Certain Senior Indebtedness.

Any failure by the Company to make any payment on or perform any other obligation in respect of Senior Indebtedness, other than any indebtedness incurred by the Company or assumed or guaranteed, directly or indirectly, by the Company for money borrowed (or any deferral, renewal, extension or refunding thereof) or any other obligation as to which the provisions of this Section shall have been waived by the Company in the instrument or instruments by which the Company incurred, assumed, guaranteed or otherwise created such indebtedness or obligation, shall not be deemed a default under clause (b) of Section 15.02 if (i) the Company shall be disputing its obligation to make such payment or perform such

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obligation and (ii) either (A) no final judgment relating to such dispute shall have been issued against the Company that is in full force and effect and is not subject to further review, including a judgment that has become final by reason of the expiration of the time within which a party may seek further appeal or review, or (B) in the event that a judgment that is subject to further review or appeal has been issued, the Company shall in good faith be prosecuting an appeal or other proceeding for review and a stay of execution shall have been obtained pending such appeal or review.

Section 15.04. Subrogation.

Senior Indebtedness shall not be deemed to have been paid in full unless the holders thereof shall have received cash (or securities or other property satisfactory to such holders) in full payment of such Senior Indebtedness then outstanding. Upon the payment in full of all Senior Indebtedness, the Holders of the Debt Securities shall be subrogated to the rights of the holders of Senior Indebtedness to receive any further payments or distributions of cash, property or securities of the Company applicable to the holders of the Senior Indebtedness until all amounts owing on the Debt Securities shall be paid in full; and such payments or distributions of cash, property or securities received by the Holders of the Debt Securities, by reason of such subrogation, which otherwise would be paid or distributed to the holders of such Senior Indebtedness shall, as between the Company, its creditors other than the holders of Senior Indebtedness, and the Holders, be deemed to be a payment by the Company to or on account of Senior Indebtedness, it being understood that the provisions of this Article are and are intended solely for the purpose of defining the relative rights of the Holders, on the one hand, and the holders of the Senior Indebtedness, on the other hand.

If any payment or distribution to which the Holders of the Debt Securities would otherwise have been entitled but for the provisions of this Article shall have been applied, pursuant to the provisions of this Article, to the payment of amounts payable under Senior Indebtedness, then and in such case, the Holders of the Debt Securities shall be entitled to receive from the holders of such Senior Indebtedness any payments or distributions received by such holders of Senior Indebtedness in excess of the amount required to make payment to the extent required by Section 15.02, or provision for payment, of such Senior Indebtedness.

Section 15.05. Unconditional Obligation of the Company.

Nothing contained in this Article or elsewhere in this Indenture or in the Debt Securities is intended to or shall impair, as among the Company, its creditors other than the holders of Senior Indebtedness and the Holders, the obligation of the Company, which is absolute and unconditional, to pay to the Holders the principal of and interest on the Debt Securities as and when the same shall become due and payable in accordance with their terms, or is intended to or shall affect the relative rights of the Holders and creditors of the Company other than the holders of Senior Indebtedness, nor shall anything herein or therein prevent the Trustee or any Holder from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, subject to the rights, if any, under this Article of the holders of Senior Indebtedness in respect of cash, property or securities of the Company received upon the exercise of any such remedy.

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\* Bracketed language throughout this Indenture will be inserted in the Indenture in the event that subordinated Debt Securities are issued.

Upon any payment or distribution of assets or securities of the Company referred to in this Article, the Trustee and the Holders shall be entitled to rely upon any order or decree of a court of competent jurisdiction in which such bankruptcy, dissolution, winding up, liquidation or reorganization proceedings are pending or upon a certificate of the receiver, trustee in bankruptcy, liquidating trustee agent or other person making such payment or distribution delivered to the Trustee or to the Holders for the purpose of ascertaining the persons entitled to participate in such distribution, the holders of the Senior Indebtedness and other indebtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon, and all other facts pertinent thereto or to this Article.

