

JER INVESTORS TRUST INC (JERT)

8-K

Current report filing

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

FORM 8-K

CURRENT REPORT

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

Date of Report (Date of earliest event reported): June 3, 2009 (May 29, 2009)

JER Investors Trust Inc.

(Exact Name of Registrant as Specified in Charter)

Maryland
(State or other jurisdiction
of incorporation)

001-32564
(Commission File Number)

75-3152779
(IRS Employer
Identification No.)

1650 Tysons Boulevard, Suite 1600, McLean, VA
(Address of Principal Executive Offices)

22102
(Zip Code)

Registrant's telephone number, including area code

(703) 714-8000

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 1.01. Entry Into a Material Definitive Agreement.

On May 29, 2009, JER Investors Trust Inc. (the "Company") entered into (i) an agreement with two holders of outstanding trust preferred securities of the Company ("TRUPs") with an aggregate liquidation amount of \$56.25 million to exchange such TRUPs for \$70.31 million aggregate principal amount of junior subordinated notes due 2037 (the "Notes") issued by the Company pursuant to the Junior Subordinated Indenture, dated May 29, 2009, between the Company and The Bank of New York Mellon Trust Company, National Association, as trustee (the "Indenture"), (ii) a letter agreement with one such holder, providing for the issuance of 238,347 unregistered shares of the Company's common stock (subject, under certain conditions, to the sale of up to 68,856 additional unregistered shares of common stock) and certain cash payments to that holder in connection with the exchange described above, (iii) an agreement with the other such holder, providing for certain cash payments to that holder in connection with the exchange described above, (iv) an agreement with a third holder of TRUPs with an aggregate liquidation amount of \$3.75 million to exchange such TRUPs for 541,906 unregistered shares of the Company's common stock and certain cash payments ((i), (ii) and (iv) together, the "Exchange Agreements"), and (v) a registration rights agreement with those holders receiving shares of the Company's common stock in the exchanges described above providing for certain piggyback registration rights with respect to such shares (the "Registration Rights Agreement").

An aggregate of \$58.74 million of TRUPs have been cancelled to date in conjunction with these exchanges, and the remaining \$1.26 million of TRUPs outstanding are scheduled to be cancelled by July 30, 2009. The Company also satisfied its interest payment obligations on the TRUPs for the April 30, 2009 interest payment dates, and, with respect to the remaining TRUPs outstanding, the July 30, 2009 interest payment date (in advance thereof). In total, the Company has made aggregate cash payments of \$0.7 million through May 29, 2009 to satisfy its obligations on the TRUPs in connection with the exchanges described above and the satisfaction of interest obligations. The Company is obligated to make \$0.2 million of additional cash payments in order to complete its repurchase of the remaining TRUPs.

The Notes will pay interest at a rate of 0.50% annually through April 29, 2012 or such earlier date as the Company elects (the "Modification Period"). If the Modification Period ends earlier than April 29, 2012, the Company will pay interest at a fixed rate of 7.24% annually from such date through April 29, 2012. Thereafter, the Company will pay interest at a variable rate equal to LIBOR plus 2.25% annually. During the Modification Period, the Company will be subject to certain restrictions, including limitations on its ability to pay dividends on shares of its common stock, provided, however, that the Company shall be permitted to pay dividends to the extent necessary to satisfy REIT dividend requirements. The Indenture contains customary events of default, including those relating to nonpayment of principal or interest when due, and defaults based on events of bankruptcy and insolvency. Historically, the Company paid approximately \$4.3 million annually in cash interest on the TRUPs. During the Modification Period, the Company will be obligated to pay approximately \$0.4 million annually in cash interest on the Notes issued in exchange for the TRUPs.

The foregoing summary is not complete and is qualified in its entirety by reference to the full text of the Indenture, the Registration Rights Agreement and the Exchange Agreements, which are filed herewith as Exhibits 4.1, 4.2, and 10.1, 10.2 and 10.3, respectively, and are incorporated by reference herein.

Item 2.03. Creation of a Direct Financial Obligation.

The information provided with respect to the Company's issuance of the Notes in Item 1.01 of this Current Report on Form 8-K is incorporated by reference into this Item 2.03.

Item 3.02. Unregistered Sales of Equity Securities.

The information provided with respect to the Company's issuance of shares of common stock in Item 1.01 of this Current Report on Form 8-K is incorporated by reference into this Item 3.02.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

4.1 Junior Subordinated Indenture between JER Investors Trust Inc. and The Bank of New York Mellon Trust Company, National Association, dated May 29, 2009.

4.2 Registration Rights Agreement among JER Investors Trust Inc., EJF Distressed Master Fund II, LP and Kodiak CDO II, Ltd., dated May 29, 2009.

10.1 Exchange Agreement among JER Investors Trust Inc., Taberna Preferred Funding IX, Ltd. and Kodiak CDO II, Ltd., dated May 29, 2009.

10.2 Exchange Agreement between JER Investors Trust Inc. and EJF Distressed Master Fund II, LP, dated May 29, 2009.

10.3 Letter Agreement between JER Investors Trust Inc. and Kodiak CDO II, Ltd., dated May 29, 2009.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

JER Investors Trust Inc.

(Registrant)

Date: June 3, 2009

By: /s/ J. Michael McGillis
Name: J. Michael McGillis
Title: Chief Financial Officer

EXHIBIT INDEX

Exhibit No. Description

- | | |
|------|---|
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JUNIOR SUBORDINATED INDENTURE

between

JER INVESTORS TRUST INC.

and

THE BANK OF NEW YORK MELLON TRUST COMPANY, NATIONAL ASSOCIATION
as *Trustee*

Dated as of May 29, 2009

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I Definitions and Other Provisions of General Application	1
SECTION 1.1. Definitions	1
SECTION 1.2. Compliance Certificate and Opinions	9
SECTION 1.3. Forms of Documents Delivered to Trustee	10
SECTION 1.4. Acts of Holders	10
SECTION 1.5. Notices, Etc. to Trustee and Company	12
SECTION 1.6. Notice to Holders; Waiver	13
SECTION 1.7. Effect of Headings and Table of Contents	14
SECTION 1.8. Successors and Assigns	14
SECTION 1.9. Separability Clause	14
SECTION 1.10. Benefits of Indenture	14
SECTION 1.11. Governing Law	14
SECTION 1.12. Submission to Jurisdiction	14
SECTION 1.13. Non-Business Days	15
SECTION 1.14. Shareholder Communications Act	15
ARTICLE II Security Forms	16
SECTION 2.1. Form of Security	16
SECTION 2.2. Restricted Legend	20
SECTION 2.3. Form of Trustee's Certificate of Authentication	22
SECTION 2.4. Temporary Securities	22
SECTION 2.5. Definitive Securities	22
ARTICLE III The Securities	23
SECTION 3.1. Payment of Principal and Interest	23
SECTION 3.2. Denominations	25
SECTION 3.3. Execution, Authentication, Delivery and Dating	25
SECTION 3.4. Global Securities	26
SECTION 3.5. Registration, Transfer and Exchange Generally	28
SECTION 3.6. Mutilated, Destroyed, Lost and Stolen Securities	29
SECTION 3.7. Persons Deemed Owners	30
SECTION 3.8. Cancellation	30
SECTION 3.9. Reserved	30
SECTION 3.10. Reserved	30
SECTION 3.11. Agreed Tax Treatment	30
SECTION 3.12. CUSIP Numbers	31
ARTICLE IV Satisfaction and Discharge	31
SECTION 4.1. Satisfaction and Discharge of Indenture	31
SECTION 4.2. Application of Trust Money	32
ARTICLE V Remedies	33
SECTION 5.1. Events of Default	33

SECTION 5.2.	Acceleration of Maturity; Rescission and Annulment	34
SECTION 5.3.	Collection of Indebtedness and Suits for Enforcement by Trustee	34
SECTION 5.4.	Trustee May File Proofs of Claim	35
SECTION 5.5.	Trustee May Enforce Claim Without Possession of Securities	35
SECTION 5.6.	Application of Money Collected	36
SECTION 5.7.	Limitation on Suits.	36
SECTION 5.8.	Unconditional Right of Holders to Receive Principal, Premium, if any, and Interest	37
SECTION 5.9.	Restoration of Rights and Remedies	37
SECTION 5.10.	Rights and Remedies Cumulative	37
SECTION 5.11.	Delay or Omission Not Waiver	37
SECTION 5.12.	Control by Holders	38
SECTION 5.13.	Waiver of Past Defaults	38
SECTION 5.14.	Undertaking for Costs	38
SECTION 5.15.	Waiver of Usury, Stay or Extension Laws	39
ARTICLE VI	The Trustee	39
SECTION 6.1.	Corporate Trustee Required	39
SECTION 6.2.	Certain Duties and Responsibilities	39
SECTION 6.3.	Notice of Defaults	40
SECTION 6.4.	Certain Rights of Trustee	41
SECTION 6.5.	May Hold Securities	43
SECTION 6.6.	Compensation; Reimbursement; Indemnity	43
SECTION 6.7.	Resignation and Removal; Appointment of Successor	44
SECTION 6.8.	Acceptance of Appointment by Successor	44
SECTION 6.9.	Merger, Conversion, Consolidation or Succession to Business	45
SECTION 6.10.	Not Responsible for Recitals or Issuance of Securities	45
SECTION 6.11.	Appointment of Authenticating Agent	45
ARTICLE VII	Holder's Lists and Reports by Company	47
SECTION 7.1.	Securities Registrar to Furnish Trustee Names and Addresses of Holders	47
SECTION 7.2.	Preservation of Information, Communications to Holders	47
SECTION 7.3.	Reports by Company	48
ARTICLE VIII	Consolidation, Merger, Conveyance, Transfer or Lease	49
SECTION 8.1.	Company May Consolidate, Etc., Only on Certain Terms	49
SECTION 8.2.	Successor Company Substituted	49
ARTICLE IX	Supplemental Indentures	50
SECTION 9.1.	Supplemental Indentures without Consent of Holders	50
SECTION 9.2.	Supplemental Indentures with Consent of Holders	51
SECTION 9.3.	Execution of Supplemental Indentures	51
SECTION 9.4.	Effect of Supplemental Indentures	52
SECTION 9.5.	Reference in Securities to Supplemental Indentures	52
ARTICLE X	Covenants	52

SECTION 10.1.	Payment of Principal, Premium, if any, and Interest	52
SECTION 10.2.	Money for Security Payments to be Held in Trust	52
SECTION 10.3.	Statement as to Compliance	53
SECTION 10.4.	Calculation Agent	53
SECTION 10.5.	Inspection of Books and Records; Management and Board Observation Rights	54
SECTION 10.6.	Additional Covenants	55
SECTION 10.7.	Waiver of Covenants	56
SECTION 10.8.	Treatment of Securities	56
ARTICLE XI	Redemption of Securities	56
SECTION 11.1.	Optional Redemption	56
SECTION 11.2.	Special Event Redemption	56
SECTION 11.3.	Election to Redeem; Notice to Trustee	57
SECTION 11.4.	Selection of Securities to be Redeemed	57
SECTION 11.5.	Notice of Redemption	57
SECTION 11.6.	Deposit of Redemption Price	58
SECTION 11.7.	Payment of Securities Called for Redemption	58
ARTICLE XII	Subordination of Securities	59
SECTION 12.1.	Securities Subordinate to Senior Debt	59
SECTION 12.2.	No Payment When Senior Debt in Default; Payment Over of Proceeds Upon Dissolution, Etc.	59
SECTION 12.3.	Payment Permitted If No Default	61
SECTION 12.4.	Subrogation to Rights of Holders of Senior Debt	61
SECTION 12.5.	Provisions Solely to Define Relative Rights	61
SECTION 12.6.	Trustee to Effectuate Subordination	62
SECTION 12.7.	No Waiver of Subordination Provisions	62
SECTION 12.8.	Notice to Trustee	62
SECTION 12.9.	Reliance on Judicial Order or Certificate of Liquidating Agent	63
SECTION 12.10.	Trustee Not Fiduciary for Holders of Senior Debt	63
SECTION 12.11.	Rights of Trustee as Holder of Senior Debt; Preservation of Trustee's Rights	63
SECTION 12.12.	Article Applicable to Paying Agents	64

SCHEDULES

Schedule A—Determination of LIBOR

Exhibit A—Form of Officer's Financial Certificate

JUNIOR SUBORDINATED INDENTURE, dated as of May 29, 2009 between JER Investors Trust Inc., a Maryland corporation (the "*Company*"), and The Bank of New York Mellon Trust Company, National Association, a national banking association, as Trustee (in such capacity, the "*Trustee*").

RECITALS OF THE COMPANY

Whereas, the Company has duly authorized the execution and delivery of this Indenture to provide for the issuance of its unsecured junior subordinated notes (the "*Securities*") and to provide the terms and conditions upon which the Securities are to be authenticated, issued and delivered; and

Whereas, all things necessary to make this Indenture a valid agreement of the Company, in accordance with its terms, have been done.

Now, Therefore, this Indenture Witnesseth:

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

ARTICLE I

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

SECTION 1.1. *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 I have the meanings assigned to them in this Article I;
- (b) the words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation"
- (c) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with GAAP;
- (d) unless the context otherwise requires, any reference to an "Article" or a "Section" refers to an Article or a Section, as the case may be, of this Indenture;
- (e) the words "hereby", "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;
- (f) a reference to the singular includes the plural and vice versa; and

(g) the masculine, feminine or neuter genders used herein shall include the masculine, feminine and neuter genders.

"Act" when used with respect to any Holder, has the meaning specified in Section 1.4.

"Additional Interest" means the interest, if any, that shall accrue on any amounts payable on the Securities, 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 Security, in each case to the extent legally enforceable.

"Administrative Action" has the meaning specified in the definition of Tax Event.

"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.

"Applicable Depositary Procedures" means, with respect to any transfer or transaction involving a Global Security or beneficial interest therein, the rules and procedures of the Depositary for such Security, in each case to the extent applicable to such transaction and as in effect from time to time.

"Authenticating Agent" means any Person authorized by the Trustee pursuant to Section 6.11 to act on behalf of the Trustee to authenticate the Securities.

"Board of Directors" means the board of directors of the Company or any duly authorized committee of that board.

"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.

"Business Day" means any day other than (i) a Saturday or Sunday, (ii) a day on which banking institutions in the City of New York are authorized or required by law or executive order to remain closed or (iii) a day on which the Corporate Trust Office of the Trustee is closed for business.

"Calculation Agent" has the meaning specified in Section 10.4.

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

"Collateral Manager" means, collectively, (i) Taberna Capital Management, LLC, and (ii) Kodiak CDO Management, LLC, and their respective successors and/or assigns as collateral manager of the applicable Holders.

"Commission" has the meaning specified in Section 7.3(c).

"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" and "Company Order" mean, respectively, the written request or order authorized by the Board of Directors and signed in the name of the Company by a duly authorized officer of the Company and delivered to the Trustee.

"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.

"Corporate Trust Office" means the principal office of the Trustee at which at any particular time its corporate trust business shall be administered, which office at the date of this Indenture is located at 601 Travis Street, 16th Floor, Houston, Texas 77019, Attn: Global Corporate Trust, JER Investors Trust Inc. Initially, all notices and correspondence shall be addressed to Mudassir Mohamed, telephone number (713) 483-6029.

"Debt" means, with respect to any Person, whether recourse is to all or a portion of the assets of such Person, whether currently existing or hereafter incurred and whether or not contingent and without duplication, (i) every obligation of such Person for money borrowed; (ii) every obligation of such Person evidenced by bonds, debentures, notes or other similar instruments, including obligations incurred in connection with the acquisition of property, assets or businesses; (iii) every reimbursement obligation of such Person with respect to letters of credit, bankers' acceptances or similar facilities issued for the account of such Person; (iv) every obligation of such Person issued or assumed as the deferred purchase price of property or services (but excluding trade accounts payable or other accrued liabilities arising in the ordinary course of business); (v) every capital lease obligation of such Person; (vi) all indebtedness of such Person, whether incurred on or prior to the date of this Indenture or thereafter incurred, for claims in respect of derivative products, including interest rate, foreign exchange rate and commodity forward contracts, options and swaps and similar arrangements; (vii) every obligation of the type referred to in clauses (i) through (vi) of another Person and all dividends of another Person the payment of which, in either case, such Person has guaranteed or is responsible or liable for, directly or indirectly, as obligor or otherwise; and (viii) any renewals, extensions, refundings, amendments or modifications of any obligation of the type referred to in clauses (i) through (vii).

"Defaulted Interest" has the meaning specified in [Section 3.1\(c\)](#).

"Depository" means an organization registered as a clearing agency under the Exchange Act that is designated as Depository by the Company or any successor thereto.

"Depository Participant" means a broker, dealer, bank, other financial institution or other Person for whom from time to time a Depository effects book-entry transfers and pledges of securities deposited with the Depository.

"Dollar" or "\$" means the currency of the United States of America that, as at the time of payment, is legal tender for the payment of public and private debts.

"EDGAR" has the meaning specified in [Section 7.3\(b\)](#).

"Equity Interests" means with respect to any Person (a) if such a Person is a partnership, the partnership interests (general or limited) in a partnership, (b) if such Person is a limited liability company, the membership interests in a limited liability company, (c) if such Person is a corporation, the shares or stock interests (both common stock and preferred stock) in a corporation, and (d) if such person is a trust, any common or preferred securities issued by said trust.

"Event of Default" has the meaning specified in [Section 5.1](#).

"Exchange Act" means the Securities Exchange Act of 1934 or any statute successor thereto, in each case as amended from time to time.

"Exchange Agreement" means that certain Exchange Agreement executed and delivered contemporaneously with this Indenture by and among the Company, Taberna Preferred Funding IX, Ltd., Kodiak CDO II, Ltd., and acknowledged and agreed by EJF Distressed Master Fund II, L.P.

"Expiration Date" has the meaning specified in [Section 1.4\(h\)](#).

"Financing Entity" has the meaning set forth in the definition of Senior Debt.

"Fixed Rate" means for the Interest Period commencing on the date hereof and for each Interest Period thereafter, through and including the Interest Period immediately preceding the Interest Period during which the Modification Period Termination Date occurs, a fixed rate equal to one half of one percent (0.50%) per annum, *provided*, that, if the Modification Period Termination Date has occurred the fixed rate shall, for the Interest Period during which the Modification Period Termination Date occurs and for each consecutive Interest Period thereafter through and including April 29, 2012, equal seven and twenty-four one hundredths percent (7.24%) per annum.

"Fixed Rate Period" has the meaning set forth in [Section 2.1](#).

"GAAP" means United States generally accepted accounting principles, consistently applied, from time to time in effect.

"Global Security" means a Security that evidences all or part of the Securities, the ownership and transfers of which shall be made through book entries by a Depositary.

"Government Obligation" means (a) any security that is (i) a direct obligation of the United States of America of which the full faith and credit of the United States of America is pledged or (ii) an obligation of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America or the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America, which, in either

case (i) or (ii), is not callable or redeemable at the option of the issuer thereof, and (b) any depositary receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act) as custodian with respect to any Government Obligation that is specified in clause (a) above and held by such bank for the account of the holder of such depositary receipt, or with respect to any specific payment of principal of or interest on any Government Obligation that is so specified and held, *provided*, that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depositary receipt from any amount received by the custodian in respect of the Government Obligation or the specific payment of principal or interest evidenced by such depositary receipt.

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

"*Indenture*" means this instrument as originally executed or as it may from time to time be amended or supplemented by one or more amendments or indentures supplemental hereto entered into pursuant to the applicable provisions hereof.

"*Interest Payment Date*" means July 30, October 30, January 30, and April 30 of each year during the term of this Indenture commencing on July 30, 2009.

"*Interest Period*" means the period commencing on, and including, an Interest Payment Date and continuing through and including the day prior to the next succeeding Interest Payment Date; provided that the period from May 29, 2009 through July 29, 2009 shall be considered to be an Interest Period notwithstanding the fact that May 29, 2009 is not an Interest Payment Date.

"*Investment Company Act*" means the Investment Company Act of 1940 or any successor statute thereto, in each case as amended from time to time.

"*Investment Company Event*" means the receipt by the Company of an Opinion of Counsel experienced in such matters to the effect that, as a result of the occurrence of a change in law or regulation (including any announced prospective change) or a written change in interpretation or application of law or regulation by any legislative body, court, governmental agency or regulatory authority, there is more than an insubstantial risk that the Company is or, within ninety (90) days of the date of such opinion will be, considered an "investment company" that is required to be registered under the Investment Company Act, which change or prospective change becomes effective or would become effective, as the case may be, on or after the date of the issuance of the Securities.

"*LIBOR*" has the meaning specified in Schedule A.

"*LIBOR Business Day*" has the meaning specified in Schedule A.

"*LIBOR Determination Date*" has the meaning specified in Schedule A.

"*Maturity*" means, when used with respect to any Security, the date on which the principal of such Security or any installment of principal becomes due and payable as therein or herein provided, whether at the Stated Maturity or by declaration of acceleration, call for redemption or otherwise.

"*Modification Period*" means the period commencing as of May 29, 2009 and continuing through, and including April 29, 2012, unless otherwise terminated in accordance with Section 3.1(g) in which case the Modification Period shall terminate on the Modification Period Termination Date.

"*Modification Period Termination Date*" means the earlier of (a) April 29, 2012, and (b) a date prior to April 29, 2012 selected by the Company in accordance with the terms of Section 3.1(g).

"*Notice of Default*" means a written notice of the kind specified in Section 5.1(c).

"*Officer's Certificate*" means a certificate signed by a duly authorized officer of the Company and delivered to the Trustee.

"*Opinion of Counsel*" means a written opinion of counsel, who may be counsel for or an employee of the Company or any Affiliate of the Company.

"*Optional Redemption Price*" has the meaning set forth in Section 11.1.

"*Original Issue Date*" means the date of original issuance of each Security.

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

(i) Securities theretofore canceled by the Trustee or delivered to the Trustee for cancellation;

(ii) Securities for whose payment or redemption money in the necessary amount has been theretofore deposited with the Trustee or any Paying Agent in trust for the Holders of such Securities; *provided*, that, if such Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made; and

(iii) Securities that have been paid or in substitution for or in lieu of which other Securities have been authenticated and delivered pursuant to the provisions of this Indenture, unless proof satisfactory to the Trustee is presented that any such Securities are held by Holders in whose hands such Securities are valid, binding and legal obligations of the Company;

provided, that in determining whether the Holders of the requisite principal amount of Outstanding Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Securities owned by the Company, if any, or any other obligor upon the Securities, if any, or any Affiliate of the Company or such other obligor shall be disregarded and deemed not to be Outstanding unless the Company shall hold all Outstanding Securities, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Securities that a Responsible Officer of the Trustee actually knows to be so owned shall be so disregarded. Securities so owned that have been pledged in good faith may be regarded as Outstanding if the pledgee

establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Securities and that the pledgee is not the Company or any other obligor upon the Securities or any Affiliate of the Company or such other obligor.

"*Paying Agent*" means the Trustee or any Person (other than the Company or any Affiliate of the Company) authorized by the Trustee to pay the principal of or any premium or interest on, or other amounts in respect of, any Securities on behalf of the Company.

"*Person*" means a legal person, including any individual, corporation, estate, partnership, joint venture, association, joint stock company, company, limited liability company, trust, unincorporated association, or government, or any agency or political subdivision thereof, or any other entity of whatever nature.

"*Place of Payment*" means, with respect to the Securities, the Corporate Trust Office of the Trustee.

"*Predecessor Security*" of any particular Security means every previous Security evidencing all or a portion of the same debt as that evidenced by such particular Security. For the purposes of this definition, any security authenticated and delivered under Section 3.6 in lieu of a mutilated, destroyed, lost or stolen Security shall be deemed to evidence the same debt as the mutilated, destroyed, lost or stolen Security.

"*Proceeding*" has the meaning specified in Section 12.2(b).

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

"*Redemption Price*" means, when used with respect to any Security to be redeemed, in whole or in part, the Special Redemption Price or the Optional Redemption Price, as applicable, at which such Security or portion thereof is to be redeemed as fixed by or pursuant to this Indenture.

"*Reference Banks*" has the meaning specified in Schedule A.

"*Regular Record Date*" for the interest payable on any Interest Payment Date with respect to the Securities means the date that is fifteen (15) days preceding such Interest Payment Date (whether or not a Business Day).

"*REIT*" has the meaning specified in Section 10.6(c).

"*Responsible Officer*" means, when used with respect to the Trustee, the officer in the Global Corporate Trust department of the Trustee having direct responsibility for the administration of this Indenture.

"*Rights Plan*" means a plan of the Company providing for the issuance by the Company to all holders of its Equity Interests of rights entitling the holders thereof to subscribe for or purchase Equity Interests or any class or series of Equity Interests in the Company which rights (i) are deemed to be transferred with such Equity Interests and (ii) are also issued in respect of future issuances of such Equity Interests, in each case until the occurrence of a specified event or events.

"SCA" has the meaning set forth in [Section 1.14\(a\)](#).

"Securities" or "Security" means any debt securities or debt security, as the case may be, authenticated and delivered under this Indenture.

"Securities Act" means the Securities Act of 1933 or any successor statute thereto, in each case as amended from time to time.

"Securities Register" and "Securities Registrar" have the respective meanings specified in [Section 3.5](#).

"Senior Debt" means the principal of and any premium and interest on (including interest accruing on or after the filing of any petition in bankruptcy or for reorganization relating to the Company, whether or not such claim for post-petition interest is allowed in such proceeding) all Debt of the Company, whether incurred on or prior to the date of this Indenture or thereafter incurred, unless it is provided in the instrument creating or evidencing the same or pursuant to which the same is outstanding, that such obligations are not superior in right of payment to the Securities issued under this Indenture; *provided*, that Senior Debt shall not be deemed to include any (i) debt or (ii) other debt securities (and guarantees, if any, in respect of such debt securities) issued to any trust (or a trustee of any such trust), partnership or other entity affiliated with the Company that is a financing vehicle of the Company (a "Financing Entity") in connection with the issuance by such Financing Entity of equity securities or other securities, in each case of (i) or (ii) pursuant to an instrument that ranks *pari passu* with or junior in right of payment to this Indenture.

"Special Event" means the occurrence of an Investment Company Event or a Tax Event.

"Special Record Date" for the payment of any Defaulted Interest means a date fixed by the Trustee pursuant to [Section 3.1](#).

"Special Redemption Price" has the meaning set forth in [Section 11.2](#).

"Stamp Taxes" has the meaning set forth in [Section 3.11\(c\)](#).

"Stated Maturity" means April 30, 2037.

"Subsidiary" of a Person means (a) any corporation more than fifty percent (50%) of the outstanding securities having ordinary voting power of which shall at the time be owned or Controlled, directly or indirectly, by such Person and/or by one or more of its Subsidiaries or (b) any partnership, limited liability company, association, joint venture or similar business organization more than fifty percent (50%) of the ownership interests having ordinary voting power of which shall at the time be owned or Controlled, directly or indirectly, by such Person and/or by one or more of its Subsidiaries. Unless otherwise expressly provided, all references herein to a "Subsidiary" shall mean a Subsidiary of the Company.

"*Tax Event*" means the receipt by the Company of an Opinion of Counsel experienced in such matters to the effect that, as a result of (a) any amendment to or change (including any announced prospective change) in the laws or any regulations thereunder of the United States or any political subdivision or taxing authority thereof or therein or (b) any judicial decision or any official administrative pronouncement (including any private letter ruling, technical advice memorandum or field service advice) or regulatory procedure, including any notice or announcement of intent to adopt any such pronouncement or procedure (an "*Administrative Action*"), regardless of whether such judicial decision or Administrative Action is issued to or in connection with a proceeding involving the Company and whether or not subject to review or appeal, which amendment, change, judicial decision or Administrative Action is enacted, promulgated or announced, in each case, on or after the date of issuance of the Securities, there is more than an insubstantial risk that interest payable by the Company on the Securities is not, or within ninety (90) days of the date of such opinion, will not be, deductible by the Company, in whole or in part, for United States federal income tax purposes.

"*Trustee*" means the Person named as the "Trustee" in the first paragraph of this instrument, solely in its capacity as such and not in its individual capacity, until a successor Trustee shall have become such pursuant to the applicable provisions of this Indenture, and, thereafter, "Trustee" shall mean or include each Person who is then a Trustee hereunder.

"*Trust Indenture Act*" means the Trust Indenture Act of 1939, as amended and as in effect on the date as of this Indenture.

SECTION 1.2. *Compliance Certificate and Opinions.*

(a) Upon any application or request by the Company to the Trustee to take any action under any provision of this Indenture, the Company shall, if requested by the Trustee, furnish to the Trustee an Officer's Certificate stating that all conditions precedent (including covenants compliance with which constitutes a condition 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 (including covenants compliance with which constitutes a condition precedent), if any, have been complied with.

(b) Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than the certificate provided pursuant to Section 10.3) shall include:

- (i) a statement by each individual signing such certificate or opinion that such individual has read such covenant or condition and the definitions herein relating thereto;
- (ii) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions of such individual contained in such certificate or opinion are based;
- (iii) a statement that, in the opinion of such individual, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been complied with; and

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

SECTION 1.3. *Forms of Documents Delivered to Trustee.*

(a) 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.

(b) 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 after reasonable inquiry should know, that the certificate or opinion or representations with respect to matters upon which his or her certificate or opinion is based are erroneous. Any such certificate or Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company stating that the information with respect to such factual matters is in the possession of the Company, unless such counsel knows, or after reasonable inquiry should know, that the certificate or opinion or representations with respect to such matters are erroneous.

(c) 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.

(d) 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 received 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. Without limiting the generality of the foregoing, any Securities issued under the authority of such defective document or instrument shall nevertheless be the valid obligations of the Company entitled to the benefits of this Indenture equally and ratably with all other Outstanding Securities.

SECTION 1.4. *Acts of Holders.*

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given to 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 thereof duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments (including any appointment of an agent) is or are delivered to the Trustee, and, where it is

hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section 1.4.

(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 the certificate of any 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 or her the execution thereof. Where such execution is by a Person acting in other than his or her individual capacity, such certificate or affidavit shall also constitute sufficient proof of his or her authority. The fact and date of the execution by any Person of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner that the Trustee deems sufficient and in accordance with such reasonable rules as the Trustee may determine.

(c) The ownership of Securities shall be proved by the Securities Register.

(d) Any request, demand, authorization, direction, notice, consent, waiver or other action by the Holder of any Security shall bind every future Holder of the same Security and the Holder of every Security issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done 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 Security.

(e) Without limiting the foregoing, a Holder entitled to take any action hereunder with regard to any particular Security may do so with regard to all or any part of the principal amount of such Security or by one or more duly appointed agents each of which may do so pursuant to such appointment with regard to all or any part of such principal amount.

(f) Except as set forth in paragraph (g) of this Section 1.4, the Company may set any day as a record date for the purpose of determining the Holders of Outstanding Securities entitled to give, make or take any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Indenture to be given, made or taken by Holders of Securities. If any record date is set pursuant to this paragraph, the Holders of Outstanding Securities on such record date, and no other Holders, shall be entitled to take the relevant action, whether or not such Holders remain Holders after such record date; *provided*, that no such action shall be effective hereunder unless taken on or prior to the applicable Expiration Date (as defined in Section 1.4(h)) by Holders of the requisite principal amount of Outstanding Securities on such record date. Nothing in this paragraph shall be construed to prevent the Company from setting a new record date for any action for which a record date has previously been set pursuant to this paragraph (whereupon the record date previously set shall automatically and with no action by any Person be canceled and of no effect). Promptly after any record date is set pursuant to this paragraph, the Company, at its own expense, shall cause notice of such record date, the proposed action by Holders and the applicable Expiration Date to be given to the Trustee in writing and to each Holder of Securities in the manner set forth in Section 1.6.

(g) The Trustee may set any day as a record date for the purpose of determining the Holders of Outstanding Securities entitled to join in the giving or making of (i) any Notice of Default, (ii) any declaration of acceleration or rescission or annulment thereof referred to in Section 5.2, (iii) any request to institute proceedings referred to in Section 5.7(b) or (iv) any direction referred to in Section 5.12. If any record date is set pursuant to this paragraph, the Holders of Outstanding Securities on such record date, and no other Holders, shall be entitled to join in such notice, declaration, request or direction, whether or not such Holders remain Holders after such record date; *provided*, that no such action shall be effective hereunder unless taken on or prior to the applicable Expiration Date by Holders of the requisite principal amount of Outstanding Securities on such record date. Nothing in this paragraph shall be construed to prevent the Trustee from setting a new record date for any action for which a record date has previously been set pursuant to this paragraph (whereupon the record date previously set shall automatically and with no action by any Person be canceled and of no effect). Promptly after any record date is set pursuant to this paragraph, the Trustee, at the Company's expense, shall cause notice of such record date, the proposed action by Holders and the applicable Expiration Date to be given to the Company in writing and to each Holder of Securities in the manner set forth in Section 1.6.

(h) With respect to any record date set pursuant to paragraph (f) or (g) of this Section 1.4, the party hereto that sets such record date may designate any day as the "*Expiration Date*" and from time to time may change the Expiration Date to any earlier or later day; *provided*, that no such change shall be effective unless notice of the proposed new Expiration Date is given to the other party hereto in writing, and to each Holder of Securities in the manner set forth in Section 1.6, on or prior to the existing Expiration Date. If an Expiration Date is not designated with respect to any record date set pursuant to this Section 1.4, the party hereto that set such record date shall be deemed to have initially designated the ninetieth (90th) day after such record date as the Expiration Date with respect thereto, subject to its right to change the Expiration Date as provided in this paragraph. Notwithstanding the foregoing, no Expiration Date shall be later than the one hundred eightieth (180th) day after the applicable record date.

SECTION 1.5. Notices, Etc. to Trustee and Company.

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

(i) the Trustee by any Holder or the Company shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing to or with and received by the Trustee at its Corporate Trust Office, or

(ii) the Company by the Trustee or any Holder shall be sufficient for every purpose hereunder if in writing and mailed, first class, postage prepaid, to the Company addressed to it at 1650 Tysons Boulevard, Suite 1600, McLean, VA 22102 or at any other address previously furnished in writing to the Trustee by the Company.

(b) The Trustee may, but is not required to, rely upon and comply with instructions and directions sent by e-mail or facsimile, (or any other reasonable means of communication) by persons believed by the Trustee in good faith to be authorized to provide such instructions or direction; provided, however, that the Trustee may require such additional evidence, confirmation or certification from any such party or parties as the Trustee, in its reasonable discretion, deems necessary or advisable before acting or refraining from acting upon any such instruction or direction.

(c) The Trustee agrees to accept and act upon instructions or directions pursuant to this Indenture sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods; provided, however, that any Person providing such instructions or directions shall provide to the Trustee an incumbency certificate listing such designated persons, which incumbency certificate shall be amended whenever a person is to be added or deleted from the listing. If such Person elects to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. Each Person providing instructions or directions to the Trustee hereunder agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting, in good faith, on unauthorized instructions, and the risk of interception and misuse by third parties.

SECTION 1.6. Notice to Holders; Waiver.

Where this Indenture provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first class, postage prepaid, to each Holder affected by such event to the address of such Holder as it appears in the Securities Register, not later than the latest date (if any), and not earlier than the earliest date (if any), prescribed for the giving of such notice. If, by reason of the suspension of or irregularities in regular mail service or for any other reason, it shall be impossible or impracticable to mail notice of any event to Holders when said notice is required to be given pursuant to any provision of this Indenture, then any manner of giving such notice as shall be satisfactory to the Trustee shall be deemed to be a sufficient giving of such notice. 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. Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

SECTION 1.7. *Effect of Headings and Table of Contents.*

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

SECTION 1.8. *Successors and Assigns.*

This Indenture shall be binding upon and shall inure to the benefit of any successor to the Company and the Trustee, including any successor by operation of law. Except in connection with a transaction involving the Company that is permitted under Article VIII and pursuant to which the assignee agrees in writing to perform the Company's obligations hereunder, the Company shall not assign its obligations hereunder.

SECTION 1.9. *Separability Clause.*

If any provision in this Indenture or in the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and there shall be deemed substituted for the provision at issue a valid, legal and enforceable provision as similar as possible to the provision at issue.

SECTION 1.10. *Benefits of Indenture.*

Nothing in this Indenture or in the Securities, express or implied, shall give to any Person, other than the parties hereto and their successors and assigns, the holders of Senior Debt, and the Holders of the Securities any benefit or any legal or equitable right, remedy or claim under this Indenture.

SECTION 1.11. *Governing Law.*

This Indenture and the rights and obligations of each of the Holders, the Company and the Trustee shall be construed and enforced in accordance with and governed by the laws of the State of New York without reference to its conflict of laws provisions (other than section 5-1401 of the General Obligations Law).

SECTION 1.12. *Submission to Jurisdiction.*

ANY LEGAL ACTION OR PROCEEDING BY OR AGAINST ANY PARTY HERETO OR WITH RESPECT TO OR ARISING OUT OF THIS INDENTURE MAY BE BROUGHT IN OR REMOVED TO THE COURTS OF THE STATE OF NEW YORK, IN AND FOR THE COUNTY OF NEW YORK, OR OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK (IN EACH CASE SITTING IN THE BOROUGH OF MANHATTAN). BY EXECUTION AND DELIVERY OF THIS INDENTURE, EACH PARTY ACCEPTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS (AND COURTS OF APPEALS THEREFROM) FOR LEGAL PROCEEDINGS ARISING OUT OF OR IN CONNECTION WITH THIS INDENTURE.

SECTION 1.13. *Non-Business Days.*

If any Interest Payment Date, Redemption Date or Stated Maturity of any Security shall not be a Business Day, then (notwithstanding any other provision of this Indenture or the Securities) payment of interest, premium, if any, or principal or other amounts in respect of such Security shall not be made on such date, but shall be made on the next succeeding Business Day (and no interest shall accrue in respect of the amounts whose payment is so delayed for the period from and after such Interest Payment Date, Redemption Date or Stated Maturity, as the case may be, until such next succeeding Business Day) except that, if such Business Day falls in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day, in each case with the same force and effect as if made on the Interest Payment Date or Redemption Date or at the Stated Maturity.

SECTION 1.14. *Shareholder Communications Act*

(a) With respect to securities under and as defined in the Shareholders Communications Act of 1985 (the "SCA") issued in the United States, the SCA requires the Trustee to disclose to the issuers, upon their request, the name, address and securities position of its customers who are (i) the "beneficial owners" (as defined in the SCA) of the issuer's securities, if the beneficial owner does not object to such disclosure, or (ii) acting as a "respondent bank" (as defined in the SCA) with respect to the securities. (Under the SCA, "respondent banks" do not have the option of objecting to such disclosure upon the issuers' request.) The SCA defines a "beneficial owner" as any person who has, or shares, the power to vote a security (pursuant to an agreement or otherwise), or who directs the voting of a security. The SCA defines a "respondent bank" as any bank, association or other entity that exercises fiduciary powers which holds securities on behalf of beneficial owners and deposits such securities for safekeeping with a bank, such as Trustee. Under the SCA, each Holder is either the "beneficial owner" or a "respondent bank."

(b) For purposes of this Indenture, until Trustee receives a contrary written instruction from a Holder, Trustee shall assume that such Holder is the beneficial owner of the Securities.

(c) For purposes of this Indenture, until Trustee receives a contrary instruction from a Holder, Trustee shall release the name, address and securities position to the Company, if the Company requests such information pursuant to the SCA for the specific purpose of direct communications between the Company and such Holder. With respect to securities issued outside of the United States, if applicable, information shall be released to issuers only if required by law or regulation of the particular country in which the securities are located.

more Predecessor Securities) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee, notice whereof shall be given to Holders of Securities not less than ten (10) days prior to such Special Record Date, or be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities may be listed, and upon such notice as may be required by such exchange, all as more fully provided in the Indenture.

Payment of principal of, premium, if any, and interest on this Security shall be made in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts. Payments of principal, premium, if any, and interest due at the Maturity of this Security shall be made at the Place of Payment upon surrender of such Securities to the Paying Agent, and payments of interest shall be made, subject to such surrender where applicable, by wire transfer at such place and to such account at a banking institution in the United States as may be designated in writing to the Paying Agent at least ten (10) Business Days prior to the date for payment by the Person entitled thereto unless proper written transfer instructions have not been received by the relevant record date, in which case such payments shall be made by check mailed to the address of such Person as such address shall appear in the Security Register.

The indebtedness evidenced by this Security is, to the extent provided in the Indenture, subordinate and junior in right of payment to the prior payment in full of all Senior Debt, and this Security is issued subject to the provisions of the Indenture with respect thereto. Each Holder of this Security, by accepting the same, (a) agrees to and shall be bound by such provisions, (b) authorizes and directs the Trustee on his or her behalf to take such actions as may be necessary or appropriate to effectuate the subordination so provided and (c) appoints the Trustee his or her attorney-in-fact for any and all such purposes. Each Holder hereof, by his or her acceptance hereof, waives all notice of the acceptance of the subordination provisions contained herein and in the Indenture by each holder of Senior Debt, whether now outstanding or hereafter incurred, and waives reliance by each such holder upon said provisions.

Unless the certificate of authentication hereon has been executed by the Trustee by manual signature, this Security shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

[FORM OF REVERSE OF SECURITY]

This Security is one of a duly authorized issue of securities of the Company (the "*Securities*") issued under the Junior Subordinated Indenture, dated as of May 29, 2009 (the "*Indenture*"), between the Company and The Bank of New York Mellon Trust Company, National Association, as Trustee (in such capacity, the "*Trustee*," which term includes any successor trustee under the Indenture), to which Indenture and all indentures supplemental thereto reference is hereby made for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee, the holders of Senior Debt and the Holders of the Securities and of the terms upon which the Securities are, and are to be, authenticated and delivered.

All terms used in this Security that are defined in the Indenture shall have the meanings assigned to them in the Indenture.

The Company may, on any Interest Payment Date, at its option, upon not less than thirty (30) days' nor more than sixty (60) days' written notice to the Holders of the Securities (unless a shorter notice period shall be satisfactory to the Trustee) on or after April 30, 2012 and subject to the terms and conditions of Article XI of the Indenture, redeem this Security in whole at any time or in part from time to time at a Redemption Price equal to one hundred percent (100%) of the principal amount hereof, together, in the case of any such redemption, with accrued interest, including any Additional Interest, through but excluding the date fixed as the Redemption Date.

In addition, upon the occurrence and during the continuation of a Special Event, prior to April 30, 2012, the Company may, at its option, upon not less than thirty (30) days' nor more than sixty (60) days' written notice to the Holders of the Securities (unless a shorter notice period shall be satisfactory to the Trustee), redeem this Security, in whole but not in part, subject to the terms and conditions of Article XI of the Indenture at a Redemption Price equal to one hundred three percent (103.0%) from the date hereof through April 30, 2010 and one hundred two percent (102.0%) thereafter of the principal amount hereof, together, in the case of any such redemption, with accrued interest, including any Additional Interest, through but excluding the date fixed as the Redemption Date.

In the event of redemption of this Security in part only, a new Security or Securities for the unredeemed portion hereof will be issued in the name of the Holder hereof upon the cancellation hereof. If less than all the Securities are to be redeemed, the particular Securities to be redeemed shall be selected not more than sixty (60) days prior to the Redemption Date by the Trustee from the Outstanding Securities not previously called for redemption, by such method as the Trustee shall deem fair and appropriate and which may provide for the selection for redemption of a portion of the principal amount of any Security.

The Indenture permits, with certain exceptions as therein provided, the Company and the Trustee at any time to enter into a supplemental indenture or indentures for the purpose of modifying in any manner the rights and obligations of the Company and of the Holders of the Securities, with the consent of the Holders of not less than a majority in aggregate principal amount of the Outstanding Securities. The Indenture also contains provisions permitting Holders of specified percentages in principal amount of the Securities, on behalf of the Holders of all Securities, to waive compliance by the Company with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Security shall be conclusive and binding upon such Holder and upon all future Holders of this Security and of any Security issued upon the registration of transfer hereof or in exchange hereof or in lieu hereof, whether or not notation of such consent or waiver is made upon this Security.