Section 15.06. Priority of Senior Indebtedness Upon Maturity.

Upon the maturity of the principal of any Senior Indebtedness by lapse of time, acceleration or otherwise, all matured principal of Senior Indebtedness and interest and premium, if any, thereon shall first be paid in full before any payment of principal or premium or interest, if any, is made upon the Debt Securities or before any Debt Securities can be acquired by the Company or any sinking fund payment is made with respect to the Debt Securities (except that required sinking fund payments may be reduced by Debt Securities acquired before such maturity of such Senior Indebtedness).

Section 15.07. Trustee as Holder of Senior Indebtedness.

The Trustee shall be entitled to all rights set forth in this Article with respect to any Senior Indebtedness at any time held by it, to the same extent as any other holder of Senior Indebtedness. Nothing in this Article shall deprive the Trustee of any of its rights as such holder.

Section 15.08. Notice to Trustee to Effectuate Subordination.

The Company shall give prompt written notice to the Trustee of any fact known to the Company that would prohibit the making of any payment to or by the Trustee in respect of the Debt Securities pursuant to the provisions of this Article. Notwithstanding the provisions of this Article or any other provision of the Indenture, the Trustee shall not be charged with knowledge of the existence of any facts that would prohibit the making of any payment of moneys to or by the Trustee unless and until the Trustee shall have received written notice thereof from the Company, from a Holder or from a holder of any Senior Indebtedness or from any representative or representatives of such holder and, prior to the receipt of any such written notice, the Trustee shall be entitled, subject to Section 9.01, in all respects to assume that no such facts exist; *provided, however*, that, if prior to the fifth Business Day preceding the date upon which by the terms hereof any such moneys may become payable for any purpose, or in the event of the execution of an instrument pursuant to Section 7.02 acknowledging satisfaction and discharge of this Indenture, then if prior to the second Business Day preceding the date of such execution, the Trustee shall not have received with respect to such moneys the notice provided for in this Section, then, anything herein contained to the contrary notwithstanding, the Trustee may, in its discretion, receive such moneys and/or apply the same to the purpose for which they were received, and shall not be affected by any notice to the contrary, which may be received by it on

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\* Bracketed language throughout this Indenture will be inserted in the Indenture in the event that subordinated Debt Securities are issued.

or after such date; *provided, however*, that no such application shall affect the obligations under this Article of the persons receiving such moneys from the Trustee.

Section 15.09. Modification, Extension, Etc. of Senior Indebtedness.

The holders of Senior Indebtedness may, without affecting in any manner the subordination of the payment of the principal of and premium, if any, and interest, if any, on the Debt Securities, at any time or from time to time and in their absolute discretion, agree with the Company to change the manner, place or terms of payment, change or extend the time of payment of, or renew or alter, any Senior Indebtedness, or amend or supplement any instrument pursuant to which any Senior Indebtedness is issued, or exercise or refrain from exercising any other of their rights under the Senior Indebtedness, including, without limitation, the waiver of default thereunder, all without notice to or assent from the Holders or the Trustee.

Section 15.10. Trustee Has No Fiduciary Duty to Holders of Senior Indebtedness.

With respect to the holders of Senior Indebtedness, the Trustee undertakes to perform or to observe only such of its covenants and objectives as are specifically set forth in this Article, and no implied covenants or obligations with respect to the holders of Senior Indebtedness shall be read into this Indenture against the Trustee. The Trustee shall not be deemed to owe any fiduciary duty to the holders of Senior Indebtedness, and shall not be liable to any such holders if it shall mistakenly pay over or deliver to the Holders or the Company or any other Person, cash, property or securities to which any holders of Senior Indebtedness shall be entitled by virtue of this Article or otherwise.

Section 15.11. Paying Agents other than the Trustee.