No reference herein to the Indenture and no provision of this Security or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and any premium, if any, and interest, including any Additional Interest (to the extent legally enforceable), on this Security at the times, place and rate, and in the coin or currency, herein prescribed.

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Security is restricted to transfers (i) to the Company, (ii) to "Qualified Institutional Buyers" as defined in Rule 144A under the Securities Act of 1933, as amended (the "*Securities Act*") who are also "Qualified Purchasers" (as such term is defined in the Investment Company Act of 1940, as amended), (iii) to Persons other than U.S. Persons (as defined in Regulation S) in reliance on Regulation S under the Securities Act ("*Regulation S*"), (iv) pursuant to an effective registration statement under the Securities Act or (v) pursuant to another exemption from registration under the Securities Act and is registrable in the Securities Register, upon surrender of this Security for registration of transfer at the office or agency of the Company maintained for such purpose, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Securities Registrar and duly executed by, the Holder hereof or such Holder's attorney duly authorized in writing, and thereupon one or more new Securities, of like tenor, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees.

The Securities are issuable only in registered form without coupons in minimum denominations of \$100,000 and any integral multiple of \$1,000 in excess thereof. As provided in the Indenture and subject to certain limitations therein set forth, Securities are exchangeable for a like aggregate principal amount of Securities and of like tenor of a different authorized denomination, as requested by the Holder surrendering the same.

No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

The Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name this Security is registered as the owner hereof for all purposes, whether or not this Security be overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

The Company and, by its acceptance of this Security or a beneficial interest herein, the Holder of, and any Person that acquires a beneficial interest in, this Security agree that, for United States federal, state and local tax purposes, it is intended that this Security constitute indebtedness.

This Security shall be construed and enforced in accordance with and governed by the laws of the State of New York, without reference to its conflict of laws provisions (other than section 5-1401 of the General Obligations Law).

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed on this day of , 2009.

JER INVESTORS TRUST INC.

By: _____
Name:
Title:

SECTION 2.2 *Restricted Legend.*

(a) Any Security issued hereunder shall bear a legend in substantially the following form:

[IF THIS SECURITY IS A GLOBAL SECURITY INSERT: THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF THE DEPOSITORY TRUST COMPANY ("DTC") OR A NOMINEE OF DTC. THIS SECURITY IS EXCHANGEABLE FOR SECURITIES REGISTERED IN THE NAME OF A PERSON OTHER THAN DTC OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE, AND NO TRANSFER OF THIS SECURITY (OTHER THAN A TRANSFER OF THIS SECURITY AS A WHOLE BY DTC TO A NOMINEE OF DTC OR BY A NOMINEE OF DTC TO DTC OR ANOTHER NOMINEE OF DTC) MAY BE REGISTERED EXCEPT IN LIMITED CIRCUMSTANCES.

UNLESS THIS SECURITY IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF DTC TO THE ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY SECURITY ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]

THE SECURITIES REPRESENTED BY THIS CERTIFICATE WERE ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "*SECURITIES ACT*"), AND SUCH SECURITIES, AND ANY INTEREST THEREIN, MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION, OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF ANY SECURITIES IS HEREBY NOTIFIED THAT THE SELLER OF THE SECURITIES MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A UNDER THE SECURITIES ACT.

THE HOLDER OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE AGREES FOR THE BENEFIT OF THE COMPANY THAT (A) SUCH SECURITIES MAY BE OFFERED, RESOLD OR OTHERWISE TRANSFERRED ONLY (I) TO THE COMPANY, (II) TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A OF THE SECURITIES ACT) AND A "QUALIFIED PURCHASER" (AS DEFINED IN SECTION 2(A)(51) OF THE INVESTMENT COMPANY ACT OF 1940,

AS AMENDED), (III) TO PERSONS OTHER THAN U.S. PERSONS (AS DEFINED IN REGULATION S) IN RELIANCE ON REGULATION S UNDER THE SECURITIES ACT ("REGULATION S"), (IV) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR (V) PURSUANT TO ANOTHER EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT, AND (B) THE HOLDER WILL NOTIFY ANY PURCHASER OF ANY SECURITIES FROM IT OF THE RESALE RESTRICTIONS REFERRED TO IN (A) ABOVE.

THE SECURITIES WILL BE ISSUED AND MAY BE TRANSFERRED ONLY IN BLOCKS HAVING AN AGGREGATE PRINCIPAL AMOUNT OF NOT LESS THAN \$100,000. TO THE FULLEST EXTENT PERMITTED BY LAW, ANY ATTEMPTED TRANSFER OF SECURITIES, OR ANY INTEREST THEREIN, IN A BLOCK HAVING AN AGGREGATE PRINCIPAL AMOUNT OF LESS THAN \$100,000 AND MULTIPLES OF \$1,000 IN EXCESS THEREOF SHALL BE DEEMED TO BE VOID AND OF NO LEGAL EFFECT WHATSOEVER. TO THE FULLEST EXTENT PERMITTED BY LAW, ANY SUCH PURPORTED TRANSFEREE SHALL BE DEEMED NOT TO BE THE HOLDER OF SUCH SECURITIES FOR ANY PURPOSE, INCLUDING, BUT NOT LIMITED TO, THE RECEIPT OF PRINCIPAL OF OR INTEREST ON SUCH SECURITIES, OR ANY INTEREST THEREIN, AND SUCH PURPORTED TRANSFEREE SHALL BE DEEMED TO HAVE NO INTEREST WHATSOEVER IN SUCH SECURITIES.

THE HOLDER OF THIS SECURITY, OR ANY INTEREST THEREIN, BY ITS ACCEPTANCE HEREOF OR THEREOF ALSO AGREES, REPRESENTS AND WARRANTS THAT IT IS NOT AN EMPLOYEE BENEFIT PLAN, INDIVIDUAL RETIREMENT ACCOUNT OR OTHER PLAN OR ARRANGEMENT SUBJECT TO TITLE I OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED ("*ERISA*"), OR SECTION 4975 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "*CODE*") (EACH A "*PLAN*"), OR AN ENTITY WHOSE UNDERLYING ASSETS INCLUDE "PLAN ASSETS" BY REASON OF ANY PLAN'S INVESTMENT IN THE ENTITY, AND NO PERSON INVESTING "PLAN ASSETS" OF ANY PLAN MAY ACQUIRE OR HOLD THIS SECURITY OR ANY INTEREST THEREIN. ANY PURCHASER OR HOLDER OF THE SECURITIES OR ANY INTEREST THEREIN WILL BE DEEMED TO HAVE REPRESENTED BY ITS PURCHASE AND HOLDING THEREOF THAT IT IS NOT AN EMPLOYEE BENEFIT PLAN WITHIN THE MEANING OF SECTION 3(3) OF ERISA, OR A PLAN TO WHICH SECTION 4975 OF THE CODE IS APPLICABLE, A TRUSTEE OR OTHER PERSON ACTING ON BEHALF OF AN EMPLOYEE BENEFIT PLAN OR PLAN, OR ANY OTHER PERSON OR ENTITY USING THE ASSETS OF ANY EMPLOYEE BENEFIT PLAN OR PLAN TO FINANCE SUCH PURCHASE."

(b) The above legends shall not be removed from any Security unless there is delivered to the Company satisfactory evidence, which may include an Opinion of Counsel, as may be reasonably required to ensure that any future transfers thereof may be made without restriction under or violation of the provisions of the Securities Act and other applicable law.

Upon provision of such satisfactory evidence, the Company shall execute and deliver to the Trustee, and the Trustee shall deliver, upon receipt of a Company Order directing it to do so, a Security that does not bear the legend.

SECTION 2.3. *Form of Trustee's Certificate of Authentication.*

The Trustee's certificate of authentication shall be in substantially the following form:

This is one of the Securities referred to in the within-mentioned Indenture.

Dated: THE BANK OF NEW YORK MELLON TRUST COMPANY, NATIONAL ASSOCIATION, *not in its individual capacity, but solely as Trustee*
By:

Authorized Signatory

SECTION 2.4. *Temporary Securities.*

(a) Pending the preparation of definitive Securities, the Company may execute, and upon Company Order the Trustee shall authenticate and deliver, temporary Securities that are printed, lithographed, typewritten, mimeographed or otherwise produced, in any denomination, substantially of the tenor of the definitive Securities in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Securities may determine, as evidenced by their execution of such Securities.

(b) If temporary Securities are issued, the Company will cause definitive Securities to be prepared without unreasonable delay. After the preparation of definitive Securities, the temporary Securities shall be exchangeable for definitive Securities upon surrender of the temporary Securities at the office or agency of the Company designated for that purpose without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor one or more definitive Securities of any authorized denominations having the same Original Issue Date and Stated Maturity and having the same terms as such temporary Securities. Until so exchanged, the temporary Securities shall in all respects be entitled to the same benefits under this Indenture as definitive Securities.

SECTION 2.5. *Definitive Securities.*

The Securities issued on the Original Issue Date shall be in definitive form. The definitive Securities shall be printed, lithographed or engraved, or produced by any combination of these methods, if required by any securities exchange on which the Securities may be listed, on a steel engraved border or steel engraved borders or may be produced in any other manner permitted by the rules of any securities exchange on which the Securities may be listed, all as determined by the officers executing such Securities, as evidenced by their execution of such Securities.

ARTICLE III

THE SECURITIES

SECTION 3.1 *Payment of Principal and Interest.*

(a) The unpaid principal amount of the Securities shall bear interest at a fixed rate equal to the applicable Fixed Rate per annum through the Interest Payment Date in April, 2012 and thereafter at a variable rate of LIBOR plus 2.25% per annum until paid or duly provided for, such interest to accrue from the Original Issue Date or from the most recent Interest Payment Date to which interest has been paid or duly provided for, and any overdue principal, premium, if any, and any overdue installment of interest shall bear Additional Interest at a fixed rate equal to the applicable Fixed Rate per annum in effect during the period such Additional Interest accrues, through the Interest Payment Date in April, 2012 and thereafter at a variable rate of LIBOR plus 2.25% per annum compounded quarterly from the dates such amounts are due until they are paid or funds for the payment thereof are made available for payment.

(b) Interest and Additional Interest on any 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 Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest, except that interest and any Additional Interest payable on the Stated Maturity (or any date of principal repayment upon early maturity) of the principal of a Security or on a Redemption Date shall be paid to the Person to whom principal is paid. The initial payment of interest on any Security that is issued between a Regular Record Date and the related Interest Payment Date shall be payable as provided in such Security.

(c) Any interest on any Security that is due and payable, but is not timely paid or duly provided for, on any Interest Payment Date for Securities (herein called "*Defaulted Interest*") shall forthwith cease to be payable to the registered Holder on the relevant Regular Record Date by virtue of having been such Holder, and such Defaulted Interest may be paid by the Company, at its election in each case, as provided in paragraph (i) or (ii) below:

(i) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names the Securities (or their respective Predecessor Securities) are registered at the close of business on a special record date for the payment of such Defaulted Interest (a "*Special Record Date*"), which shall be fixed in the following manner. At least thirty (30) days prior to the date of the proposed payment, the Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Security 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. Thereupon the Trustee shall fix a Special Record

Date for the payment of such Defaulted Interest, which shall be not more than fifteen (15) days and not less than ten (10) days prior to the date of the proposed payment and not less than ten (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 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 a Security at the address of such Holder as it appears in the Securities Register not less than ten (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 Securities (or their respective Predecessor Securities) are registered on such Special Record Date; or

(ii) The Company may make payment of any Defaulted Interest in any other lawful manner not inconsistent with the requirements of any securities exchange or interdealer quotation system on which the Securities may be listed, traded or quoted and, upon such notice as may be required by such exchange or interdealer quotation system (or by the Trustee if the Securities are not so listed or quoted), if, after notice given by the Company to the Trustee of the proposed payment pursuant to this clause, such payment shall be deemed practicable by the Trustee.

(d) Payments of interest on the Securities shall include interest accrued to but excluding the respective Interest Payment Dates. During the Fixed Rate Period, the amount of interest payable shall be computed on the basis of a 360-day year of twelve 30-day months and the amount payable for any partial period shall be computed on the basis of the number of days elapsed in a 360-day year of twelve 30-day months. Upon expiration of the Fixed Rate Period, the amount of interest payable for any Interest Period will be computed on the basis of a 360-day year and the actual number of days elapsed in the relevant interest period.

(e) Payment of principal of, premium, if any, and interest on the Securities shall be made in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts. Payments of principal, premium, if any, and interest due at the Stated Maturity of such Securities shall be made at the Place of Payment upon surrender of such Securities to the Paying Agent and payments of interest shall be made subject to such surrender where applicable, by wire transfer at such place and to such account at a banking institution in the United States as may be designated in writing to the Paying Agent at least ten (10) Business Days prior to the date for payment by the Person entitled thereto unless proper written transfer instructions have not been received by the relevant record date, in which case such payments shall be made by check mailed to the address of such Person as such address shall appear in the Security Register.

(f) Intentionally Omitted.

(g) The Company may, at its option from time to time, upon not less than three (3) Business Days prior to the Regular Record Date written notice to the Trustee (with a copy to Chuck Logan at The Bank of New York Mellon Global Trust, N.A., 525 William Penn Boulevard, 8th Floor, Pittsburgh, Pennsylvania 15259, Facsimile: (412) 236-1141), to each Collateral Manager and to the Holders, elect to terminate the Modification Period.

(h) Subject to the foregoing provisions of this Section 3.1, each Security delivered under this Indenture upon transfer of or in exchange for or in lieu of any other Security shall carry the rights to interest accrued and unpaid, and to accrue, that were carried by such other Security.

SECTION 3.2. *Denominations.*

The Securities shall be in registered form without coupons and shall be issuable in minimum denominations of \$100,000 and any integral multiple of \$1,000 in excess thereof.

SECTION 3.3. *Execution, Authentication, Delivery and Dating.*

(a) At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities in an aggregate principal amount (including all then Outstanding Securities) not in excess of Seventy Million Three Hundred Fourteen Thousand Dollars (\$70,314,000) executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Securities, and the Trustee in accordance with the Company Order shall authenticate and deliver such Securities. In authenticating such Securities, and accepting the additional responsibilities under this Indenture in relation to such Securities, the Trustee shall be entitled to receive, and shall be fully protected in relying upon:

(i) a copy of any Board Resolution relating thereto; and

(ii) an Opinion of Counsel stating that: (1) such Securities, when authenticated and delivered by the Trustee and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute, and the Indenture constitutes, valid and legally binding obligations of the Company, each enforceable in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles; (2) the Securities have been duly authorized and executed by the Company and have been delivered to the Trustee for authentication in accordance with this Indenture; (3) the Securities are not required to be registered under the Securities Act; and (4) the Indenture is not required to be qualified under the Trust Indenture Act.

(b) The Securities shall be executed on behalf of the Company by a duly authorized officer of the Company. The signature of any of these officers on the Securities may be manual or facsimile. Securities bearing the manual or facsimile signatures of individuals who were at any time the proper officers of the 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 Securities or did not hold such offices at the date of such Securities.

(c) No Security shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose, unless there appears on such Security a certificate of authentication

substantially in the form provided for herein executed by the Trustee by the manual signature of one of its authorized signatories, and such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder. Notwithstanding the foregoing, if any Security shall have been authenticated and delivered hereunder but never issued and sold by the Company, and the Company shall deliver such Security to the Trustee for cancellation as provided in Section 3.8, for all purposes of this Indenture such Security shall be deemed never to have been authenticated and delivered hereunder and shall never be entitled to the benefits of this Indenture.

(d) Each Security shall be dated the date of its authentication.

SECTION 3.4. *Global Securities.*

(a) Upon the election of the Holder after the Original Issue Date, which election need not be in writing, the Securities owned by such Holder shall be issued in the form of one or more Global Securities registered in the name of the Depository or its nominee. Each Global Security issued under this Indenture shall be registered in the name of the Depository designated by the Company for such Global Security or a nominee thereof and delivered to such Depository or a nominee thereof or custodian therefor, and each such Global Security shall constitute a single Security for all purposes of this Indenture.

(b) Notwithstanding any other provision in this Indenture, no Global Security may be exchanged in whole or in part for registered Securities, and no transfer of a Global Security in whole or in part may be registered in the name of any Person other than the Depository for such Global Security or a nominee thereof, unless (i) such Depository advises the Trustee and the Company in writing that such Depository is no longer willing or able to properly discharge its responsibilities as Depository with respect to such Global Security, and no qualified successor is appointed by the Company within ninety (90) days of receipt by the Company of such notice, (ii) such Depository ceases to be a clearing agency registered under the Exchange Act and no successor is appointed by the Company within ninety (90) days after obtaining knowledge of such event, (iii) the Company executes and delivers to the Trustee a Company Order stating that the Company elects to terminate the book-entry system through the Depository or (iv) an Event of Default shall have occurred and be continuing. Upon the occurrence of any event specified in clause (i), (ii), (iii) or (iv) above, the Trustee shall notify the Depository and instruct the Depository to notify all owners of beneficial interests in such Global Security of the occurrence of such event and of the availability of Securities to such owners of beneficial interests requesting the same. The Trustee may conclusively rely, and be protected in relying, upon the written identification of the owners of beneficial interests furnished by the Depository, and shall not be liable for any delay resulting from a delay by the Depository. Upon the issuance of such Securities and the registration in the Securities Register of such Securities in the names of the Holders of the beneficial interests therein, the Trustee shall recognize such holders of beneficial interests as Holders.

(c) If any Global Security is to be exchanged for other Securities or canceled in part, or if another Security is to be exchanged in whole or in part for a beneficial interest in any Global Security, then either (i) such Global Security shall be so surrendered for exchange or cancellation as provided in this Article III or (ii) the principal amount thereof shall be reduced

or increased by an amount equal to (x) the portion thereof to be so exchanged or canceled, or (y) the principal amount of such other Security to be so exchanged for a beneficial interest therein, as the case may be, by means of an appropriate adjustment made on the records of the Securities Registrar, whereupon the Trustee, in accordance with the Applicable Depositary Procedures, shall instruct the Depositary or its authorized representative to make a corresponding adjustment to its records. Upon any such surrender or adjustment of a Global Security by the Depositary, accompanied by registration instructions, the Company shall execute and the Trustee shall authenticate and deliver any Securities issuable in exchange for such Global Security (or any portion thereof) in accordance with the instructions of the Depositary. The Trustee shall not be liable for any delay in delivery of such instructions and may conclusively rely on, and shall be fully protected in relying on, such instructions.

(d) Every Security authenticated and delivered upon registration of transfer of, or in exchange for or in lieu of, a Global Security or any portion thereof shall be authenticated and delivered in the form of, and shall be, a Global Security, unless such Security is registered in the name of a Person other than the Depositary for such Global Security or a nominee thereof.

(e) *Reserved.*

(f) The Depositary or its nominee, as the registered owner of a Global Security, shall be the Holder of such Global Security for all purposes under this Indenture and the Securities, and owners of beneficial interests in a Global Security shall hold such interests pursuant to the Applicable Depositary Procedures. Accordingly, any such owner's beneficial interest in a Global Security shall be shown only on, and the transfer of such interest shall be effected only through, records maintained by the Depositary or its nominee or its Depositary Participants. The Securities Registrar and the Trustee shall be entitled to deal with the Depositary for all purposes of this Indenture relating to a Global Security (including the payment of principal and interest thereon and the giving of instructions or directions by owners of beneficial interests therein and the giving of notices) as the sole Holder of the Security and shall have no obligations to the owners of beneficial interests therein. Neither the Trustee nor the Securities Registrar shall have any liability in respect of any transfers effected by the Depositary.

(g) The rights of owners of beneficial interests in a Global Security shall be exercised only through the Depositary and shall be limited to those established by law and agreements between such owners and the Depositary and/or its Depositary Participants.

(h) No holder of any beneficial interest in any Global Security held on its behalf by a Depositary shall have any rights under this Indenture with respect to such Global Security, and such Depositary may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the owner of such Global Security for all purposes whatsoever. None of the Company, the Trustee nor any agent of the Company or the Trustee 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 maintaining, supervising or reviewing any records relating to such beneficial ownership interests. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by a Depositary or impair, as between a Depositary and such holders of beneficial interests, the operation of customary practices governing the exercise of the rights of the Depositary (or its nominee) as Holder of any Security.

SECTION 3.5. *Registration, Transfer and Exchange Generally.*

(a) The Trustee shall cause to be kept at the Corporate Trust Office a register (the "*Securities Register*") in which the registrar and transfer agent with respect to the Securities (the "*Securities Registrar*"), subject to such reasonable regulations as it may prescribe, shall provide for the registration of Securities and of transfers and exchanges of Securities. The Trustee shall at all times also be the Securities Registrar. The provisions of Article VI shall apply to the Trustee in its role as Securities Registrar.

(b) Subject to compliance with Section 2.2(b), upon surrender for registration of transfer of any Security at the offices or agencies of the Company designated for that purpose the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Securities of any authorized denominations of like tenor and aggregate principal amount.

(c) At the option of the Holder, Securities may be exchanged for other Securities of any authorized denominations, of like tenor and aggregate principal amount, upon surrender of the Securities to be exchanged at such office or agency. Whenever any Securities are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Securities that the Holder making the exchange is entitled to receive.

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

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

(f) No service charge shall be made to a Holder for any transfer or exchange of 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 transfer or exchange of Securities.

(g) Neither the Company nor the Trustee shall be required pursuant to the provisions of this Section 3.5(g): (i) to issue, register the transfer of or exchange any Security during a period beginning at the opening of business fifteen (15) days before the day of selection for redemption of Securities pursuant to Article XI and ending at the close of business on the day of mailing of the notice of redemption or (ii) to register the transfer of or exchange any Security so selected for redemption in whole or in part, except, in the case of any such Security to be redeemed in part, any portion thereof not to be redeemed.

(h) The Company shall designate an office or offices or agency or agencies where Securities may be surrendered for registration of transfer or exchange. The Company initially

designates the Corporate Trust Office as its office and agency for such purposes. The Company shall give prompt written notice to the Trustee and to the Holders of any change in the location of any such office or agency.

(i) The Securities may only be transferred to (i) to the Company, (ii) to a "qualified institutional buyer" (as defined in Rule 144A of the Securities Act), who is also a "Qualified Purchaser" (as such term is defined in Section 2(a)(51) of the Investment Company Act), (iii) Persons other than U.S. Persons (as defined in Regulation S) in reliance on Regulation S under the Securities Act, (iv) pursuant to an effective registration statement under the Securities Act or (v) pursuant to another exemption from registration under the Securities Act.

(j) Neither the Trustee nor the Securities Registrar shall be responsible for ascertaining whether any transfer hereunder complies with the registration provisions of or any exemptions from the Securities Act, applicable state securities laws or the applicable laws of any other jurisdiction, ERISA, the Code, or the Investment Company Act; *provided*, that if a certificate is specifically required by the express terms of this Section 3.5 to be delivered to the Trustee or the Securities Registrar by a Holder or transferee of a Security, the Trustee and the Securities Registrar shall be under a duty to receive and examine the same to determine whether or not the certificate substantially conforms on its face to the requirements of this Indenture and shall promptly notify the party delivering the same if such certificate does not comply with such terms.

SECTION 3.6. *Mutilated, Destroyed, Lost and Stolen Securities.*

(a) If any mutilated Security is surrendered to the Trustee together with such security or indemnity as may be required by the Trustee to save the Company and the Trustee harmless, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a new Security of like tenor and aggregate principal amount and bearing a number not contemporaneously outstanding.

(b) If there shall be delivered to the Trustee (i) evidence to its satisfaction of the destruction, loss or theft of any Security and (ii) such security or indemnity as may be required by it to save each of the Company and the Trustee harmless, then, in the absence of notice to the Company or the Trustee that such Security has been acquired by a *bona fide* purchaser, the Company shall execute and upon its written request the Trustee shall authenticate and deliver, in lieu of any such destroyed, lost or stolen Security, a new Security of like tenor and aggregate principal amount as such destroyed, lost or stolen Security, and bearing a number not contemporaneously outstanding.

(c) If any such mutilated, destroyed, lost or stolen Security has become or is about to become due and payable, the Company in its discretion may, instead of issuing a new Security, pay such Security.

(d) Upon the issuance of any new Security under this Section 3.6, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

(e) Every new Security issued pursuant to this Section 3.6 in lieu of any mutilated, destroyed, lost or stolen Security shall constitute an original additional contractual obligation of the Company, whether or not the mutilated, destroyed, lost or stolen Security shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities duly issued hereunder.

(f) The provisions of this Section 3.6 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities.

SECTION 3.7. Persons Deemed Owners.

The Company, the Trustee and any agent of the Company or the Trustee shall treat the Person in whose name any Security is registered as the owner of such Security for the purpose of receiving payment of principal of and any interest on such Security and for all other purposes whatsoever, and neither the Company, the Trustee nor any agent of the Company or the Trustee shall be affected by notice to the contrary.

SECTION 3.8. Cancellation.

All Securities surrendered for payment, redemption, transfer or exchange shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee, and any such Securities and Securities surrendered directly to the Trustee for any such purpose shall be promptly canceled by it. The Company may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder that the Company may have acquired in any manner whatsoever, and all Securities so delivered shall be promptly canceled by the Trustee. No Securities shall be authenticated in lieu of or in exchange for any Securities canceled as provided in this Section 3.8, except as expressly permitted by this Indenture. All canceled Securities shall be retained or disposed of by the Trustee in accordance with its customary practices and the Trustee shall deliver to the Company a certificate of such disposition.

SECTION 3.9. Reserved.

SECTION 3.10. Reserved.

SECTION 3.11. Agreed Tax Treatment.

(a) Each Security issued hereunder shall provide that the Company and, by its acceptance or acquisition of a Security or a beneficial interest therein, the Holder of, and any Person that acquires a direct or indirect beneficial interest in, such Security, intend and agree to treat such Security as indebtedness of the Company for United States Federal, state and local and foreign tax purposes. The provisions of this Indenture shall be interpreted to further this intention and agreement of the parties.

(b) Intentionally omitted.

(c) The Company shall pay to the relevant taxing authority in accordance with applicable law, and indemnify and hold the Holders harmless from, any present or future stamp, documentary, excise, property or similar taxes, charges or levies that arise from any payment made hereunder or under the Securities or from the execution, delivery or registration of, performance under, or otherwise with respect to, this Indenture or the Securities (hereinafter referred to as "*Stamp Taxes*"). This indemnification shall be made within thirty (30) days from the date any such Holder makes written demand therefor.

(d) Intentionally Omitted.

(e) Within thirty (30) days after the date of any payment of Stamp Taxes, the Company shall furnish to any such Holder the original or a certified copy of a receipt evidencing such payment.

(f) Each Holder shall, upon the written request of the Company, deliver to the Company its Internal Revenue Service Forms W-8 and/or W-9, as applicable, to the extent available.

SECTION 3.12. *CUSIP Numbers.*

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

ARTICLE IV

SATISFACTION AND DISCHARGE

SECTION 4.1. *Satisfaction and Discharge of Indenture.*

This Indenture shall, upon Company Request, cease to be of further effect (except as to any surviving rights of registration of transfer or exchange of Securities herein expressly provided for and as otherwise provided in this Section 4.1) and the Trustee, on demand of and at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when

(a) either

(i) all Securities theretofore authenticated and delivered (other than (A) Securities that have been mutilated, destroyed, lost or stolen and that have been replaced or paid as provided in Section 3.6 and (B) Securities for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust as provided in Section 10.2) have been delivered to the Trustee for cancellation; or

(ii) all such Securities not theretofore delivered to the Trustee for cancellation

(A) have become due and payable, or

(B) will become due and payable at their Stated Maturity within one year of the date of deposit, or

(C) are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company,

and the Company, in the case of subclause (ii)(A), (B) or (C) above, has deposited or caused to be deposited with the Trustee as trust funds in trust for such purpose (x) an amount in the currency or currencies in which the Securities are payable, (y) Government Obligations which through the scheduled payment of principal and interest in respect thereof in accordance with their terms will provide, not later than the due date of any payment, money in an amount or (z) a combination thereof, in each case sufficient, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge the entire indebtedness on such Securities not theretofore delivered to the Trustee for cancellation, for principal and any premium and interest (including any Additional Interest) to the date of such deposit (in the case of Securities that have become due and payable) or to the Stated Maturity (or any date of principal repayment upon early maturity) or Redemption Date, as the case may be;

(b) the Company has paid or caused to be paid all other sums payable hereunder by the Company; and

(c) the Company has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 6.6, the obligations of the Company to any Authenticating Agent under Section 6.11 and, if money shall have been deposited with the Trustee pursuant to subclause (a)(ii) of this Section 4.1, the obligations of the Trustee under Section 4.2 and Section 10.2(e) shall survive.

SECTION 4.2. Application of Trust Money.

Subject to the provisions of Section 10.2(d), all money deposited with the Trustee pursuant to Section 4.1 shall be held in trust and applied by the Trustee, in accordance with the provisions of the Securities and this Indenture, to the payment in accordance with Section 3.1, either directly or through any Paying Agent as the Trustee may determine, to the Persons entitled thereto, of the principal and any premium and interest (including any Additional Interest) for the payment of which such money or obligations have been deposited with or received by the Trustee. Moneys held by the Trustee under this Section 4.2 shall not be subject to the claims of holders of Senior Debt under Article XII.

ARTICLE V

REMEDIES

SECTION 5.1. *Events of Default.*

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

(a) default in the payment of any interest upon any Security, including any Additional Interest in respect thereof, when it becomes due and payable, and continuance of such default for a period of thirty (30) days; provided, however that during the Modification Period, such thirty (30) day period shall be reduced to five (5) Business Days;

(b) default in the payment of the principal of or any premium on any Security at its Maturity; or

(c) Except as otherwise set forth in this Section 5.1, default in the performance, or breach, of any covenant or warranty of the Company in this Indenture or the Exchange Agreement and continuance of such default or breach for a period of thirty (30) 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 twenty-five percent (25%) in aggregate principal amount of the Outstanding Securities 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;

(d) the entry by a court having jurisdiction in the premises of a decree or order adjudging the Company a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company under any applicable Federal or state bankruptcy, insolvency, reorganization or other similar law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order for relief or any such other decree or order unstayed and in effect for a period of sixty (60) consecutive days;

(e) the institution by the Company of proceedings to be adjudicated a bankrupt or insolvent, or the consent by the Company to the institution of bankruptcy or insolvency proceedings against it, or the filing by the Company of a petition or answer or consent seeking reorganization or relief under any applicable Federal or state bankruptcy, insolvency, reorganization or other similar 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 other 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 and its willingness to be adjudicated a bankrupt or insolvent, or the taking of corporate action by the Company in furtherance of any such action; or

(f) default in the performance or breach of any covenant or warranty of the Company set forth in Section 10.6 (Additional Covenants) and continuance of such default for a period of five (5) Business Days.

SECTION 5.2. Acceleration of Maturity; Rescission and Annulment.

(a) If an Event of Default occurs and is continuing, then and in every such case the Trustee or the Holders of not less than twenty-five percent (25%) in aggregate principal amount of the Outstanding Securities may declare the principal amount of all the Securities to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by Holders), and upon any such declaration the principal amount of and the accrued interest (including any Additional Interest) on all the Securities shall become immediately due and payable.

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

(i) the Company has paid or deposited with the Trustee a sum sufficient to pay:

(A) all overdue installments of interest on all Securities,

(B) any accrued Additional Interest on all Securities,

(C) the principal of and any premium on any Securities that have become due otherwise than by such declaration of acceleration and interest (including any Additional Interest) thereon at the rate borne by the Securities, and

(D) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, and its agents and counsel; and

(ii) all Events of Default with respect to Securities, other than the non-payment of the principal of Securities that has become due solely by such acceleration, have been cured or waived as provided in Section 5.13;

No such rescission shall affect any subsequent default or impair any right consequent thereon.

SECTION 5.3. Collection of Indebtedness and Suits for Enforcement by Trustee.

(a) The Company covenants that if:

(i) default is made in the payment of any installment of interest (including any Additional Interest) on any Security when such interest becomes due and payable and such default continues for a period of thirty (30) days, or

(ii) default is made in the payment of the principal of and any premium on any Security at the Maturity thereof,

the Company will, upon demand of the Trustee, pay to the Trustee, for the benefit of the Holders of such Securities, the whole amount then due and payable on such Securities for principal and any premium and interest (including any Additional Interest) and, in addition thereto, all amounts owing the Trustee under Section 6.6.

(b) If the Company fails 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, and may prosecute such proceeding to judgment or final decree, and may enforce the same against the Company or any other obligor upon such 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 the Securities, wherever situated.

(c) If an Event of Default with respect to any Securities occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders of such Securities 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.

SECTION 5.4. Trustee May File Proofs of Claim.

In case of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or similar judicial proceeding relative to the Company (or any other obligor upon the Securities), its property or its creditors, the Trustee shall be entitled and empowered, by intervention in such proceeding or otherwise, to take any and all actions authorized hereunder in order to have claims of the Holders and the Trustee allowed in any such proceeding. In particular, the Trustee shall be authorized 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 first pay to the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts owing the Trustee, any predecessor Trustee and other Persons under Section 6.6.

SECTION 5.5. Trustee May Enforce Claim Without Possession of Securities.

All rights of action and claims under this Indenture or the Securities may be prosecuted and enforced by the Trustee without the possession of any of the 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, subject to Article XII and after provision for the payment of all the amounts owing the Trustee, any predecessor Trustee and other Persons under Section 6.6, be for the ratable benefit of the Holders of the Securities in respect of which such judgment has been recovered.

SECTION 5.6. Application of Money Collected.

Any money or property collected or to be applied by the Trustee with respect to the Securities pursuant to this Article V 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 or property on account of principal or any premium or interest (including any Additional Interest), upon presentation of the Securities 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, any predecessor Trustee and other Persons under Section 6.6;

SECOND: To the payment of all Senior Debt of the Company if and to the extent required by Article XII;

THIRD: Subject to Article XII, to the payment of the amounts then due and unpaid upon the Securities for principal and any premium and interest (including any Additional Interest) 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 the Securities for principal and any premium and interest (including any Additional Interest), respectively; and

FOURTH: The balance, if any, to the Person or Persons entitled thereto.

SECTION 5.7. Limitation on Suits.

Subject to Section 5.8, no Holder of any Securities shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture or for the appointment of a custodian, receiver, assignee, trustee, liquidator, sequestrator (or other similar official) or for any other remedy hereunder, unless:

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

(b) the Holders of not less than a majority in aggregate principal amount of the Outstanding Securities 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 have offered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request;

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

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

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 itself of, any provision of this Indenture to affect, disturb or prejudice the rights of any other Holders of Securities, 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 such Holders.

SECTION 5.8. Unconditional Right of Holders to Receive Principal, Premium, if any, and Interest.

Notwithstanding any other provision in this Indenture, the Holder of any Security shall have the right, which is absolute and unconditional, to receive payment of the principal of and any premium on such Security at its Maturity and payment of interest (including any Additional Interest) on such Security when due and payable and to institute suit for the enforcement of any such payment, and such right shall not be impaired without the consent of such Holder.

SECTION 5.9. 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 has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or such Holder, then and in every such case the Company, the Trustee and such Holders shall, subject to any determination in such proceeding, be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of the Trustee and such Holder shall continue as though no such proceeding had been instituted.

SECTION 5.10. Rights and Remedies Cumulative.

Except as otherwise provided in Section 3.6(f), no right or remedy herein conferred upon or reserved to the Trustee or 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 5.11. Delay or Omission Not Waiver.

No delay or omission of the Trustee or any Holder of any Securities 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 V 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 the Holders, as the case may be.

SECTION 5.12. *Control by Holders.*

The Holders of not less than a majority in aggregate principal amount of the Outstanding Securities shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee; *provided*, that:

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

(b) the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction, and

(c) subject to the provisions of Section 6.2, the Trustee shall have the right to decline to follow such direction if a Responsible Officer or Officers of the Trustee shall, in good faith, reasonably determine that the proceeding so directed would be unjustly prejudicial to the Holders not joining in any such direction or would involve the Trustee in personal liability.

SECTION 5.13. *Waiver of Past Defaults.*

(a) The Holders of not less than a majority in aggregate principal amount of the Outstanding Securities may waive any past Event of Default hereunder and its consequences except an Event of Default:

(i) in the payment of the principal of or any premium or interest (including any Additional Interest) on any Outstanding Security (unless such Event of Default has been cured and the Company has paid to or deposited with the Trustee a sum sufficient to pay all installments of interest (including any Additional Interest) due and past due and all principal of and any premium on all Securities due otherwise than by acceleration), or

(ii) in respect of a covenant or provision hereof that under Article IX cannot be modified or amended without the consent of each Holder of any Outstanding Security.

(b) Any such waiver shall be deemed to be on behalf of the Holders of all the Outstanding Securities.

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

SECTION 5.14. *Undertaking for Costs.*

All parties to this Indenture agree, and each Holder of any Security by his or her acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party

litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section 5.14 shall not apply to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than ten percent (10%) in aggregate principal amount of the Outstanding Securities, or to any suit instituted by any Holder for the enforcement of the payment of the principal of or any premium on the Security after the Stated Maturity or any interest (including any Additional Interest) on any Security after it is due and payable.

SECTION 5.15. *Waiver of Usury, 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 usury, stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the 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 VI

THE TRUSTEE

SECTION 6.1. *Corporate Trustee Required.*

There shall at all times be a Trustee hereunder with respect to the Securities. The Trustee shall be a corporation or national banking association organized and doing business under the laws of the United States or of any state thereof, authorized to exercise corporate trust powers, having a combined capital and surplus of at least \$50,000,000, subject to supervision or examination by Federal or state authority and having an office within the United States. If such entity 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 6.1, the combined capital and surplus of such entity 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 6.1, it shall resign immediately in the manner and with the effect hereinafter specified in this Article VI.

SECTION 6.2. *Certain Duties and Responsibilities.*

Except during the continuance of an Event of Default:

(i) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements

of this Indenture; provided, that 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 substantially conform on their face to the requirements of this Indenture.

(b) If an Event of Default known to the Trustee has occurred and is continuing, the Trustee shall, prior to the receipt of directions, if any, from the Holders of at least a majority in aggregate principal amount of the Outstanding Securities, exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(c) Notwithstanding the foregoing, 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 repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it. 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 6.2. To the extent that, at law or in equity, the Trustee has duties and liabilities relating to the Holders, the Trustee shall not be liable to any Holder for the Trustee's good faith reliance on the provisions of this Indenture. The provisions of this Indenture, to the extent that they restrict the duties and liabilities of the Trustee otherwise existing at law or in equity, are agreed by the Company and the Holders to replace such other duties and liabilities of the Trustee.

(d) No provisions of this Indenture shall be construed to relieve the Trustee from liability with respect to matters that are within the authority of the Trustee under this Indenture for its own negligent action, negligent failure to act or willful misconduct, except that:

(i) the Trustee shall not be liable for any error or judgment made in good faith by an authorized officer of the Trustee, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts;

(ii) 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 at least a majority in aggregate principal amount of the Outstanding Securities; and

(iii) the Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed in writing with the Company and money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law.

SECTION 6.3. *Notice of Defaults.*

Within ninety (90) days after the occurrence of any default actually known to the Trustee, the Trustee shall give the Holders notice of such default unless such default shall have been cured or waived; provided, that except in the case of a default in the payment of the principal of or any premium or interest on any Securities, the Trustee shall be fully protected in withholding

the notice if and so long as the board of directors, the executive committee or a trust committee of directors and/or Responsible Officers of the Trustee in good faith determines that withholding the notice is in the interest of Holders of Securities; and *provided, further*, that in the case of any default of the character specified in Section 5.1(c), no such notice to Holders shall be given until at least thirty (30) days after the occurrence thereof. For the purpose of this Section 6.3, the term "default" means any event which is, or after notice or lapse of time or both would become, an Event of Default.

SECTION 6.4. *Certain Rights of Trustee.*

Subject to the provisions of Section 6.2:

(a) the Trustee may conclusively rely and shall be fully protected in acting or refraining from acting in good faith and in accordance with the terms hereof upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note 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) if (i) in performing its duties under this Indenture the Trustee is required to decide between alternative courses of action, (ii) in construing any of the provisions of this Indenture the Trustee finds ambiguous or inconsistent with any other provisions contained herein or (iii) the Trustee is unsure of the application of any provision of this Indenture, then, except as to any matter as to which the Holders are entitled to decide under the terms of this Indenture, the Trustee shall deliver a notice to the Company requesting the Company's written instruction as to the course of action to be taken and the Trustee shall take such action, or refrain from taking such action, as the Trustee shall be instructed in writing to take, or to refrain from taking, by the Company; *provided*, that if the Trustee does not receive such instructions from the Company within ten Business Days after it has delivered such notice or such reasonably shorter period of time set forth in such notice, the Trustee may, but shall be under no duty to, take such action, or refrain from taking such action, as the Trustee shall deem advisable and in the best interests of the Holders, in which event the Trustee shall have no liability except for its own negligence, bad faith or willful misconduct;

(c) any request or direction of the Company shall be sufficiently evidenced by a Company Request or Company Order and any resolution of the Board of Directors may be sufficiently evidenced by a Board Resolution;

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

(e) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders pursuant to this Indenture, unless such Holders shall have offered to the Trustee security or indemnity reasonably satisfactory to it against the costs, expenses (including reasonable attorneys' fees and expenses) and liabilities that might be incurred by it in compliance with such request or direction, including reasonable advances as may be requested by the Trustee;

(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, indenture, note or other paper or document, but the Trustee in its discretion may make such inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such inquiry or investigation, it shall be entitled to examine 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, attorneys, custodians or nominees and the Trustee shall not be responsible for any misconduct or negligence on the part of any such agent, attorney, custodian or nominee appointed with due care by it hereunder;

(h) whenever in the administration of this Indenture the Trustee shall deem it desirable to receive instructions with respect to enforcing any remedy or right or taking any other action with respect to enforcing any remedy or right hereunder, the Trustee (i) may request instructions from the Holders (which instructions may only be given by the Holders of the same aggregate principal amount of Outstanding Securities as would be entitled to direct the Trustee under this Indenture in respect of such remedy, right or action), (ii) may refrain from enforcing such remedy or right or taking such action until such instructions are received and (iii) shall be protected in acting in accordance with such instructions;

(i) except as otherwise expressly provided by this Indenture, the Trustee shall not be under any obligation to take any action that is discretionary under the provisions of this Indenture;

(j) without prejudice to any other rights available to the Trustee under applicable law, when the Trustee incurs expenses or renders services in connection with any bankruptcy, insolvency or other proceeding referred to in clauses (d) or (e) of the definition of Event of Default, such expenses (including legal fees and expenses of its agents and counsel) and the compensation for such services are intended to constitute expenses of administration under any bankruptcy laws or law relating to creditors rights generally;

(k) 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, conclusively rely upon an Officer's Certificate addressing such matter, which, upon receipt of such request, shall be promptly delivered by the Company;

(l) the Trustee shall not be charged with knowledge of any Event of Default unless either (i) a Responsible Officer of the Trustee shall have actual knowledge or (ii) the Trustee shall have received written notice thereof from the Company or a Holder; and

(m) in the event that the Trustee is also acting as Paying Agent, Authenticating Agent, Calculation Agent or Securities Registrar hereunder, the rights and protections afforded to the Trustee pursuant to this Article VI shall also be afforded such Paying Agent, Authenticating Agent, Calculation Agent or Securities Registrar.