In case at any time any Paying Agent other than the Trustee shall have been appointed by the Company and be then acting hereunder, the term "Trustee" as used in this Article shall in such case (unless the context shall otherwise require) be construed as extending to and including such Paying Agent within its meaning as fully for all intents and purposes as if such Paying Agent were named in this Article in addition to or in place of the Trustee; *provided, however*, that Sections 15.07, 15.08 and 15.10 shall not apply to the Company if it acts as Paying Agent.

Section 15.12. Rights of Holders of Senior Indebtedness Not Impaired.

No right of any present or future holder of Senior Indebtedness to enforce the subordination herein shall at any time or in any way be prejudiced or impaired by any act or failure to act on the part of the Company or by any noncompliance by the Company with the terms, provisions and covenants of this Indenture, regardless of any knowledge thereof any such holder may have or be otherwise charged with.

Section 15.13. This Article Not To Prevent Events of Default.

The failure to make a payment on account of principal of, or premium, if any, or interest on the Debt Securities by reason of any provision of this Article shall not be construed as

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\* Bracketed language throughout this Indenture will be inserted in the Indenture in the event that subordinated Debt Securities are issued.

preventing the occurrence of an Event of Default specified in paragraph (a) or (b) of Section 8.01.

Section 15.14. Effect of Subordination Provisions; Termination.

Notwithstanding anything contained herein to the contrary, other than as provided in the immediately succeeding sentence, all the provisions of this Indenture shall be subject to the provisions of this Article, so far as the same may be applicable thereto.

Notwithstanding anything contained herein to the contrary, the provisions of this Article XV shall be of no further effect, and the Debt Securities shall no longer be subordinated in right of payment to the prior payment of Senior Indebtedness, if the Company shall have delivered to the Trustee a notice to such effect. Any such notice delivered by the Company shall not be deemed to be a supplemental indenture for purposes of Article XII.]\*

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

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\* Bracketed language throughout this Indenture will be inserted in the Indenture in the event that subordinated Debt Securities are issued.

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

**ELLINGTON FINANCIAL LLC**

By: \_\_\_\_\_  
Name:  
Title:

[SEAL]

[ATTEST]

By: \_\_\_\_\_  
Name:  
Title:

*[Trustee's signature page follows.]*

\_\_\_\_\_, Trustee

By: \_\_\_\_\_  
Authorized Representative

[SEAL]

[ATTEST]

\_\_\_\_\_  
Authorized Representative

HUNTON & WILLIAMS LLP  
RIVERFRONT PLAZA, EAST TOWER  
951 EAST BYRD STREET  
RICHMOND, VIRGINIA 23219-4074  
TEL 804 • 788 • 8200  
FAX 804 • 788 • 8218

November 4, 2011

Board of Directors  
Ellington Financial LLC  
53 Forest Avenue  
Old Greenwich, Connecticut 06870

Universal Shelf Registration Statement on Form S-3

Ladies and Gentlemen:

We have acted as special counsel to Ellington Financial LLC, a Delaware limited liability company (the “Company”), in connection with the Registration Statement on Form S-3 (the “Registration Statement”), to be filed on the date hereof by the Company with the Securities and Exchange Commission (the “Commission”) under the Securities Act of 1933, as amended (the “Securities Act”). The Registration Statement relates to the issuance and sale from time to time by the Company of (i) common shares representing limited liability company interests of the Company (the “Common Shares”), (ii) preferred shares representing limited liability company interests of the Company (the “Preferred Shares”), (iii) shareholder rights to purchase Common Shares or Preferred Shares (the “Shareholder Rights”), (iv) warrants to purchase Common Shares or Preferred Shares (the “Warrants”) and (v) debt securities of the Company (the “Debt Securities,” and, together with the Common Shares, the Preferred Shares, the Shareholder Rights and the Warrants, the “Offered Securities”), having an aggregate maximum offering price not to exceed \$750,000,000. The Offered Securities may be issued and sold from time to time in multiple transactions pursuant to Rule 415 of the General Rules and Regulations promulgated under the Securities Act and as set forth in the Registration Statement, any amendments thereto, the prospectus contained therein and any amendments or supplements thereto. Any Debt Securities will be issued pursuant to one or more open-ended indentures between the Company and trustees yet to be named. Any Shareholder Rights will be issued pursuant to one or more subscription agreements (each, a “Subscription Agreement”) substantially in the form to be filed as an exhibit to a post-effective amendment to the Registration Statement or as an exhibit to a document filed under the Securities Exchange Act of 1934, as amended, and incorporated into the Registration Statement by reference. Any Warrants will be evidenced by a warrant certificate and issued pursuant to one or more warrant agreements (each, a “Warrant Agreement”) between the Company and the warrant agent party thereto substantially in the form to be filed as an exhibit to a post-effective amendment to the Registration Statement or as an exhibit to a document