SECTION 6.5. *May Hold Securities.*

The Trustee, any Authenticating Agent, any Paying Agent, any Securities Registrar or any other agent of the Company, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with the Company with the same rights it would have if it were not Trustee, Authenticating Agent, Paying Agent, Securities Registrar or such other agent.

SECTION 6.6. *Compensation; Reimbursement; Indemnity.*

(a) The Company agrees:

(i) to pay to the Trustee from time to time reasonable compensation for all services rendered by it hereunder in such amounts as the Company and the Trustee shall agree from time to time (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(ii) to reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to its negligence, bad faith or willful misconduct; and

(iii) to the fullest extent permitted by applicable law, to indemnify the Trustee and its Affiliates, and their officers, directors, shareholders, agents, representatives and employees for, and to hold them harmless against, any loss, damage, liability, tax (other than income, franchise or other taxes imposed on amounts paid pursuant to (i) or (ii) hereof), penalty, expense or claim of any kind or nature whatsoever incurred without negligence, bad faith or willful misconduct on its part arising out of or in connection with the acceptance or administration of this trust or the performance of the Trustee's duties hereunder, including the 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.

(b) To secure the Company's payment obligations in this Section 6.6, the Company hereby grants and pledges to the Trustee and the Trustee shall have a lien prior to the Securities on all money or property held or collected by the Trustee, other than money or property held in trust to pay principal and interest on particular Securities. Such lien shall survive the satisfaction and discharge of this Indenture or the resignation or removal of the Trustee.

(c) The obligations of the Company under this Section 6.6 shall survive the satisfaction and discharge of this Indenture and the earlier resignation or removal of the Trustee.

(d) In no event shall the Trustee be liable for any indirect, special, punitive or consequential loss or damage of any kind whatsoever, including, but not limited to, lost profits, even if the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(e) In no event shall the Trustee be liable for any failure or delay in the performance of its obligations hereunder because of circumstances beyond its control, including, but not limited to, acts of God, flood, war (whether declared or undeclared), terrorism, fire, riot, embargo, government action, including any laws, ordinances, regulations, governmental action or the like which delay, restrict or prohibit the providing of the services contemplated by this Indenture.

SECTION 6.7. 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 VI shall become effective until the acceptance of appointment by the successor Trustee under Section 6.8.

(b) The Trustee may resign at any time after providing thirty (30) days written notice thereof to the Company and the Holders.

(c) The Trustee may be removed by the Act of the Holders of at least a majority in aggregate of principal amount of the Outstanding Securities, delivered to the Trustee and the Company provided, that prior to an Event of Default, the written consent of the Company (not to be unreasonably withheld) shall be required for the removal of the Trustee, which consent or objection shall be provided within three (3) Business Days and if not so given in writing, be deemed granted.

(d) 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 reason, the Holders of the Outstanding Securities shall promptly appoint a successor Trustee, and such successor Trustee and the retiring Trustee shall comply with the applicable requirements of Section 6.8 provided, that prior to an Event of Default, the written consent of the Company (not to be unreasonably withheld) shall be required for the removal of the Trustee, which consent or objection shall be provided within three (3) Business Days and if not so given in writing, be deemed granted. If no successor Trustee shall have been so appointed by the Holders and accepted appointment within sixty (60) days after the giving of a notice of resignation by the Trustee or the removal of the Trustee in the manner required by Section 6.8, any Holder who has been a bona fide Holder of a Security for at least six months (or, if the Securities have been Outstanding for less than six (6) months, the entire period of such lesser time) may, on behalf of such Holder and all others similarly situated, and any resigning Trustee may, at the expense of the Company, petition any court of competent jurisdiction for the appointment of a successor Trustee

SECTION 6.8. Acceptance of Appointment by Successor.

(a) In case of the appointment hereunder of a successor Trustee, each 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 its charges, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder.

(b) Upon request of any such successor Trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all rights, powers and trusts referred to in paragraph (a) of this Section 6.8.

(c) 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 VI.

SECTION 6.9. Merger, Conversion, Consolidation or Succession to Business.

Any Person into which the Trustee may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any Person succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, without the execution or filing of any paper or any further act on the part of any of the parties hereto, *provided*, that such Person shall be otherwise qualified and eligible under this Article VI. In case any Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation or as otherwise provided above in this Section 6.9 to such authenticating Trustee may adopt such authentication and deliver the Securities so authenticated, and in case any Securities shall not have been authenticated, any successor to the Trustee may authenticate such Securities either in the name of any predecessor Trustee or in the name of such successor Trustee, and in all cases the certificate of authentication shall have the full force which it is provided anywhere in the Securities or in this Indenture that the certificate of the Trustee shall have.

SECTION 6.10. Not Responsible for Recitals or Issuance of Securities.

The recitals contained herein and in the 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 any responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities. Neither the Trustee nor any Authenticating Agent shall be accountable for the use or application by the Company of the Securities or the proceeds thereof.

SECTION 6.11. Appointment of Authenticating Agent.

(a) The Trustee may appoint an Authenticating Agent or Agents with respect to the Securities, which shall be authorized to act on behalf of the Trustee to authenticate Securities issued upon original issue and upon exchange, registration of transfer or partial redemption thereof or pursuant to Section 3.6, and 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 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. Each Authenticating Agent shall be acceptable to the Company and shall at all times be a corporation or national banking association organized and doing business under the laws of the United States of America, or of any State or Territory thereof or the District of Columbia, 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 6.11 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 6.11, such Authenticating Agent shall resign immediately in the manner and with the effect specified in this Section 6.11.

(b) Any Person into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which such Authenticating Agent shall be a party, or any Person succeeding to all or substantially all of the corporate trust business of an Authenticating Agent shall be the successor Authenticating Agent hereunder, *provided* such Person shall be otherwise eligible under this Section 6.11, without the execution or filing of any paper or any further act on the part of the Trustee or the Authenticating Agent.

(c) An Authenticating Agent may resign at any time by giving 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 6.11, the Trustee may appoint a successor Authenticating Agent eligible under the provisions of this Section 6.11, which shall be acceptable to the Company, and shall give notice of such appointment to all Holders. 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.

(d) The Company agrees to pay to each Authenticating Agent from time to time reasonable compensation for its services under this Section 6.11 in such amounts as the Company and the Authenticating Agent shall agree from time to time.

(e) If an appointment of an Authenticating Agent is made pursuant to this Section 6.11, the Securities may have endorsed thereon, in addition to the Trustee's certificate of authentication, an alternative certificate of authentication in the following form:

This is one of the Securities referred to in the within mentioned Indenture.

Dated: THE BANK OF NEW YORK MELLON TRUST COMPANY, NATIONAL ASSOCIATION, not in its individual capacity, but solely as Trustee
By:

Authenticating Agent

By:

Authorized Signatory

ARTICLE VII

HOLDER'S LISTS AND REPORTS BY COMPANY

SECTION 7.1. *Securities Registrar to Furnish Trustee Names and Addresses of Holders.*

If requested to do so, the Securities Registrar will furnish or cause to be furnished to the Trustee:

(a) semiannually, on or before June 30 and December 31 of each year, a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders as of a date not more than fifteen (15) days prior to the delivery thereof, and

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

in each case to the extent such information is in the possession or control of the Securities Registrar and has not otherwise been received by the Trustee in its capacity as Securities Registrar.

SECTION 7.2. *Preservation of Information, Communications to Holders.*

(a) The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders contained in the most recent list furnished to the Trustee as provided in Section 7.1 and the names and addresses of Holders received by the Trustee in its capacity as Securities Registrar. The Trustee may destroy any list furnished to it as provided in Section 7.1 upon receipt of a new list so furnished.

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

(c) Every Holder of 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 information as to the names and addresses of the Holders made pursuant to the Trust Indenture Act.

SECTION 7.3. *Reports by Company.*

(a) The Company shall furnish to the Holders and to prospective purchasers of the Securities, upon their request, the information required to be furnished pursuant to Rule 144A(d)(4) under the Securities Act. The delivery requirement set forth in the preceding sentence may be satisfied by compliance with Section 7.3(b) hereof.

(b) The Company shall furnish to each of (i) the Trustee, (ii) the Holders and to subsequent holders of Securities, (iii) Taberna Capital Management, LLC, 450 Park Avenue, New York, New York 10022, Attn: Raphael Licht (or such other address as designated by Taberna Capital Management, LLC), (iv) Kodiak CDO Management, LLC, c/o EJP Capital LLC, 2107 Wilson Boulevard, Suite 400, Arlington, Virginia, 22201, Attn: Lindsay Kucera (or such other address as designated by Kodiak CDO Management, LLC), (v) any other Collateral Manager and (vi) any beneficial owner of the Securities reasonably identified to the Company (which identification may be made either by such beneficial owner or by one or more of the Collateral Managers), a duly completed and executed certificate substantially and substantively in the form attached hereto as Exhibit A, including the financial statements referenced in such Exhibit, which certificate and financial statements shall be so furnished by the Company not later than forty-five (45) days after the end of each of the first three fiscal quarters of each fiscal year of the Company and not later than ninety (90) days after the end of each fiscal year of the Company, to the extent such statements are not available or have not been filed by the Company on the Commission's Electronic Data Gathering, Analysis and Retrieval system (or any successor to such electronic filing system, "EDGAR") within the required time period; if the Company is not a company reporting with the Securities and Exchange Commission (the "*Commission*"), the financial statements referenced in said Exhibit shall be delivered to the Trustee and the Holders as provided above. If such statements are available via EDGAR the Company shall not be required to provide either the certificate or the financial statements.

(c) If the Company does not intend to file its annual and quarterly information with the Commission in electronic form pursuant to Regulation S-T of the Commission using the EDGAR system, the Company shall notify the Trustee in the manner prescribed herein and shall deliver the certificates and financial statements for each such annual and quarterly filing period as provided in subsection (b) above. The Trustee is hereby authorized and directed to access the EDGAR system for purposes of retrieving the financial information so filed. The Trustee may register with the Company on the Company's website to receive the information so filed but shall not be required to do so. Each Collateral Manager is likewise authorized to register with the Company on the Company's website to receive the information so filed but shall not be required to do so. Compliance with the foregoing shall constitute delivery by the Company of its financial statements to the Trustee in compliance with the provisions of Section 314(a) of the Trust Indenture Act, if applicable. The Trustee shall have no duty to search for or obtain any electronic or other filings that the Company makes with the Commission, regardless of whether such filings are periodic, supplemental or otherwise. Delivery of reports, information and documents to the Trustee pursuant to this Section 7.3(c)

shall be solely for purposes of compliance with this Section 7.3(c) and, if applicable, with Section 314(a) of the Trust Indenture Act. The Trustee's receipt of such reports, information and documents shall not constitute notice to it of the content thereof or any matter determinable from the content thereof, including the Company's compliance with any of its covenants hereunder, as to which the Trustee is entitled to rely upon Officer's Certificates.

ARTICLE VIII

CONSOLIDATION, MERGER, CONVEYANCE, TRANSFER OR LEASE

SECTION 8.1. *Company May Consolidate, Etc., Only on Certain Terms.*

The Company shall not consolidate with or merge into any other Person or convey, transfer or lease its properties and assets substantially as an entirety to any Person, and no Person shall consolidate with or merge into the Company or convey, transfer or lease its properties and assets substantially as an entirety to the Company, unless:

(a) if the Company shall consolidate with or merge into another Person or convey, transfer or lease its properties and assets substantially as an entirety to any Person, the entity 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 an entity organized and existing under the laws of the United States of America or any State or Territory thereof or the District of Columbia and shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form reasonably satisfactory to the Trustee, the due and punctual payment of the principal of and any premium and interest (including any Additional Interest) on all the 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, no Event of Default, and no event that, after notice or lapse of time, or both, would constitute an Event of Default, shall have happened and be continuing; and

(c) the Company has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, merger, conveyance, transfer or lease and, if a supplemental indenture is required in connection with such transaction, any such supplemental indenture comply with this Article VIII and that all conditions precedent herein provided for relating to such transaction have been complied with; and the Trustee may rely upon such Officer's Certificate and Opinion of Counsel as conclusive evidence that such transaction complies with this Section 8.1.

SECTION 8.2. *Successor Company Substituted.*

(a) Upon any consolidation or merger by the Company with or into any other Person, or any conveyance, transfer or lease by the Company of its properties and assets substantially as an entirety to any Person in accordance with Section 8.1 and the execution and delivery to the Trustee of the supplemental indenture described in Section 8.1(a), the successor entity formed by such consolidation or into which the Company is merged or 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 in the event of any such conveyance or transfer, following the execution and delivery of such supplemental indenture, the Company shall be discharged from all obligations and covenants under the Indenture and the Securities.

(b) Such successor Person may cause to be executed, and may issue either in its own name or in the name of the Company, any or all of the Securities issuable hereunder that theretofore shall not have been signed by the Company and delivered to the Trustee; and, upon the order of such successor Person instead of the Company and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall deliver any Securities that previously shall have been signed and delivered by the officers of the Company to the Trustee for authentication, and any Securities that such successor Person thereafter shall cause to be executed and delivered to the Trustee on its behalf. All the Securities so issued shall in all respects have the same legal rank and benefit under this Indenture as the Securities theretofore or thereafter issued in accordance with the terms of this Indenture.

(c) In case of any such consolidation, merger, sale, conveyance or lease, such changes in phraseology and form may be made in the Securities thereafter to be issued as may be appropriate to reflect such occurrence.

ARTICLE IX

SUPPLEMENTAL INDENTURES

SECTION 9.1. *Supplemental Indentures without Consent of Holders.*

Without the consent of any Holders, the Company, when authorized by a Company Order or Company Request, and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form reasonably 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 Securities; or

(b) to evidence and provide for the acceptance of appointment hereunder by a successor trustee; or

(c) to cure any ambiguity, to correct or supplement any provision herein that may be defective or inconsistent with any other provision herein, or to make or amend any other provisions with respect to matters or questions arising under this Indenture, which shall not be inconsistent with the other provisions of this Indenture, provided, that such action pursuant to this clause (b) shall not adversely affect in any material respect the interests of any Holders; or

(d) to comply with the rules and regulations of any securities exchange or interdealer quotation system on which any of the Securities may be listed, traded or quoted; or

(e) to add to the covenants, restrictions or obligations of the Company or to add to the Events of Default, *provided*, that such action pursuant to this clause (e) shall not adversely affect in any material respect the interests of any Holders; or

(f) to modify, eliminate or add to any provisions of the Indenture or the Securities to such extent as shall be necessary to ensure that the Securities are treated as indebtedness of the Company for United States Federal income tax purposes, *provided*, that such action pursuant to this clause (f) shall not adversely affect in any material respect the interests of any Holders.

SECTION 9.2. Supplemental Indentures with Consent of Holders.

(a) Subject to Section 9.1, with the consent of the Holders of not less than a majority in aggregate principal amount of the Outstanding Securities, by Act of said Holders delivered to the Company and the Trustee, the Company, when authorized by a Company Order or Company Request, and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights of the Holders of Securities under this Indenture; *provided*, that no such supplemental indenture shall, without the consent of the Holder of each Outstanding Security,

(i) change the Stated Maturity of the principal or any premium of any Security or change the date of payment of any installment of interest (including any Additional Interest) on any Security, or reduce the principal amount thereof or the rate of interest thereon or any premium payable upon the redemption thereof or change the place of payment where, or the coin or currency in which, any Security or interest thereon is payable, or restrict or impair the right to institute suit for the enforcement of any such payment on or after such date, or

(ii) reduce the percentage in aggregate principal amount of the Outstanding Securities, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver of compliance with any provision of this Indenture or of defaults hereunder and their consequences provided for in this Indenture, or

(iii) modify any of the provisions of this [Section 9.2](#), [Section 5.13](#) or [Section 10.7](#), except to increase any percentage in aggregate principal amount of the Outstanding Securities, the consent of whose Holders is required for any reason, or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Security;

(b) It shall not be necessary for any Act of Holders under this [Section 9.2](#) to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.

SECTION 9.3. Execution of Supplemental Indentures.

In executing or accepting the additional trusts created by any supplemental indenture permitted by this [Article IX](#) or the modifications thereby of the trusts created by this Indenture,

the Trustee shall be entitled to receive, and shall be fully protected in conclusively relying upon, an Officer's Certificate and an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture, and that all conditions precedent herein relating to such action have been complied with. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture that affects the Trustee's own rights, duties, indemnities or immunities under this Indenture or otherwise. Copies of the final form of each supplemental indenture shall be delivered by the Company to the Holders at the expense of the Company.

SECTION 9.4. Effect of Supplemental Indentures.

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

SECTION 9.5. Reference in Securities to Supplemental Indentures.

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

ARTICLE X

COVENANTS

SECTION 10.1. Payment of Principal, Premium, if any, and Interest.

The Company covenants and agrees for the benefit of the Holders of the Securities that it will duly and punctually pay the principal of and any premium and interest (including any Additional Interest) on the Securities in accordance with the terms of the Securities and this Indenture.

SECTION 10.2. Money for Security Payments to be Held in Trust.

(a) Whenever the Company shall have one or more Paying Agents, it will, prior to 10:00 a.m., New York City time, on each due date of the principal of or any premium or interest (including any Additional Interest) on any Securities, deposit with such Paying Agent a sum sufficient to pay such amount, such sum to be held as provided in the Trust Indenture Act and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of its failure to so act.

(b) The Company will cause each Paying Agent for the Securities other than 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 10.2, that such Paying Agent

will (i) comply with the provisions of this Indenture and the Trust Indenture Act applicable to it as a Paying Agent and (ii) during the continuance of any default by the Company (or any other obligor upon the Securities) in the making of any payment in respect of the Securities, upon the written request of the Trustee, forthwith pay to the Trustee all sums held in trust by such Paying Agent for payment in respect of the Securities.

(c) The Company may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, 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, 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.

(d) Any money deposited with the Trustee or any Paying Agent for the payment of the principal of and any premium or interest (including any Additional Interest) on any Security and remaining unclaimed for two years after such principal and any premium or interest has become due and payable shall (unless otherwise required by mandatory provision of applicable escheat or abandoned or unclaimed property law) be paid on Company Request to the Company, or (if then held by the Company) shall (unless otherwise required by mandatory provision of applicable escheat or abandoned or unclaimed property law) be discharged from such trust; and the Holder of such Security shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; *provided*, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once, in a newspaper published in the English language, customarily published on each Business Day and of general circulation in the Borough of Manhattan, The City of New York, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than thirty (30) days from the date of such publication, any unclaimed balance of such money then remaining will be repaid to the Company.

SECTION 10.3. *Statement as to Compliance.*

The Company shall deliver to the Trustee and to each Collateral Manager, within ninety (90) days after the end of each fiscal year of the Company ending after the date hereof, an Officer's Certificate covering the preceding calendar year, stating whether or not to the knowledge of the signers thereof the Company is in default in the performance or observance of any of the terms, provisions and conditions of this Indenture (without regard to any period of grace or requirement of notice provided hereunder), and if the Company shall be in default, specifying all such defaults and the nature and status thereof of which they may have knowledge.

SECTION 10.4. *Calculation Agent.*

(a) The Company hereby agrees that for so long as any of the Securities remain Outstanding, there will at all times be an agent appointed to calculate LIBOR in respect of each Interest Payment Date in accordance with the terms of Schedule A (the "*Calculation Agent*").

The Company has initially appointed the Trustee as Calculation Agent for purposes of determining LIBOR for each Interest Payment Date. The Calculation Agent may be removed by the Holders at any time. If the Calculation Agent is unable or unwilling to act as such or is removed by the Holders, the Holders will promptly appoint as a replacement Calculation Agent the London office of a leading bank which is engaged in transactions in Eurodollar deposits in the international Eurodollar market and which does not control or is not controlled by or under common control with the Company or its Affiliates. The Calculation Agent may not resign its duties without a successor having been duly appointed.

(b) The Calculation Agent shall be required to agree that, as soon as possible after 11:00 a.m. (London time) on each LIBOR Determination Date (as defined in Schedule A), but in no event later than 11:00 a.m. (London time) on the Business Day immediately following each LIBOR Determination Date, the Calculation Agent will calculate the interest rate (the Interest Payment shall be rounded to the nearest cent, with half a cent being rounded upwards) for the related Interest Payment Date, and will communicate such rate and amount to the Company, the Trustee, each Paying Agent and the Depository. The Calculation Agent will also specify to the Company the quotations upon which the foregoing rates and amounts are based and, in any event, the Calculation Agent shall notify the Company before 5:00 p.m. (London time) on each LIBOR Determination Date that either: (i) it has determined or is in the process of determining the foregoing rates and amounts or (ii) it has not determined and is not in the process of determining the foregoing rates and amounts, together with its reasons therefor. The Calculation Agent's determination of the foregoing rates and amounts for any Interest Payment Date will (in the absence of manifest error) be final and binding upon all parties. For the sole purpose of calculating the interest rate for the Securities, "Business Day" shall be defined as any day on which dealings in deposits in Dollars are transacted in the London interbank market.

SECTION 10.5. Inspection of Books and Records; Management and Board Observation Rights.

The Company shall permit each Collateral Manager upon written request delivered at least three (3) Business Days prior to the applicable date to examine the books and records of account of the Company and its Subsidiaries and to discuss the affairs, finances and accounts of such Persons with, and to be advised as to the same by management representatives of the Company and its Subsidiaries as such Collateral Manager reasonably requests, either in person at the Company's offices or telephonically, all at reasonable times and intervals during normal business hours at the expense of the Company. The Collateral Managers shall use good faith efforts to coordinate such inspections so as to minimize the interference with and disruption to the Company's normal business operations and shall limit such inspections to twice per calendar year unless an Event of Default has occurred and is continuing. Except to the extent (i) required by law, (ii) required by any court order, or any directive of a Governmental Authority, or (iii) that any such information is available or accessible in the public domain, the Holders shall maintain all information disclosed and/or copied in the course of any such inspection confidential in all respects, except that it may share such information with the Trustee, any Collateral Manager for the Holders, any other Holder and any of their respective counsel provided that such Person agrees to maintain the confidentiality of such information. No Holder shall trade in the Company's securities within thirty (30) days of receipt of any information pursuant to this Section 10.5 unless such information shall otherwise have been disclosed to the public by the Company prior thereto.