ATLANTA AUSTIN BANGKOK BEIJING BRUSSELS CHARLOTTE DALLAS HOUSTON LONDON LOS ANGELES  
McLEAN MIAMI NEW YORK NORFOLK RALEIGH RICHMOND SAN FRANCISCO TOKYO WASHINGTON  
[www.hunton.com](http://www.hunton.com)

filed under the Securities Exchange Act of 1934, as amended, and incorporated into the Registration Statement by reference.

This opinion is being furnished to you for submission to the Commission as an exhibit to the Registration Statement in accordance with the requirements of Item 16 of Form S-3 and Item 601(b)(5)(i) of Regulation S-K promulgated under the Securities Act.

In connection with the foregoing, we have examined the following documents:

- (a) The Registration Statement, including the Form of Indenture filed as Exhibit 4.3 to the Registration Statement (the "Indenture"), and the related form of prospectus included therein in the form in which it was filed with the Commission under the Securities Act;
- (b) The Certificate of Formation of the Company, as certified by the Secretary of State of the State of Delaware on November 3, 2011, as certified by the Secretary of the Company on the date hereof (the "Certificate of Formation");
- (c) The Second Amended and Restated Operating Agreement of the Company, dated as of July 1, 2009, as amended, as certified by the Secretary of the Company on the date hereof (the "Operating Agreement");
- (d) Resolutions adopted by the Board of Directors (the "Board of Directors") of the Company on November 1, 2011 authorizing the registration, issuance and sale of the Offered Securities, as certified by the Secretary of the Company on the date hereof (the "Resolutions"); and
- (e) The certificate of the Secretary of State of the State of Delaware as to the due formation, existence and good standing of the Company, dated November 3, 2011 (the "Delaware Certificate").

For purposes of the opinion expressed below, we have assumed (i) the authenticity of all documents submitted to us as originals, (ii) the conformity to the originals of all documents submitted as certified or photostatic copies and the authenticity of the originals thereof, (iii) the legal capacity of natural persons, (iv) the genuineness of all signatures and (v) the due authorization, execution and delivery of all documents by all parties and the validity, binding effect and enforceability thereof (other than the authorization, execution and delivery of documents by the Company and the validity, binding effect and enforceability

thereof upon the Company). As to factual matters, we have relied upon a certificate of the Secretary of the Company and upon certificates of public officials.

Based upon the foregoing and such other information and documents as we have considered necessary for the purposes hereof, we are of the opinion that:

1. The Company is a limited liability company duly formed and existing under the laws of the State of Delaware and is in good standing with the Secretary of State of the State of Delaware.

2. With respect to the Common Shares, (a) when the terms of the issuance and sale of the Common Shares have been duly established in conformity with the Certificate of Formation and the Operating Agreement and (b) when the Common Shares have been duly issued and sold as contemplated by the Registration Statement (as declared effective by the Commission), the prospectus contained therein and any applicable prospectus supplement, and if all of the foregoing actions are taken in accordance with appropriate limited liability company authorization of the Company, and so as not to violate any applicable law or result in a default under or breach of any agreement or instrument binding on the Company and so as to comply with any requirement or restriction imposed by any court or governmental body having jurisdiction over the Company, and the Company has received full payment therefor in accordance with such limited liability company authorization, then the Common Shares will be validly issued and, under the Delaware Limited Liability Company Act (the "DLLCA"), the purchasers of the Common Shares will have no obligation to make further payments for their purchase of the Common Shares or contributions to the Company solely by reason of their ownership of the Common Shares, except for their obligation pursuant to Section 18-607 or 18-804 of the DLLCA to repay any funds wrongfully distributed to them.