SECTION 10.6. *Additional Covenants.*

(a) The Company covenants and agrees with each Holder of Securities that (x) during the Modification Period and/or (y) if an Event of Default shall have occurred and be continuing, other than an Event of Default caused solely by the act, or failure to act, of the Trustee, it shall not (i) declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to, any of the Company's Equity Interests, (ii) vote in favor of or permit or otherwise allow any of its Subsidiaries to declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to or otherwise retire, any shares of any such Subsidiary's preferred stock or other Equity Interests entitling the holders thereof to a stated rate of return (for the avoidance of doubt, whether such preferred stock or other Equity Interests are perpetual or otherwise) other than the Company, or (iii) make any payment of principal of or any interest or premium, if any, on or repay, repurchase or redeem any debt securities of the Company that rank pari passu in all respects with or junior in interest to the Securities (other than (A) repurchases, redemptions or other acquisitions of Equity Interests of the Company in connection with any employment contract, benefit plan or other similar arrangement with or for the benefit of any one or more employees, officers, directors or consultants, in connection with a dividend reinvestment or stockholder stock purchase or similar plan with respect to any Equity Interests or in connection with the issuance of Equity Interests of the Company (or securities convertible into or exercisable for such Equity Interests) as consideration in an acquisition transaction entered into prior to the Event of Default, (B) as a result of an exchange or conversion of any class or series of the Company's Equity Interests (or any Equity Interests of a Subsidiary of the Company) for any class or series of the Company's Equity Interests or of any class or series of the Company's indebtedness for any class or series of the Company's Equity Interests, (C) the purchase of fractional interests in Equity Interests of the Company pursuant to the conversion or exchange provisions of such Equity Interests or the security being converted or exchanged, (D) any declaration of a dividend in connection with any Rights Plan, the issuance of rights, Equity Interests or other property under any Rights Plan or the redemption or repurchase of rights pursuant thereto, (E) any dividend in the form of Equity Interests, warrants, options or other rights where the dividend Equity Interests or the Equity Interests issuable upon exercise of such warrants, options or other rights is the same Equity Interests as that on which the dividend is being paid or ranks pari passu with or junior to such Equity Interests, or (F) any other dividends or distributions necessary in order for the Company to maintain its status as a REIT, provided that in each instance above any such declaration or payment made during the Modification Period shall be declared and paid in the form of stock to the maximum extent permitted by the Code or final rules and regulations or published Internal Revenue Service guidance promulgated thereunder, with the balance payable in cash or (G) any other transaction consented to in writing by Holders representing a majority in aggregate principal amount of the outstanding Securities in their sole and absolute discretion.

(b) The Company also is presently qualified as a real estate investment trust ("REIT") under the Code and as of the date hereof, no circumstance or event has occurred that would disqualify the Company as a REIT. The Company agrees to use its commercially reasonable

best efforts to meet the requirements to qualify as a REIT for so long as it is commercially reasonable to do so unless the Board of Directors determines that it is not in the best interests of the Company to be a REIT.

SECTION 10.7. *Waiver of Covenants.*

The Company may omit in any particular instance to comply with any covenant or condition contained in Sections 10.5 and/or 10.6 if, before or after the time for such compliance, the Holders of at least a majority in aggregate principal amount of the Outstanding Securities shall, by Act of such Holders, either waive such compliance in such instance or generally waive compliance with such covenant or condition, but no such waiver shall extend to or affect such covenant or condition except to the extent so expressly waived, and, until such waiver shall become effective, the obligations of the Company in respect of any such covenant or condition shall remain in full force and effect.

SECTION 10.8. *Treatment of Securities.*

The Company will treat the Securities as indebtedness, and the amounts, other than payments of principal, payable in respect of the principal amount of such Securities as interest, for all United States federal income tax purposes. All payments in respect of the Securities will be made free and clear of U.S. withholding tax to any beneficial owner thereof that has provided an Internal Revenue Service Form W9 or W 8BEN (or any substitute or successor form) establishing its U.S. or non-U.S. status for U.S. Federal income tax purposes or any other applicable form establishing a complete exemption from U.S. withholding tax.

ARTICLE XI

REDEMPTION OF SECURITIES

SECTION 11.1. *Optional Redemption.*

The Company may, at its option, on any Interest Payment Date, on or after April 30, 2012, redeem the Securities in whole at any time or in part from time to time, at a Redemption Price equal to one hundred percent (100%) of the principal amount thereof (or of the redeemed portion thereof, as applicable), together, in the case of any such redemption, with accrued and unpaid interest, including any Additional Interest, through but excluding the date fixed as the Redemption Date (the "*Optional Redemption Price*").

SECTION 11.2. *Special Event Redemption.*

Prior to April 30, 2012, upon the occurrence and during the continuation of a Special Event, the Company may, at its option, redeem the Securities, in whole but not in part, at a Redemption Price equal to one hundred three percent (103.0%) from the date hereof through April 30, 2010 and one hundred two percent (102.0%) thereafter of the principal amount thereof, together, in the case of any such redemption, with accrued interest, including any Additional Interest, through but excluding the date fixed as the Redemption Date (the "*Special Redemption Price*").

SECTION 11.3. *Election to Redeem; Notice to Trustee.*

The election of the Company to redeem any Securities, in whole or in part, shall be evidenced by or pursuant to a Company Order or Company Request. In case of any redemption at the election of the Company, the Company shall, not less than forty-five (45) days and not more than seventy-five (75) days prior to the Redemption Date (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee in writing of such date and of the principal amount of the Securities to be redeemed and provide the additional information required to be included in the notice or notices contemplated by Section 11.5. In the case of any redemption of Securities, in whole or in part, (a) prior to the expiration of any restriction on such redemption provided in this Indenture or the Securities or (b) pursuant to an election of the Company which is subject to a condition specified in this Indenture or the Securities, the Company shall furnish the Trustee with an Officer's Certificate and an Opinion of Counsel evidencing compliance with such restriction or condition.

SECTION 11.4. *Selection of Securities to be Redeemed.*

(a) If less than all the Securities are to be redeemed, the particular Securities to be redeemed shall be selected and redeemed on a pro rata basis not more than sixty (60) days prior to the Redemption Date by the Trustee from the Outstanding Securities not previously called for redemption, *provided*, that the unredeemed portion of the principal amount of any Security shall be in an authorized denomination (which shall not be less than the minimum authorized denomination) for such Security.

(b) The Trustee shall promptly notify the Company in writing of the Securities selected for redemption and, in the case of any Securities selected for partial redemption, the principal amount thereof to be redeemed. For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Securities shall relate, in the case of any Security redeemed or to be redeemed only in part, to the portion of the principal amount of such Security that has been or is to be redeemed.

(c) The provisions of paragraphs (a) and (b) of this Section 11.4 shall not apply with respect to any redemption affecting only a single Security, whether such Security is to be redeemed in whole or in part. In the case of any such redemption in part, the unredeemed portion of the principal amount of the Security shall be in an authorized denomination (which shall not be less than the minimum authorized denomination) for such Security.

SECTION 11.5. *Notice of Redemption.*

(a) Notice of redemption shall be given not later than the thirtieth (30th) day, and not earlier than the sixtieth (60th) day, prior to the Redemption Date to the Trustee and each Holder of Securities to be redeemed, in whole or in part (unless a shorter notice shall be satisfactory to the Trustee).

(b) With respect to Securities to be redeemed, in whole or in part, each notice of redemption shall state:

(i) the Redemption Date;

(ii) the Redemption Price or, if the Redemption Price cannot be calculated prior to the time the notice is required to be sent, the estimate of the Redemption Price, as calculated by the Company, together with a statement that it is an estimate and that the actual Redemption Price will be calculated on the fifth Business Day prior to the Redemption Date (and if an estimate is provided, a further notice shall be sent of the actual Redemption Price on the date that such Redemption Price is calculated);

(iii) if less than all Outstanding Securities are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the amount of and particular Securities to be redeemed;

(iv) that on the Redemption Date, the Redemption Price will become due and payable upon each such Security or portion thereof, and that any interest (including any Additional Interest) on such Security or such portion, as the case may be, shall cease to accrue on and after said date; and

(v) the place or places where such Securities are to be surrendered for payment of the Redemption Price.

(c) Notice of redemption of Securities to be redeemed, in whole or in part, at the election of the Company shall be given by the Company or, at the Company's request, by the Trustee in the name and at the expense of the Company and shall be irrevocable. The notice if mailed in the manner provided above shall be conclusively presumed to have been duly given, whether or not the Holder receives such notice. In any case, a failure to give such notice by mail or any defect in the notice to the Holder of any Security designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any other Security.

SECTION 11.6. Deposit of Redemption Price.

Prior to 10:00 a.m., New York City time, on the Redemption Date specified in the notice of redemption given as provided in Section 11.5, the Company will deposit with the Trustee or with one or more Paying Agents an amount of money sufficient to pay the Redemption Price of, and any accrued interest (including any Additional Interest) on, all the Securities (or portions thereof) that are to be redeemed on that date.

SECTION 11.7. Payment of Securities Called for Redemption.

(a) If any notice of redemption has been given as provided in Section 11.5, the Securities or portion of Securities with respect to which such notice has been given shall become due and payable on the date and at the place or places stated in such notice at the applicable Redemption Price, together with accrued interest (including any Additional Interest) to the Redemption Date. On presentation and surrender of such Securities at a Place of Payment specified in such notice, the Securities or the specified portions thereof shall be paid and redeemed by the Company at the applicable Redemption Price, together with accrued interest (including any Additional Interest) to the Redemption Date.

(b) Upon presentation of any Security redeemed in part only, the Company shall execute and the Trustee shall authenticate and deliver to the Holder thereof, at the expense of the Company, a new Security or Securities, of authorized denominations, in aggregate principal amount equal to the unredeemed portion of the Security so presented and having the same Original Issue Date, Stated Maturity and terms.

(c) If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal of and any premium on such Security shall, until paid, bear interest from the Redemption Date at the rate prescribed therefor in the Security.

ARTICLE XII

SUBORDINATION OF SECURITIES

SECTION 12.1. *Securities Subordinate to Senior Debt.*

The Company covenants and agrees, and each Holder of a Security, by its acceptance thereof, likewise covenants and agrees, that, to the extent and in the manner hereinafter set forth in this Article XII, the payment of the principal of and any premium and interest (including any Additional Interest) on each and all of the Securities are hereby expressly made subordinate and subject in right of payment to the prior payment in full of all Senior Debt.

SECTION 12.2. *No Payment When Senior Debt in Default; Payment Over of Proceeds Upon Dissolution, Etc.*

(a) In the event and during the continuation of any default by the Company in the payment of any principal of or any premium or interest on any Senior Debt (following any grace period, if applicable) when the same becomes due and payable, whether at maturity or at a date fixed for prepayment or by declaration of acceleration or otherwise, then, upon written notice of such default to the Company by the holders of such Senior Debt or any trustee therefor, unless and until such default shall have been cured or waived or shall have ceased to exist, no direct or indirect payment (in cash, property, securities, by set-off or otherwise) shall be made or agreed to be made on account of the principal of or any premium or interest (including any Additional Interest) on any of the Securities, or in respect of any redemption, repayment, retirement, purchase or other acquisition of any of the Securities.

(b) In the event of a bankruptcy, insolvency or other proceeding described in clause (d) or (e) of the definition of Event of Default (each such event, if any, herein sometimes referred to as a "*Proceeding*"), all Senior Debt (including any interest thereon accruing after the commencement of any such proceedings) shall first be paid in full before any payment or distribution, whether in cash, securities or other property, shall be made to any Holder of any of the Securities on account thereof. Any payment or distribution, whether in cash, securities or other property (other than securities of the Company or any other entity provided for by a plan of reorganization or readjustment the payment of which is subordinate, at least to the extent provided in these subordination provisions with respect to the indebtedness evidenced by the Securities, to the payment of all Senior Debt at the time outstanding and to any securities issued in respect thereof under any such plan of reorganization or readjustment), which would

otherwise (but for these subordination provisions) be payable or deliverable in respect of the Securities shall be paid or delivered directly to the holders of Senior Debt in accordance with the priorities then existing among such holders until all Senior Debt (including any interest thereon accruing after the commencement of any Proceeding) shall have been paid in full.

(c) In the event of any Proceeding, after payment in full of all sums owing with respect to Senior Debt, the Holders of the Securities, together with the holders of any obligations of the Company ranking on a parity with the Securities, shall be entitled to be paid from the remaining assets of the Company the amounts at the time due and owing on account of unpaid principal of and any premium and interest (including any Additional Interest) on the Securities and such other obligations before any payment or other distribution, whether in cash, property or otherwise, shall be made on account of any Equity Interests or any obligations of the Company ranking junior to the Securities and such other obligations. If, notwithstanding the foregoing, any payment or distribution of any character on any security, whether in cash, securities or other property (other than securities of the Company or any other entity provided for by a plan of reorganization or readjustment the payment of which is subordinate, at least to the extent provided in these subordination provisions with respect to the indebtedness evidenced by the Securities, to the payment of all Senior Debt at the time outstanding and to any securities issued in respect thereof under any such plan of reorganization or readjustment) shall be received by the Trustee or any Holder in contravention of any of the terms hereof and before all Senior Debt shall have been paid in full, such payment or distribution or security shall be received in trust for the benefit of, and shall be paid over or delivered and transferred to, the holders of the Senior Debt at the time outstanding in accordance with the priorities then existing among such holders for application to the payment of all Senior Debt remaining unpaid, to the extent necessary to pay all such Senior Debt (including any interest thereon accruing after the commencement of any Proceeding) in full. In the event of the failure of the Trustee or any Holder to endorse or assign any such payment, distribution or security, each holder of Senior Debt is hereby irrevocably authorized to endorse or assign the same.

(d) The Trustee and the Holders, at the expense of the Company, shall take such reasonable action (including the delivery of this Indenture to an agent for any holders of Senior Debt or consent to the filing of a financing statement with respect hereto) as may, in the opinion of counsel designated by the holders of a majority in principal amount of the Senior Debt at the time outstanding, be necessary or appropriate to assure the effectiveness of the subordination effected by these provisions.

(e) The provisions of this Section 12.2 shall not impair any rights, interests, remedies or powers of any secured creditor of the Company in respect of any security interest the creation of which is not prohibited by the provisions of this Indenture.

(f) The securing of any obligations of the Company, otherwise ranking on a parity with the Securities or ranking junior to the Securities, shall not be deemed to prevent such obligations from constituting, respectively, obligations ranking on a parity with the Securities or ranking junior to the Securities.

SECTION 12.3. *Payment Permitted If No Default.*

Nothing contained in this Article XII or elsewhere in this Indenture or in any of the Securities shall prevent (a) the Company, at any time, except during the pendency of the conditions described in paragraph (a) of Section 12.2 or of any Proceeding referred to in Section 12.2, from making payments at any time of principal of and any premium or interest (including any Additional Interest) on the Securities or (b) the application by the Trustee of any moneys deposited with it hereunder to the payment of or on account of the principal of and any premium or interest (including any Additional Interest) on the Securities or the retention of such payment by the Holders, if, at the time of such application by the Trustee, it did not have knowledge (in accordance with Section 12.8) that such payment would have been prohibited by the provisions of this Article XII, except as provided in Section 12.8.

SECTION 12.4. *Subrogation to Rights of Holders of Senior Debt.*

Subject to the payment in full of all amounts due or to become due on all Senior Debt, or the provision for such payment in cash or cash equivalents or otherwise in a manner satisfactory to the holders of Senior Debt, the Holders of the Securities shall be subrogated to the extent of the payments or distributions made to the holders of such Senior Debt pursuant to the provisions of this Article XII (equally and ratably with the holders of all indebtedness of the Company that by its express terms is subordinated to Senior Debt of the Company to substantially the same extent as the Securities are subordinated to the Senior Debt and is entitled to like rights of subrogation by reason of any payments or distributions made to holders of such Senior Debt) to the rights of the holders of such Senior Debt to receive payments and distributions of cash, property and securities applicable to the Senior Debt until the principal of and any premium and interest (including any Additional Interest) on the Securities shall be paid in full. For purposes of such subrogation, no payments or distributions to the holders of the Senior Debt of any cash, property or securities to which the Holders of the Securities or the Trustee would be entitled except for the provisions of this Article XII, and no payments made pursuant to the provisions of this Article XII to the holders of Senior Debt by Holders of the Securities or the Trustee, shall, as among the Company, its creditors other than holders of Senior Debt, and the Holders of the Securities, be deemed to be a payment or distribution by the Company to or on account of the Senior Debt.

SECTION 12.5. *Provisions Solely to Define Relative Rights.*

The provisions of this Article XII are and are intended solely for the purpose of defining the relative rights of the Holders of the Securities on the one hand and the holders of Senior Debt on the other hand. Nothing contained in this Article XII or elsewhere in this Indenture or in the Securities is intended to or shall (a) impair, as between the Company and the Holders of the Securities, the obligations of the Company, which are absolute and unconditional, to pay to the Holders of the Securities the principal of and any premium and interest (including any Additional Interest) on the Securities as and when the same shall become due and payable in accordance with their terms, (b) affect the relative rights against the Company of the Holders of the Securities and creditors of the Company other than their rights in relation to the holders of Senior Debt or (c) prevent the Trustee or the Holder of any Security from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, including filing and

voting claims in any Proceeding, subject to the rights, if any, under this Article XII of the holders of Senior Debt to receive cash, property and securities otherwise payable or deliverable to the Trustee or such Holder.

SECTION 12.6. Trustee to Effectuate Subordination.

Each Holder of a Security by his or her acceptance thereof authorizes and directs the Trustee on his or her behalf to take such action as may be necessary or appropriate to acknowledge or effectuate the subordination provided in this Article XII and appoints the Trustee his or her attorney-in-fact for any and all such purposes.

SECTION 12.7. No Waiver of Subordination Provisions.

(a) No right of any present or future holder of any Senior Debt to enforce subordination as herein provided shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Company or by any act or failure to act, in good faith, by any such holder, or by any noncompliance by the Company with the terms, provisions and covenants of this Indenture, regardless of any knowledge thereof that any such holder may have or be otherwise charged with.

(b) Without in any way limiting the generality of paragraph (a) of this Section 12.7, the holders of Senior Debt may, at any time and from to time, without the consent of or notice to the Trustee or the Holders of the Securities, without incurring responsibility to such Holders of the Securities and without impairing or releasing the subordination provided in this Article XII or the obligations hereunder of such Holders of the Securities to the holders of Senior Debt, do any one or more of the following: (i) change the manner, place or terms of payment or extend the time of payment of, or renew or alter, Senior Debt, or otherwise amend or supplement in any manner Senior Debt or any instrument evidencing the same or any agreement under which Senior Debt is outstanding, (ii) sell, exchange, release or otherwise deal with any property pledged, mortgaged or otherwise securing Senior Debt, (iii) release any Person liable in any manner for the payment of Senior Debt and (iv) exercise or refrain from exercising any rights against the Company and any other Person.

SECTION 12.8. Notice to Trustee.

(a) The Company shall give prompt written notice to a Responsible Officer of 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 Securities. Notwithstanding the provisions of this Article XII or any other provision of this Indenture, the Trustee shall not be charged with knowledge of the existence of any facts that would prohibit the making of any payment to or by the Trustee in respect of the Securities, unless and until a Responsible Officer of the Trustee shall have received written notice thereof from the Company or a holder of Senior Debt or from any trustee, agent or representative thereof; *provided*, that if the Trustee shall not have received the notice provided for in this Section 12.8 at least two Business Days prior to the date upon which by the terms hereof any monies may become payable for any purpose (including, the payment of the principal of and any premium on or interest (including any Additional Interest) on any Security), then, anything herein contained to the contrary notwithstanding, the Trustee shall

have full power and authority to receive such monies and to apply the same to the purpose for which they were received and shall not be affected by any notice to the contrary that may be received by it within two Business Days prior to such date.

(b) The Trustee shall be entitled to rely on the delivery to it of a written notice by a Person representing himself or herself to be a holder of Senior Debt (or a trustee, agent, representative or attorney-in-fact therefor) to establish that such notice has been given by a holder of Senior Debt (or a trustee, agent, representative or attorney-in-fact therefor). In the event that the Trustee determines in good faith that further evidence is required with respect to the right of any Person as a holder of Senior Debt to participate in any payment or distribution pursuant to this Article XII, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Senior Debt held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and any other facts pertinent to the rights of such Person under this Article XII, and if such evidence is not furnished, the Trustee may defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment.

SECTION 12.9. Reliance on Judicial Order or Certificate of Liquidating Agent.

Upon any payment or distribution of assets of the Company referred to in this Article XII, the Trustee and the Holders of the Securities shall be entitled to conclusively rely upon any order or decree entered by any court of competent jurisdiction in which such Proceeding is pending, or a certificate of the trustee in bankruptcy, receiver, liquidating trustee, custodian, assignee for the benefit of creditors, agent or other Person making such payment or distribution, delivered to the Trustee or to the Holders of Securities, for the purpose of ascertaining the Persons entitled to participate in such payment or distribution, the holders of the Senior Debt 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 XII.

SECTION 12.10. Trustee Not Fiduciary for Holders of Senior Debt.

The Trustee, in its capacity as trustee under this Indenture, shall not be deemed to owe any fiduciary duty to the holders of Senior Debt and shall not be liable to any such holders if it shall in good faith mistakenly pay over or distribute to Holders of Securities or to the Company or to any other Person cash, property or securities to which any holders of Senior Debt shall be entitled by virtue of this Article XII or otherwise.

SECTION 12.11. Rights of Trustee as Holder of Senior Debt; Preservation of Trustee's Rights.

The Trustee in its individual capacity shall be entitled to all the rights set forth in this Article XII with respect to any Senior Debt that may at any time be held by it, to the same extent as any other holder of Senior Debt, and nothing in this Indenture shall deprive the Trustee of any of its rights as such holder.