3. With respect to the Preferred Shares, (a) when the terms of the particular class or series of Preferred Shares and of the issuance and sale of such Preferred Shares have been duly established in conformity with the Certificate of Formation and the Operating Agreement, (b) with respect to a particular class or series of Preferred Shares, when the related designating amendment to the Operating Agreement establishing the relative powers, designations, preferences, rights, duties, limitations or restrictions of such Preferred Shares has been annexed to the Operating Agreement, and (c) when such class or series of Preferred Shares have been duly issued and sold as contemplated by the Registration Statement (as declared effective by the Commission), the prospectus contained therein and any applicable prospectus supplement, and if all of the foregoing actions are taken in accordance with appropriate limited liability company authorization of the Company, and so as not to violate

any applicable law or result in a default under or breach of any agreement or instrument binding on the Company and so as to comply with any requirement or restriction imposed by any court or governmental body having jurisdiction over the Company, and the Company has received full payment therefor in accordance with such limited liability company authorization, then the Preferred Shares will be validly issued and, under the DLLCA, the purchasers of the Preferred Shares will have no obligation to make further payments for their purchase of the Preferred Shares or contributions to the Company solely by reason of their ownership of the Preferred Shares, except for their obligation pursuant to Section 18-607 or 18-804 of the DLLCA to repay any funds wrongfully distributed to them.

4. With respect to the Shareholder Rights, (a) when the terms of the issuance and sale of any Shareholder Rights have been duly established in conformity with the Certificate of Formation and the Operating Agreement, (b) when such Shareholder Rights have been duly issued and sold as contemplated by the Registration Statement (as declared effective by the Commission), the prospectus contained therein and any applicable prospectus supplement, (c) when the applicable Subscription Agreement (including a form of certificate representing the Shareholder Rights) has been duly executed and delivered and (d) when the certificates representing such Shareholder Rights have been duly executed, attested and delivered in accordance with the applicable Subscription Agreement, and if all of the foregoing actions are taken in accordance with appropriate limited liability company authorization of the Company, and so as not to violate any applicable law or result in a default under or breach of any agreement or instrument binding on the Company and so as to comply with any requirement or restriction imposed by any court or governmental body having jurisdiction over the Company, and the Company has received full payment therefor in accordance with such limited liability company authorization, then such Shareholder Rights will be validly issued and will constitute legal, valid and binding obligations of the Company, enforceable against the Company in accordance with the terms of such Shareholder Rights and the terms of the applicable Subscription Agreement, except as the enforceability thereof may be limited or otherwise affected by (i) bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer and other laws affecting the rights of creditors generally and (ii) principles of equity, whether considered at law or equity.

5. With respect to the Warrants, (a) when the terms of the particular class or series of Warrants and of the issuance and sale of such Warrants have been duly established in conformity with the Certificate of Formation and the Operating Agreement, (b) when such Warrants have been duly issued and sold as contemplated by the Registration Statement (as declared effective by the Commission), the prospectus contained therein and any applicable prospectus supplement, (c) when the applicable Warrant Agreement (including a form of

certificate representing the Warrants) has been duly executed and delivered and (d) when the certificates representing such Warrants have been duly executed and delivered in accordance with the applicable Warrant Agreement, and if all of the foregoing actions are taken in accordance with appropriate limited liability company authorization of the Company, and so as not to violate any applicable law or result in a default under or breach of any agreement or instrument binding on the Company and so as to comply with any requirement or restriction imposed by any court or governmental body having jurisdiction over the Company, and the Company has received full payment therefor in accordance with such limited liability company authorization, then such Warrants will be validly issued and will constitute legal, valid and binding obligations of the Company, enforceable against the Company in accordance with the terms of such Warrants and the terms of the applicable Warrant Agreement, except as the enforceability thereof may be limited or otherwise affected by (i) bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer and other laws affecting the rights of creditors generally and (ii) principles of equity, whether considered at law or equity.

6. With respect to the Debt Securities, (a) when the terms of any class or series of Debt Securities and of the issuance and sale of such Debt Securities have been duly established in conformity with the Certificate of Formation and the Operating Agreement, (b) when the Debt Securities have been duly executed, issued and sold as contemplated by the Registration Statement (as declared effective by the Commission), the prospectus contained therein and any applicable prospectus supplement, and (c) when such Debt Securities have been duly authenticated and delivered in accordance with the applicable Indenture, and if all of the foregoing actions are taken in accordance with appropriate limited liability company authorization of the Company, and so as not to violate any applicable law or result in a default under or breach of any agreement or instrument binding on the Company and so as to comply with any requirement or restriction imposed by any court or governmental body having jurisdiction over the Company, and the Company has received full payment therefor in accordance with such limited liability company authorization, then, so long as the Debt Securities are issued in the form of Indenture with the appropriate terms of the Debt Securities included therein, such Debt Securities will be validly issued and will constitute legal, valid and binding obligations of the Company, enforceable against the Company in accordance with the terms of such Debt Securities and the terms of the applicable Indenture, except as the enforceability thereof may be limited or otherwise affected by (i) bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer and other laws affecting the rights of creditors generally and (ii) principles of equity, whether considered at law or equity.

In expressing the opinions above, we have assumed that (i) any Common Shares or Preferred Shares will not be issued in violation of Section 3.1(a)(i) of the Operating Agreement, as amended as of the date hereof, (ii) upon issuance, the total number of Common Shares and Preferred Shares issued and outstanding will not exceed the total number of Common Shares and Preferred Shares that the Company has authority to issue under the Operating Agreement, (iii) with respect to the Debt Securities, the applicable trustee will have been qualified under the Trust Indenture Act of 1939, as amended, and a Statement of Eligibility of the Trustee on Form T-1 will have been properly filed with the Commission and (iv) each of the applicable Debt Securities, Indentures, Subscription Agreements and Warrant Agreements will have been duly executed and delivered and governed by and construed in accordance with the laws of the State of New York.

The opinion with respect to the formation, existence and good standing of the Company in the State of Delaware is based solely on the Delaware Certificate.

We do not purport to express an opinion on any laws other than the DLLCA and the laws of the State of New York. We express no opinion as to the applicability or effect of any federal or state laws regarding fraudulent transfers or fraudulent conveyances.

We hereby consent to the filing of this opinion as Exhibit 5.1 to the Registration Statement with the Commission on the date hereof and to the reference to this firm under the heading "Legal Matters" in the Registration Statement. In giving this consent, we do not admit that we are within the category of persons whose consent is required by Section 7 of the Securities Act or the rules and regulations promulgated thereunder by the Commission.

This opinion is limited to the matters stated in this letter, and no opinions may be implied or inferred beyond the matters expressly stated in this letter. The opinions expressed in this letter speak only as of its date. We do not undertake to advise you of any changes in the opinions expressed herein from matters that might hereafter arise or be brought to our attention.