SECTION 12.12. *Article Applicable to Paying Agents.*

If at any time any Paying Agent other than the Trustee shall have been appointed by the Trustee and be then acting hereunder, the term "Trustee" as used in this Article XII shall in such case (unless the context otherwise requires) 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 XII in addition to or in place of the Trustee. For the avoidance of doubt, the Trustee shall not appoint the Company or any affiliate of the Company as Paying Agent hereunder.

* * * *

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.

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

JER INVESTORS TRUST INC.

By: /s/ J. Michael McGillis
Name: J. Michael McGillis
Title: Chief Financial Officer

(Signatures continue on the next page)

THE BANK OF NEW YORK MELLON TRUST COMPANY, NATIONAL ASSOCIATION, as Trustee

By: /s/ Bill Marshall

Name: Bill Marshall

Title: Vice President

DETERMINATION OF LIBOR

With respect to the Securities, the London interbank offered rate ("LIBOR") shall be determined by the Calculation Agent in accordance with the following provisions (in each case rounded to the nearest .000001%):

(1) On the second LIBOR Business Day (as defined below) prior to a Distribution Date after the expiration of the Fixed Rate Period (each such day, a "LIBOR Determination Date"), LIBOR for any given security shall for the following interest payment period equal the rate (expressed as a percentage per annum) for U.S. dollar deposits in Europe, for a three (3) month period, that appears on Dow Jones Telerate (as defined in the International Swaps and Derivatives Association, Inc. 2000 Interest Rate and Currency Exchange Definitions) Page 3750, or such other page as may replace such Page 3750, as of 11:00 a.m. (London time) on such LIBOR Determination Date, as reported by Bloomberg Financial Market Commodities News or any successor service. If such rate is superseded on Telerate Page 3750 by a corrected rate before 12:00 noon (London time) on such LIBOR Determination Date, the corrected rate as so substituted will be LIBOR for such LIBOR Determination Date.

(2) If on any LIBOR Determination Date such rate does not appear on Dow Jones Telerate Page 3750 or such other page as may replace such Page 3750, the Calculation Agent shall determine the arithmetic mean of the offered quotations (expressed as a percentage per annum) of the Reference Banks (as defined below) to leading banks in the London interbank market for U.S. dollar deposits in Europe, for a three (3) month period, for an amount determined by the Calculation Agent (but not less than U.S. \$1,000,000) by reference to requests for quotations as of approximately 11:00 A.M. (London time) on the LIBOR Determination Date made by the Calculation Agent to the Reference Banks. If on any LIBOR Determination Date at least two of the Reference Banks provide such quotations, LIBOR shall equal such arithmetic mean of such quotations. If on any LIBOR Determination Date only one or none of the Reference Banks provide such quotations, LIBOR shall be deemed to be the arithmetic mean of the offered quotations (expressed as a percentage per annum) that two (2) leading banks in The City of New York selected by the Calculation Agent are quoting on the relevant LIBOR Determination Date for U.S. dollar deposits in Europe, for a three (3) month period, for an amount determined by the Calculation Agent (but not less than U.S. \$1,000,000); provided, that if the Calculation Agent is required but is unable to determine a rate in accordance with at least one of the procedures provided above, LIBOR shall be LIBOR as determined on the previous LIBOR Determination Date.

(3) As used herein: "*Reference Banks*" means four major banks in the London interbank market selected by the Calculation Agent; and "*LIBOR Business Day*" means a day (a) on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) in London and (b) is not a Saturday, Sunday or other day on which commercial banking institutions in New York, New York or Wilmington, Delaware are authorized or obligated by law or executive order to be closed.

**Form of
Officer's Financial Certificate**

The undersigned, the [Chairman/Vice Chairman/Chief Executive Officer/President/Vice President/Chief Financial Officer/Treasurer/Assistant Treasurer], hereby certifies, pursuant to Section 7.3(b) of the Junior Subordinated Indenture dated May 29, 2009, between JER Investors Trust Inc. (the "Company"), and The Bank of New York Mellon Trust Company, National Association, as trustee, that:

[FOR FISCAL YEAR END: Attached to the Company's annual report on Form 10-K, filed with the Securities and Exchange Commission (or to the extent not publicly available on EDGAR attached hereto) are the audited consolidated financial statements (including the balance sheet, income statement and statement of cash flows, and notes thereto, together with the report of the independent accountants thereon) of the Company and its consolidated subsidiaries for the three years ended [date], 20 except with respect to the balance sheet, which shall be provided for the two years ended [date], 20 .

[FOR FISCAL QUARTER END: Attached hereto are the unaudited consolidated financial statements (including the balance sheet and income statement) of the Company and its consolidated subsidiaries for the fiscal quarter ended [date], 20 .]

The financial statements fairly present in all material respects, in accordance with U.S. generally accepted accounting principles ("GAAP"), the financial position of the Company and its consolidated subsidiaries, and the results of operations and changes in financial condition as of the date, and for the [quarterly] [annual] period ended [date], 20 , and such financial statements have been prepared in accordance with GAAP consistently applied throughout the period involved (except as otherwise noted therein).

There has been no monetary default with respect to any indebtedness owed by the Company and/or its subsidiaries (other than those defaults cured within 30 days of the occurrence of the same) [, except as set forth below:].

[Insert any exceptions by listing, in detail, the nature of the condition or event causing such noncompliance, the period during which such condition or event has existed and the action(s) the Company has taken, is taking, or proposes to take with respect to each such condition or event.]

IN WITNESS WHEREOF, the undersigned has executed this Officer's Financial Certificate as of this day of , 20 .

JER Investors Trust Inc.

By: _____
Name: _____

JER Investors Trust Inc.
1650 Tyson Boulevard, Suite 1600
McLean, VA 22101
(703) 714-8000

REGISTRATION RIGHTS AGREEMENT

DATED AS OF MAY 29, 2009

By and Among

JER INVESTORS TRUST INC.

And

EJF DISTRESSED FUND II, LP

And

KODIAK CDO II, LTD.

REGISTRATION RIGHTS AGREEMENT

This REGISTRATION RIGHTS AGREEMENT (this "Agreement") is made and entered into as of May 29, 2009, by and among JER Investors Trust Inc., a Maryland corporation (the "Company"), EJV Distressed Master Fund II, LP ("EJV") and Kodiak CDO II, Ltd. ("Kodiak").

WITNESSETH:

WHEREAS, the Company has agreed to issue to EJV 541,906 shares (the "EJV Shares") of the Company's common stock, par value \$0.01 per share (the "Common Stock"), pursuant to the Exchange Agreement, dated May 29, 2009, by and between the Company and EJV (the "EJV Agreement");

WHEREAS, the Company has agreed to issue to Kodiak 238,347 shares of common stock (the "Kodiak Shares" and, collectively with the EJV Shares, the "Shares") pursuant to the Letter Agreement, dated May 29, 2009, by and between the Company and Kodiak (the "Kodiak Agreement" and together with the EJV Agreement, the "Agreements");

WHEREAS, in connection with the issuance of the Shares to the respective Holders, the Company has agreed to provide to the Holders the registration rights set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants and undertakings contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to and on the terms and conditions herein set forth, the parties hereto hereby agree as follows:

ARTICLE I

Certain Definitions

As used in this Agreement, the following terms shall have the meanings ascribed to them below:

1.1 "Commission" shall mean the Securities and Exchange Commission or any federal agency at the time administering the Securities Act.

1.2 "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended, or any federal statute then in effect which has replaced such statute.

1.3 "Group" shall mean two or more Persons that would be deemed a "group" for purposes of Rule 13d-5 under the Exchange Act.

1.4 "Holder" means each of EJV and Kodiak, in each case for so long as it owns any Registrable Securities and any other Person who is a holder or beneficial owner of Registrable Securities for so long as such Person owns any Registrable Securities.

1.5 "Person" shall mean an individual, corporation, limited liability company, joint venture, partnership, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity that may be treated as a person under applicable law.

1.6 "Registrable Securities" shall mean the Shares.

As to any Registrable Securities, such securities shall cease to be Registrable Securities when (i) a registration statement registering such Registrable Securities under the Securities Act has been declared or becomes effective and such Registrable Securities have been sold or otherwise transferred by the Holder thereof pursuant to such effective registration statement; (ii) such Registrable Securities are sold pursuant to Rule 144 under circumstances in which any legend borne by such Registrable Securities relating to restrictions on the transferability thereof, under the Securities Act or otherwise, is removed by the Company; (iii) such Registrable Securities are eligible to be sold pursuant to Rule 144 without volume or manner-of-sale restrictions; or (iv) such Registrable Securities shall cease to be outstanding.

1.7 "Rule 144" shall mean Rule 144 promulgated under the Securities Act, or any successor provision of the Securities Act.

1.8 "Securities Act" shall mean Securities Act of 1933, as amended, or any federal statute then in effect which has replaced such statute.

ARTICLE II

Public Offering Pursuant to Registration Rights

2.1 Piggyback Registration.

(a) If the Company shall determine to register any equity securities of the Company for its own account or for the account of other holders of Common Stock of the Company on any registration form (other than Form S-4 or S-8 or other successor forms) which permits the inclusion of Registrable Securities held by any Holder (a "Piggyback Registration"), the Company will promptly give each Holder written notice thereof and, subject to Section 2.1(c), and Section 2.1(d), shall include in such registration all Registrable Securities requested to be included therein pursuant to the written requests of Holders received within 10 days after delivery of the Company's notice. Notwithstanding anything to the contrary contained in this Section 2.1(a), the Company shall have the right at any time after it shall have given notice pursuant to this Section 2.1(a) (irrespective of whether a written request for inclusion of any such securities shall have been made) not to elect to file such proposed registration statement, or to withdraw the same after the filing but prior to the effective date thereof.

(b) If the Piggyback Registration relates to an underwritten public offering, the Company shall so advise the Holders as part of the written notice given pursuant to Section 2.1(a). In such event, the right of any Holder to participate in such registration shall be conditioned upon such Holder's participation in such underwriting in accordance with the terms and conditions thereof. The Board of Directors of the Company shall have the right to select, in its sole and absolute discretion, the managing underwriter(s) for any underwritten Piggyback

Registration. All Holders proposing to distribute their Registrable Securities through such underwriting shall (together with the Company) enter into an underwriting agreement in customary form.

(c) If a Piggyback Registration is an underwritten primary registration on behalf of the Company, and the managing underwriters advise the Company in writing that in their opinion the number of shares of Common Stock requested to be included in such registration exceeds the number which can be sold in such offering and/or that the number of Registrable Securities proposed to be included in any such registration would adversely affect the price per share of the Common Stock to be sold in such offering, the Company shall include in such registration (i) first, the shares of Common Stock requested by the Holders to be sold in such offering, on a pro rata basis, (ii) second, the shares of Common Stock the Company proposes to sell and (iii) third, other shares of Common Stock requested to be included in such registration, pro rata among the holders of such securities on the basis of the number of shares requested to be registered by such holders, or as such holders may otherwise agree.

(d) If a Piggyback Registration is an underwritten secondary registration on behalf of a holder of the Company's securities, and the managing underwriters advise the Company or the initiating holders in writing that in their opinion the number of shares of Common Stock requested to be included in such registration exceeds the number which can be sold in such offering and/or that the number of shares of Registrable Securities proposed to be included in any such registration would adversely affect the price per share of the Company's equity securities to be sold in such offering, the Company shall include in such registration (i) first, the shares of Common Stock requested to be included therein by the holders requesting such registration (ii) second, the shares of Common Stock requested by the Holders to be sold in such offering, on a pro rata basis, and (iii) third, other shares of Common Stock requested to be included in such registration, pro rata among the holders of such securities on the basis of the number of shares requested to be registered by such holders or as such holders may otherwise agree.

2.2 Expenses of Registration. All expenses incurred in connection with all Piggyback Registrations, including the fees not to exceed \$15,000 and disbursements of one counsel for the selling Holders (selected by the Holders of a majority of the Registrable Securities being registered) shall be borne by the Company. All underwriting discounts, selling commissions and other similar fees relating to Registrable Securities included in any Piggyback Registration shall be borne by the holders of such Registrable Securities pro rata on the basis of the amount of Registrable Securities sold by them.

2.3 Registration Procedures. In the case of each registration effected by the Company pursuant to this Article II, the Company will keep each Holder advised in writing as to the initiation of such registration and as to the completion thereof. At its expense, the Company will:

- (a) use its commercially reasonable efforts to cause such registration to be declared effective by the Commission;

(b) as soon as reasonably possible, prepare and file with the Commission such amendments and supplements to such registration statement and the prospectus included therein (including post-effective amendments, prospectus supplements and pricing supplements) as may be necessary to effect and maintain the effectiveness of such registration statement for the period the registration statement is required to remain effective;

(c) provide (A) the Holders of the Registrable Securities to be included in such registration statement, (B) the underwriters (which term, for purposes of this Agreement, shall include a person deemed to be an underwriter within the meaning of Section 2(11) of the Securities Act) if any, thereof, (C) the sales or placement agent therefor, if any, (D) counsel for such underwriters or agent, and (E) not more than one counsel for all of the Holders, the opportunity to participate in the preparation of such registration statement, each prospectus included therein or filed with the Commission, and each amendment or supplement thereto;

(d) (A) use its commercially reasonable efforts to register or qualify the Registrable Securities to be included in such registration statement under such securities laws or blue sky laws of such jurisdictions as any Holder of such Registrable Securities and each placement or sales agent, if any, therefor and underwriter, if any, thereof shall reasonably request, and (B) take any and all other actions as may be reasonably necessary or advisable to enable each such Holder, agent, if any, and underwriter, if any, to consummate the disposition in such jurisdictions of such Registrable Securities; provided, however, that the Company shall not be required for any other purpose to (1) qualify as a foreign corporation in any jurisdiction wherein it would not otherwise be required to qualify but for the requirements of this Section 2.3(d) or (2) consent to general service of process or taxation in any such jurisdiction;

(e) furnish such number of prospectuses and other documents incident thereto, including any amendment of or supplement to the prospectus, as any Holder from time to time may reasonably request;

(f) promptly notify the selling Holders of Registrable Securities, the sales or placement agent, if any, therefor and the managing underwriter or underwriters, if any, thereof and confirm such advice in writing, (A) when such registration statement or the prospectus included therein or any prospectus amendment or supplement or post-effective amendment has been filed, and with respect to such registration statement or any post-effective amendment, when the same has become effective, (B) of any comments by the Commission, the Blue Sky or securities commissioner or regulator of any state with respect thereto or any request by the Commission for amendments or supplements to such registration statement or prospectus or for additional information, (C) of the issuance by the Commission of any stop order suspending the effectiveness of such registration statement or the initiation or threatening of any proceedings for that purpose, (D) if at any time the representations and warranties of the Company contemplated by Section 2.3(m) cease to be true and correct in all material respects, (E) of the receipt by the Company of any notification with respect to the suspension of the qualification of the Registrable Securities for the sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose, or (F) at any time when a prospectus with respect to Registrable Securities is required to be delivered under the Securities Act, that such registration statement, prospectus, prospectus amendment or supplement or post-effective amendment, or any document incorporated by reference in any of the foregoing, contains an

untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances then existing;

(g) use its commercially reasonable efforts to obtain the withdrawal of any order suspending the effectiveness of such registration statement or any post-effective amendment thereto at the earliest practicable date;

(h) if requested by any managing underwriter or underwriters, any placement or sales agent or any Holder of Registrable Securities, use its commercially reasonable efforts to incorporate in a prospectus supplement or post-effective amendment such information as is required by the applicable rules and regulations of the Commission and as such managing underwriter or underwriters, such agent or such holder specifies should be included therein relating to the terms of the sale of such Registrable Securities, including, without limitation, information with respect to the principal amount of Registrable Securities being sold by such Holder or agent or to any underwriters, the name and description of such Holder, agent or underwriter, the offering price of such Registrable Securities and any discount, commission or other compensation payable in respect thereof, the purchase price being paid therefor by such underwriters and with respect to any other terms of the offering of the Registrable Securities to be sold by such Holder or agent or to such underwriters;

(i) furnish to each Holder of Registrable Securities included in such registration statement, each placement or sales agent, if any, therefor, each underwriter, if any, thereof and the respective counsel referred to in Section 2.3(c) an executed copy of such registration statement, each such amendment and supplement thereto (in each case including all exhibits thereto and documents incorporated by reference therein) and such number of copies of such registration statement (excluding exhibits thereto and documents incorporated by reference therein unless specifically and reasonably so requested by such Holder, agent or underwriter, as the case may be) and of the prospectus included in such registration statement (including each preliminary prospectus and any summary prospectus), in conformity with the requirements of the Securities Act; and the Company hereby consents to the use of such prospectus (including such preliminary and summary prospectus) and any amendment or supplement thereto by each such Holder and by any such agent and underwriter, if any, in each case in the form most recently provided to such party by the Company, in connection with the offering and sale of the Registrable Securities covered by the prospectus (including such preliminary and summary prospectus) or any supplement or amendment thereto;

(j) use its commercially reasonable efforts to cause all Registrable Securities covered by such registration to be listed on each securities exchange or inter-dealer quotation system on which the Common Stock is then listed, if any;

(k) provide a transfer agent and registrar for all Registrable Securities covered by such registration and a CUSIP number for all such Registrable Securities (each to the extent not previously obtained, in each case not later than the effective date of such registration);

(l) cooperate with the Holders of Registrable Securities and the managing underwriters, if any, to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be sold, which certificates shall not bear any restrictive legends;

(m) in the event that any broker-dealer registered under the Exchange Act shall underwrite any Registrable Securities or participate as a member of an underwriting syndicate or selling group or "assist in the distribution" (within the meaning of the Rules of Conduct (the "Rules of Conduct") of the Financial Industry Regulatory Authority, Inc. ("FINRA") thereof, whether as a holder of such Registrable Securities or as an underwriter, a placement or sales agent or a broker or dealer in respect thereof, or otherwise use its reasonable best efforts to assist such broker-dealer in complying with the requirements of such Rules of Conduct, including, without limitation, by providing such information to such broker-dealer as may be required in order for such broker-dealer to comply with the requirements of the Rules of Conduct;

(n) otherwise comply with all applicable rules and regulations of the Commission and make available to its security holders, as soon as reasonably practicable but in no event later than eighteen months after the effective date of such registration statement, an earnings statement covering the period of at least twelve months, but not more than 18 months, beginning with the first month after the effective date of the registration statement, which earnings statement shall satisfy the provisions of Section 11(a) of the Securities Act (including, at the option of the Company, Rule 158 thereunder).

2.4 Delivery of Prospectus Supplement. Subject to Section 2.1(b), in the event that the Company would be required, pursuant to Section 2.3(f) above, to notify the selling Holders of Registrable Securities, the placement or sales agent, if any, therefor and the managing underwriters, if any, thereof, the Company shall as soon as reasonably practicable prepare and furnish to each such Holder, to each placement or sales agent, if any, and to each underwriter, if any, a reasonable number of copies of a prospectus supplemented or amended so that, as thereafter delivered to initial purchasers of Registrable Securities, such prospectus shall not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances then existing. Each Holder of Registrable Securities agrees that upon receipt of any notice from the Company pursuant to Section 2.3(f) hereof, such Holder shall forthwith discontinue the disposition of Registrable Securities pursuant to the registration statement applicable to such Registrable Securities until such Holder shall have received copies of such amended or supplemented prospectus, and if so directed by the Company, such Holder shall deliver to the Company (at the Company's expense) all copies, other than permanent file copies, then in such Holder's possession of the prospectus covering such Registrable Securities at the time of receipt of such notice.

2.5 Furnishing Information by the Holders. The Company may require each Holder of Registrable Securities as to which any registration is being effected to furnish to the Company such information regarding such Holder and such Holder's intended method of distribution of such Registrable Securities as the Company may from time to time reasonably request in writing. Each such Holder agrees to promptly notify the Company of any inaccuracy or change in information previously furnished by such Holder to the Company or of the occurrence of any event in either case as a result of which any prospectus relating to such

registration contains or would contain an untrue statement of a material fact regarding such Holder or such Holder's intended method of distribution of such Registrable Securities or omits to state any material fact regarding such Holder or such Holder's intended method of distribution of such Registrable Securities required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances then existing, and promptly to furnish information so required so that such prospectus shall not contain, with respect to such Holder or the distribution of such Registrable Securities, an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing.

2.6 Indemnification.

(a) The Company will indemnify each Holder whose Registrable Securities are to be included in a registration pursuant to this Article II, each of such Holder's officers, directors, partners, agents, employees and representatives and each person controlling such Holder within the meaning of Section 15 of the Securities Act, with respect to each registration, qualification or compliance effected pursuant to this Article II, against all expenses, claims, losses, damages and liabilities (or actions, proceedings or settlements in respect thereof) arising out of or based on any untrue statement or alleged untrue statement of a material fact contained in any registration statement, any amendment thereto, or other document incorporated by reference therein, or compliance, or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, or arising out of any untrue statement or alleged untrue statement of a material fact contained in any prospectus, or any amendment thereto, or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances in which they were made, and will reimburse each such indemnified person for any reasonable legal and other expenses reasonably incurred in connection with investigating and defending or settling any such claim, loss, damage, liability or action; provided, however, that the Company will not be liable in any such case to a Holder to the extent that any such claim, loss, damage, liability or expense arises out of or is based on any untrue statement or alleged untrue statement or omission or alleged omission based upon information furnished in writing to the Company by such Holder and provided for use in such registration statement, prospectus, offering circular or other document or the Holder delivered a registration or prospectus in violation of Section 2.5 hereof after notice was provided by the Company as provided in Section 2.5. It is agreed that the indemnity agreement contained in this Section 2.6(a) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of the Company (which consent shall not be unreasonably withheld or delayed).