Very truly yours,

/s/ Hunton & Williams LLP

HUNTON & WILLIAMS LLP  
RIVERFRONT PLAZA, EAST TOWER  
951 EAST BYRD STREET  
RICHMOND, VIRGINIA 23219-4074

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November 4, 2011

FILE NO: 68139.1002

Ellington Financial LLC  
53 Forest Avenue  
Old Greenwich, Connecticut 06870

Ellington Financial LLC  
Certain Federal Income Tax Consequences

Ladies and Gentlemen:

We have acted as special tax counsel to Ellington Financial LLC, a Delaware limited liability company (the “Company”), in connection with the preparation of a Registration Statement on Form S-3 (the “Registration Statement”), including a prospectus and all documents incorporated by reference therein (the “Prospectus”), filed with the Securities and Exchange Commission (the “SEC”) on the date hereof, with respect to the offer and sale of common shares representing limited liability company interests in the Company (“Common Shares”), preferred shares representing limited liability company interests in the Company (“Preferred Shares”), shareholder rights to purchase Common Shares or Preferred Shares, warrants to purchase Common Shares or Preferred Shares, and debt securities of the Company to be offered from time-to-time, have an aggregate public offering price not to exceed \$750,000,000. You have asked for our opinion regarding certain U.S. federal income tax matters.

In giving this opinion letter, we have examined the following:

1. the Company’s Second Amended and Restated Operating Agreement, dated as of July 1, 2009, and the First Amendment to the Second Amended and Restated Operating Agreement, dated as of August 8, 2011;
2. the Registration Statement, including the Prospectus;
3. the Officer’s Certificate (as defined below); and

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4. such other documents as we have deemed necessary or appropriate for purposes of this opinion.

In connection with the opinions rendered below, we have assumed, with your consent, that:

1. each of the documents referred to above has genuine signatures, has been duly authorized, executed, and delivered; is authentic, if an original, or is accurate, if a copy; and has not been amended;
2. during its taxable year ending December 31, 2011, and future taxable years, the Company will operate in a manner that will make the factual representations contained in a certificate, dated the date hereof and executed by a duly appointed officer of the Company (the "Officer's Certificate"), true for such years;
3. the Company will not make any amendments to its organizational documents after the date of this opinion that would affect the opinions expressed below; and
4. no action will be taken by the Company after the date hereof that would have the effect of altering the facts upon which the opinions set forth below are based.

In connection with the opinions rendered below, we also have relied upon the correctness of the factual representations contained in the Officer's Certificate. No facts have come to our attention that would cause us to question the accuracy of the factual representations in the Officer's Certificate in a material way. Furthermore, where such factual representations involve terms defined in the Internal Revenue Code of 1986, as amended (the "Code"), the Treasury regulations thereunder (the "Regulations"), published rulings of the Internal Revenue Service (the "Service"), or other relevant authority, we have explained to the individual making such representations the relevant provisions of the Code, the applicable Regulations, the published rulings of the Service, and other relevant authority.

Based solely on the documents and assumptions set forth above, the representations set forth in the Officer's Certificate, and the factual matters discussed in the Prospectus under the caption "Material U.S. Federal Income Tax Considerations" (which is incorporated herein by reference), we are of the opinion that:

- (a) the Company has been and will be treated, for U.S. federal income tax purposes, as a partnership, and not as an association or a publicly traded partnership (within the meaning of Section 7704 of the Code) taxable as a corporation;

(b) the descriptions of the law and the legal conclusions contained in the Prospectus under the caption “Material U.S. Federal Income Tax Considerations” are correct in all material respects.

We will not review on a continuing basis the Company’s compliance with the documents or assumptions set forth above, or the representations set forth in the Officer’s Certificate. Accordingly, no assurance can be given that the actual results of the Company’s operations for any given taxable year will allow it to be taxed as partnership, and not as an association or a publicly traded partnership taxable as a corporation, for U.S. federal income tax purposes. Although we have made such inquiries and performed such investigations as we have deemed necessary to fulfill our professional responsibilities as counsel, we have not undertaken an independent investigation of all of the facts referred to in this letter or the Officer’s Certificate.

The foregoing opinions are based on current provisions of the Code and the Regulations, published administrative interpretations of any of the foregoing, and published court decisions. The Service has not issued Regulations or administrative interpretations with respect to various provisions of the Code relating to partnership classification. No assurance can be given that the law will not change in a way that could cause the Company to be taxable as a corporation for U.S. federal income tax purposes.

The foregoing opinions are limited to the U.S. federal income tax matters addressed herein, and no other opinions are rendered with respect to other U.S. federal tax matters or to any issues arising under the tax laws of any other country, or any state or locality. We undertake no obligation to update the opinions expressed herein after the date of this letter. This opinion letter speaks only as of the date hereof. Except as described in the paragraph below, this opinion letter may not be distributed, quoted in whole or in part or otherwise reproduced in any document, or filed with any governmental agency without our express written consent.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement. We also consent to the references to Hunton & Williams LLP under the captions “Material U.S. Federal Income Tax Considerations” and “Legal Matters” in the Prospectus. In giving this consent, we do not admit that we are in the category of persons whose consent is required by Section 7 of the Securities Act of 1933, as amended, or the rules and regulations promulgated thereunder by the SEC.

Very truly yours,

/s/ Hunton & Williams LLP

**RATIO OF EARNINGS TO FIXED CHARGES AND OF EARNINGS TO COMBINED FIXED CHARGES AND PREFERRED STOCK DIVIDENDS**

The following table sets forth our ratio of earnings to fixed charges and preferred stock dividends for each of the periods indicated:

	Six Months Ended June 30, 2011	2010	Fiscal Years Ended December 31,			2007 <sup>(1)</sup>
	2009	2008	2009	2008	2007 <sup>(1)</sup>	
Fixed charges	\$ 3,145,865	\$ 3,825,946	\$ 2,460,653	\$ 6,189,887	—	
Preferred stock dividends	—	—	—	—	—	
Combined fixed charges and preferred stock dividends	\$ 3,145,865	\$ 3,825,946	\$ 2,460,653	\$ 6,189,887	—	
Fixed charges	\$ 3,145,865	\$ 3,825,946	\$ 2,460,653	\$ 6,189,887	—	
Net income (decrease) in shareholders' equity resulting from operations	\$ 9,785,590	\$40,570,538	\$93,381,013	\$(2,422,645)	\$3,324,970	
Earnings available to cover fixed charges	\$12,931,455	\$44,396,484	\$95,841,666	\$ 3,767,242	\$3,324,970	
Ratio of Earnings to Fixed Charges	4.1x	11.6x	38.9x	0.61x	—	
Ratio of Earnings to Combined Fixed Charges and Preferred Stock Dividends <sup>(2)</sup>	4.1x	11.6x	38.9x	0.61x	—	

(1) For the period August 17, 2007 (date operations commenced) through December 31, 2007.

(2) Fixed charges consist of interest expense for the nine months ended September 30, 2011 and the fiscal years ended December 31, 2010, 2009 and 2008. There were no fixed charges for the period ended December 31, 2007.

We computed the ratio of earnings to fixed charges by dividing earnings by fixed charges. We computed the ratio of earnings to combined fixed charges and preferred share dividends by dividing earnings by the sum of fixed charges and dividends on outstanding preferred shares. In each case, earnings represent increase (decrease) in shareholders' equity resulting from operations plus fixed charges and preferred share dividends, if any. Fixed charges include interest expense. During the periods presented in the table above, no preferred shares were outstanding. For the fiscal year ended December 31, 2008, earnings were insufficient to cover fixed charges and combined fixed charges and preferred share dividends by approximately \$2.4 million.

**Consent of Independent Registered Public Accounting Firm**

We hereby consent to the incorporation by reference in this Registration Statement on Form S-3 of our report dated March 16, 2011 relating to the financial statements and financial statement schedule of Ellington Financial LLC, which appears in Ellington Financial LLC's Annual Report on Form 10-K for the year ended December 31, 2010. We also consent to the reference to us under the heading "Experts" in such Registration Statement.

/s/ PricewaterhouseCoopers LLP  
New York,  
November 4, 2011