(b) Each Holder whose Registrable Securities are included in any registration effected pursuant to this Article II shall indemnify the Company, each of its directors, officers, agents, employees and representatives, and each Person who controls the Company within the meaning of Section 15 of the Securities Act, each other Holder and each of their officers, directors, partners, agents, employees and representatives and each person controlling such Holder, and each underwriter, if any, of such Registrable Securities and each Person who controls any such underwriter, against all expenses, claims, losses, damages and liabilities (or actions, proceedings or settlements in respect thereof) arising out of or based on

any untrue statement or alleged untrue statement of a material fact contained in any registration statement, any amendment thereto, offering circular or other document incident to such registration, qualification or compliance, or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, or arising out of any untrue statement or alleged untrue statement of a material fact contained in any prospectus, or any amendment thereto, or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances in which they were made, and will reimburse such indemnified persons for any reasonable legal or other expenses reasonably incurred in connection with investigating or defending any such claim, loss, damage, liability or action, in each case to the extent, but only to the extent, that such untrue statement or omission is made in such registration statement, prospectus, offering circular or other document in reliance upon and in strict conformity with written information furnished to the Company by such Holder and provided specifically for use therein; provided, that the obligations of each Holder hereunder shall not apply to amounts paid in settlement of any such claims, losses, damages or liabilities (or actions in respect thereof) if such settlement is effected without the consent of such Holder (which consent shall not be unreasonably withheld or delayed); and provided further, that, in no event shall the liability of any Holder under this Section 2.6(b) be in excess of the net proceeds from the sale of Registrable Securities received by such Holder in the offering(s) to which the losses, claims, damages, liabilities or expenses of the indemnified party relate.

(c) Each party entitled to indemnification under this Section 2.6 (the "Indemnified Party") shall give notice to the party required to provide indemnification (the "Indemnifying Party") promptly after such Indemnified Party has actual knowledge of any claim as to which indemnity may be sought and shall permit the Indemnifying Party to assume the defense of any such claim or any litigation resulting therefrom, provided that counsel for the Indemnifying Party, who shall conduct the defense of such claim or any litigation resulting therefrom, shall be approved by the Indemnified Party (whose approval shall not unreasonably be withheld or delayed), and the Indemnified Party may participate in such defense with counsel reasonably acceptable to and paid for by the Indemnifying Party but otherwise at the Indemnified Party's expense, and provided, further, that an Indemnified Party shall have the right to retain its own counsel, with the reasonable fees and expenses of such one counsel to be paid by the Indemnifying Party, if representation of such Indemnified Party by the counsel retained by the Indemnifying Party would be inappropriate due to actual or potential differing interests between such Indemnified Party and any other party represented by such counsel in such proceeding; and provided, further, that the failure of any Indemnified Party to give notice as provided herein shall not relieve the Indemnifying Party of its obligations under this Section 2.6 to the extent such failure is not materially prejudicial. No Indemnifying Party in the defense of any such claim or litigation shall except with the consent of each Indemnified Party, consent to entry of any judgment or enter into any settlement which does not include an unconditional release of such Indemnified Party from all liability in respect of such claim or litigation. Each Indemnified Party shall furnish such information regarding itself or the claim in question as an Indemnifying Party may reasonably request in writing and as shall be reasonably required in connection with the defense of such claim and litigation resulting therefrom.

(d) If the indemnification provided for in this Section 2.6 is held by a court of competent jurisdiction to be unavailable to an Indemnified Party with respect to any

loss, liability, claim, damage or expense referred to therein, then the Indemnifying Party, in lieu of indemnifying such Indemnified Party hereunder, shall contribute to the amount paid or payable by such Indemnified Party as a result of such loss, liability, claim, damage or expense in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party on the one hand and of the Indemnified Party on the other in connection with the statements or omissions which resulted in such loss, liability, claim, damage or expense as well as any other relevant equitable considerations. The relative fault of the Indemnifying Party and of the Indemnified Party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the Indemnifying Party or by the Indemnified Party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. No person guilty of fraudulent misrepresentation (within the meaning of section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. Notwithstanding anything to the contrary in this Section 2.6(d), no Holder shall be required, pursuant to this Section 2.6(d), to contribute any amount in excess of the net proceeds received by such Holder from the sale of Registrable Securities in the offering to which the losses, claims, damages, liabilities or expenses of the Indemnified Party relate.

(e) Notwithstanding the foregoing, to the extent that the provisions on indemnification and contribution contained in an underwriting agreement entered into in connection with an underwritten public offering are in conflict with the foregoing provisions, the provisions in the underwriting agreement shall control.

(f) Any indemnity agreements contained herein shall be in addition to any other rights to indemnification or contribution which any Indemnified Party may have pursuant to law or contract and shall remain operative and in full force and effect regardless of any investigation made or omitted by or on behalf of any Indemnified Party.

2.7 Other Obligations. (a) With a view to making available the benefits of certain rules and regulations of the Commission which may effectuate the registration of Registrable Securities or permit the sale of Registrable Securities to the public without registration, the Company agrees at such time as any Registrable Securities are eligible for transfer without restriction under Rule 144 upon the request of the holder of such Registrable Securities, to remove any restrictive legend from the certificates evidencing such Registrable Securities at no cost to such holder; and

(b) for a period of one year following the Closing Date under the EJV Agreement, to use its best efforts to make and keep "current public information" available, as such term is understood and defined in Rule 144(c) under the Securities Act; to file with the Commission in a timely manner all reports and other documents required to be filed by the Company pursuant to Section 13 or 15(d) of the Exchange Act; and to furnish to each Holder forthwith upon written request a written statement by the Company as to its compliance with the reporting requirements of said Rule 144.

ARTICLE III

Termination

This Agreement shall terminate immediately following the moment at which there exist no securities of the Company that constitute Registrable Securities; provided, however, that Section 2.6 hereof shall survive indefinitely.

ARTICLE IV

Miscellaneous

4.1 Recapitalization, Exchanges, etc. Affecting the Common Stock. The provisions of this Agreement shall apply to the full extent set forth herein with respect to (a) the Registrable Securities and (b) any and all shares of capital stock of the Company or any successor or assign of the Company (whether by merger, consolidation, sale of assets or otherwise) which may be issued in respect of, in exchange for, or in substitution for the Registrable Securities, by reason of any stock dividend, split, reverse split, combination, recapitalization, reclassification, merger, consolidation or otherwise. In the event of any change in the capitalization of the Company as a result of any stock split, stock dividend or stock combination, the provisions of this Agreement shall be appropriately adjusted.

4.2 Injunctive Relief. It is hereby agreed and acknowledged that it will be impossible to measure in money the damages that would be suffered if the parties fail to comply with any of the obligations herein imposed on them and that in the event of any such failure, an aggrieved Person will be irreparably damaged and will not have an adequate remedy at law. Any such Person shall, therefore, in addition to any other remedies available under applicable law, be entitled to injunctive relief, including specific performance, to enforce such obligations, without the posting of any bond, and if any action should be brought in equity to enforce any of the provisions of this Agreement, none of the parties hereto shall raise the defense that there is an adequate remedy at law.

4.3 Parties in Interest. All the terms and provisions of this Agreement shall be binding upon, shall inure to the benefit of and shall be enforceable by the respective successors and assigns of the parties hereto. In the event that any transferee of any Holder of Registrable Securities shall acquire Registrable Securities, in any manner, whether by gift, bequest, purchase, operation of law or otherwise, such transferee shall, without any further writing of any kind, be deemed a party hereto for all purposes and such Registrable Securities shall be held subject to all of the terms of this Agreement, and by taking and holding such Registrable Securities such transferee shall be entitled to receive the benefits of and be conclusively deemed to have agreed to be bound by and to perform all of the terms and provisions of this Agreement.

4.4 Survival. The respective indemnities, agreements, representations, warranties and each other provision set forth in this Agreement or made pursuant hereto shall remain in full force and effect regardless of any investigation (or statements as to the results thereto) made by or on behalf of any Holder of Registrable Securities, any director, officer or partner of such Holder, any agent or underwriter or any director, officer or partner thereof, or any controlling person of any of the foregoing, and shall survive delivery of and payment for the Registrable Securities and the transfer of Registrable Securities by such Holder.

4.5 Amendment; Waiver.

(a) This Agreement may be amended only by a written instrument signed by the Company and by Holders holding more than 50% of the then outstanding Registrable Securities and, in the case of any amendment that adversely affects any Holder or all of the members of any group of Holders differently from any of the other Holders, by such Holder or the holders of more than 50% in interest of the securities of the Company held by such group of Holders.

(b) No provision of this Agreement may be waived orally, but only by a written instrument signed by the party against whom enforcement of such waiver is sought. Holders shall be bound from and after the date of the receipt of a written notice from the Company setting forth such amendment or waiver, whether or not the Registrable Securities shall have been marked to indicate such amendment or waiver.

4.6 Notices. Except as otherwise provided in this Agreement, notices and other communications under this Agreement shall be in writing (including a writing delivered by facsimile transmission) and shall be deemed to have been duly given if delivered personally, or sent by either certified or registered mail, return receipt requested, postage prepaid, or by overnight courier guaranteeing next day delivery, or by telex or telecopier, at the following addresses:

if to the Company:

399 Park Avenue, 38th floor
New York, NY 10022
Attention: Jeffrey L. Cirillo
Facsimile: (212) 832-0357

with a copy to:

1650 Tyson Boulevard, Suite 1600
McLean, Virginia 22101
Attention: J. Michael McGillis
Facsimile: (703) 336-8352

with a copy (which shall not constitute notice) to:

Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, New York 10036
Attention: David J. Goldschmidt, Esq.
Facsimile: (212) 735-2000

if to the Holders:
c/o EJF Capital LLC
2107 Wilson Blvd, Suite 400
Arlington, Virginia 22201
Attention: Robert Hurley, CFO
Facsimile: (703) 351-7901

The Holders may, by written notice given to the Company in accordance with this Section 3.5, change the respective addresses to which such notice or other communications are to be sent to it. All such notices and communications shall be deemed to have been given on the date of delivery thereof, if delivered by hand, on the fifth day after the mailing thereof, if mailed, on the next day after the sending thereof, if by overnight courier and when receipt is acknowledged, if sent by facsimile transmission.

4.7 APPLICABLE LAW. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO THE CONFLICTS OF LAW PRINCIPLES THEREOF.

4.8 Headings. Article, section and paragraph headings are inserted for convenience only and do not constitute a part of this Agreement.

4.9 Integration. This Agreement and the documents referred to herein or delivered pursuant hereto which form a part hereof contain the entire understanding of the parties with respect to the subject matter hereof. There are no restrictions, agreements, promises, representations, warranties, covenants or undertakings with respect to the subject matter hereof other than those expressly set forth or referred to herein. This Agreement supersedes all prior agreements and understandings between the parties with respect to this subject matter.

4.10 Illegality. In case any provision in this Agreement shall be declared or held invalid, illegal or unenforceable, in whole or in part, whether generally or in any particular jurisdiction, such provision shall be deemed amended to the extent, but only to the extent, necessary to cure such invalidity, illegality or unenforceability, and the validity, legality and enforceability of the remaining provisions, both generally and in every other jurisdiction, shall not in any way be affected or impaired thereby.

4.11 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date set forth above.

JER INVESTORS TRUST INC.

By: /s/ Mark S. Weiss

Name: Mark S. Weiss

Title: President

EJF DISTRESSED MASTER FUND II, LP

By: EJF Distressed II GP, LLC,
as General Partner

By: EJF Capital LLC,

as Sole Member

By: /s/ Neal J. Wilson

Name: Neal J. Wilson

Title: Chief Operating Officer

KODIAK CDO II, LTD.

By: Kodiak CDO Management LLC,
its Collateral Manager

By: Kodiak Funding, L.P.,
its Sole Member

By: Kodiak Funding Company Inc,
its General Partner

By: /s/ Robert M. Hurley

Name: Robert M. Hurley

Title: Chief Financial Officer

EXCHANGE AGREEMENT

among

JER INVESTORS TRUST INC.

and

TABERNA PREFERRED FUNDING IX, LTD.

and

KODIAK CDO II, LTD.

Dated as of May 29, 2009

EXCHANGE AGREEMENT

THIS EXCHANGE AGREEMENT, dated as of May 29, 2009 (this "**Agreement**"), is entered into by and among JER INVESTORS TRUST INC., a Maryland corporation (the "**Company**"), TABERNA PREFERRED FUNDING IX, LTD., a Cayman Islands corporation ("**Taberna IX**"), and KODIAK CDO II, LTD., a Cayman Islands corporation ("**Kodiak II**," together with Taberna IX, "**Taberna/Kodiak Holders**"), as is acknowledged and agreed to by EJF Distressed Master Fund II, LP ("**EJF**"), a limited partnership organized under the laws of Delaware.

RECITAL:

- A. Reference is made to that certain Junior Subordinated Indenture dated as of April 9, 2007 (the "**Existing Indenture**") by and between the Company and The Bank of New York Mellon Trust Company, National Association ("**BNYM**"), as trustee (the "**Existing Indenture Trustee**").
- B. Reference is made to that certain Amended and Restated Trust Agreement dated as of April 9, 2007 (the "**Trust Agreement**") by and among the Company, as depositor, BNYM, as Property Trustee, BNY Mellon Trust of Delaware, as Delaware Trustee, and the Administrative Trustee named therein.
- C. JERIT TS Statutory Trust I, a Delaware statutory trust ("**Trust I**") is the holder of the Junior Subordinated Note due 2037 in the amount of Sixty One Million Eight Hundred Sixty Thousand Dollars (\$61,860,000) issued by the Company pursuant to the Existing Indenture (the "**Subordinated Note**").
- D. Pursuant to the Trust Agreement, Trust I issued one or more Preferred Securities Certificates (as such term is defined in the Trust Agreement) in the aggregate liquidation amount of Sixty Million Dollars (\$60,000,000) (the "**Original Security**"), which Original Security is a global security.
- E. Taberna IX is the holder of \$28,125,000 in aggregate liquidation amount of a beneficial interest in the Original Security (the "**Taberna IX Holdings**").
- F. Kodiak II is the holder of \$28,125,000 in aggregate liquidation amount of the Original Security (the "**Kodiak II Holdings**," together with the Taberna IX Holdings, the "**Taberna/Kodiak Holdings**").
- G. EJF is the holder of \$3,750,000 in aggregate liquidation amount of the Original Security (the "**EJF Holdings**").
- H. Simultaneously herewith, the Company and BNYM, as trustee (the "**New Indenture Trustee**") have entered into that certain Junior Subordinated Indenture (the "**New Indenture**") pursuant to which Company proposes to issue Seventy Million Three Hundred Fourteen Thousand Dollars (\$70,314,000) in aggregate principal amount of the Junior Subordinated Notes due 2037 of the Company as follows (collectively, the "**Securities**"): (i) Junior Subordinated Note due 2037 in the original principal amount of \$35,157,000 issued by the Company to Taberna IX (or its designee), a copy of which is attached hereto as Exhibit B-1 ("**Note 1**"); and

(ii) Junior Subordinated Note due 2037 in the original principal amount of \$35,157,000 issued by the Company to Kodiak II (or its designee), a copy of which is attached hereto as Exhibit B-2 ("**Note 2**").

I. On the terms and subject to the conditions set forth in this Agreement, the Company, Taberna IX, Kodiak II, respectively, have agreed to exchange the Taberna/Kodiak Holdings for the respective Securities set forth above.

NOW, THEREFORE, in consideration of the mutual agreements and subject to the terms and conditions herein set forth, the parties hereto agree as follows:

1. **Definitions.** This Agreement, the New Indenture and the Securities are collectively referred to herein as the "**Operative Documents**." All other capitalized terms used but not defined in this Agreement shall have the respective meanings ascribed thereto in the New Indenture.

"**1934 Act Regulations**" has the meaning set forth in Section 4(z).

"**1934 Act Reports**" has the meaning set forth in Section 4(z).

"**Affiliate**" of any specified person means any other Person directly or indirectly Controlled, Controlling or Controlled by, or under direct or common Control with such specified Person.

"**Arbitrator**" has the meaning set forth in Section 4(l).

"**Bankruptcy Code**" means the Bankruptcy Reform Act of 1978, 11 U.S.C. §§101 et seq., as amended.

"**Benefit Plan**" means an "employee benefit plan" (as defined in ERISA) that is subject to Title I of ERISA, a "plan" as defined in Section 4975 of the Code or any entity whose assets include the assets of any such "employee benefit plan" or "plan" for purposes of Section 3(42) of ERISA and U.S. Department of Labor Regulations promulgated thereunder at 29 C.F.R. Section 2510.3-101.

"**BNYM**" has the meaning set forth in the Recitals.

"**CDO Trustee**" has the meaning set forth in Section 2(b)(i).

"**Code**" means the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated under it.

"**Closing Date**" has the meaning set forth in Section 2(b).

"**Closing Room**" has the meaning set forth in Section 2(b).

"**Company**" has the meaning set forth in the introductory paragraph hereof.

"**Company Counsel**" has the meaning set forth in Section 3(b).

"**Commission**" has the meaning set forth in Section 4(v).

"**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.

"**EJF**" has the meaning set forth in the Recitals.

"**EJF Exchange Agreement**" means that certain Exchange Agreement, dated the date hereof by and among the Company and EJF, pursuant to which the Company agreed to exchange shares of its common stock, par value of \$0.01 per share, and certain other consideration for the EJF Holdings under the terms and conditions set forth therein.

"**EJF Holdings**" has the meaning set forth in the Recitals.

"**Equity Interests**" means with respect to any Person (a) if such a Person is a partnership, the partnership interests (general or limited) in a partnership, (b) if such Person is a limited liability company, the membership interests in a limited liability company, (c) if such Person is a corporation, the shares or stock interests (both common stock and preferred stock) in a corporation, and (d) if such person is a trust, any common or preferred securities issued by said trust.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated under it.

"**Exchange**" has the meaning set forth in Section 2(b).

"**Exchange Act**" has the meaning set forth in Section 4(j).

"**Existing Indenture**" has the meaning set forth in the Recitals.

"**Existing Indenture Trustee**" has the meaning set forth in the Recitals.

"**Fee Agreement**" means that certain Fee Agreement dated the date hereof between the Company and BNYM.

"**Financial Statements**" has the meaning set forth in Section 4(w).

"**GAAP**" has the meaning set forth in Section 4(w).

"**Governmental Entities**" has the meaning set forth in Section 4(o).

"**Governmental Licenses**" has the meaning set forth in Section 4(r).

"**Holder**" has the meaning set forth in the New Indenture.

"**Impairment**" means any claim, counterclaim, setoff, defense, action, demand, litigation (including administrative proceedings or derivative actions), encumbrance, right (including expungement, avoidance, reduction, contractual or equitable subordination, or otherwise) or defect.

"**Indemnified Party**" has the meaning set forth in Section 8(a). "**Indemnified Parties**" shall have the correlative meaning.

"**Interim Financial Statements**" means those certain unaudited consolidated financial statements (including the notes thereto) and schedules of the Company and its subsidiaries filed with the Commission for the quarterly period ended March 31, 2009 filed by the Company with the Commission in its Quarterly Report on Form 10-Q on May 11, 2009.

"**Investment Company Act**" has the meaning set forth in Section 4(j).

"**Kodiak II**" has the meaning set forth in the introductory paragraph hereof.

"**Kodiak II Holdings**" has the meaning set forth in the Recitals.

"**Kodiak Transferred Rights**" means any and all of Kodiak II's right, title, and interest in, to and under the Original Security, together with the following:

(i) the Existing Indenture and Trust Agreement;

(ii) all amounts payable to Kodiak II under the Original Security, the Existing Indenture and/or the Trust Agreement, excluding, however, amounts payable on account of interest for the period from January 30, 2009 through May 29, 2009;

(iii) all claims (including "claims" as defined in Bankruptcy Code §101(5)), suits, causes of action, and any other right of Kodiak II, whether known or unknown, against the Company or any of its Affiliates (including the Trusts), or their respective agents, representatives, contractors, advisors, directors, officers and trustees or any other entity or individual that in any way is based upon, arises out of or is related to any of the foregoing, including all claims (including contract claims, tort claims, malpractice claims, and claims under any law governing the exchange of, purchase and sale of, or indentures for, securities), suits, causes of action, and any other right of Kodiak II against any attorney, accountant, financial advisor, or other entity arising under or in connection with the Original Security, the Existing Indenture, the Trust Agreement or the transactions related thereto or contemplated thereby but, excluding the transactions contemplated under this Agreement;

(iv) all guarantees and all collateral and security of any kind for or in respect of the foregoing;

(v) all cash, securities, or other property, and all setoffs and recoupments, to be received, applied, or effected by or for the account of Kodiak II under the Original Security, other than fees, costs and expenses payable to Kodiak II hereunder and all cash, securities, interest, dividends, and other property that may be exchanged for, or distributed or collected with respect to, any of the foregoing; and

(vi) all proceeds of the foregoing.

"**Lien**" has the meaning set forth in Section 4(o).

"**Material Adverse Effect**" means a material adverse effect on or change in the condition (financial or otherwise), earnings, business, liabilities or assets of the Company and its subsidiaries taken as a whole.

"**New Indenture**" has the meaning set forth in the Recitals.

"**New Indenture Trustee**" has the meaning set forth in the Recitals.

"**Note 1**" has the meaning set forth in the Recitals.

"**Note 2**" has the meaning set forth in the Recitals.

"**Original Security**" has the meaning set forth in the Recitals.

"**Person**" means a legal person, including any individual, corporation, estate, partnership, joint venture, association, joint stock company, company, limited liability company, trust, unincorporated association, or government or any agency or political subdivision thereof, or any other entity of whatever nature.

"**Regulation D**" means Regulation D under the Securities Act.

"**REIT**" has the meaning set forth in Section 4(dd).

"**Repayment Event**" has the meaning set forth in Section 4(o).

"**Rule 144A(d)(3)**" has the meaning set forth in Section 4(j).

"**Securities**" has the meaning set forth in the Recitals.

"**Securities Act**" means the Securities Act of 1933, 15 U.S.C. §§77a et seq., as amended, and the rules and regulations promulgated under it.

"**Significant Subsidiary**" means any significant subsidiary of the Company within the definition of such term in Regulation S-X. "**Significant Subsidiaries**" means, collectively, each and every Significant Subsidiary.

"**Subordinated Note**" has the meaning set forth in the Recitals.

"**Taberna**" has the meaning set forth in the introductory paragraph hereof.

"**Taberna IX**" has the meaning set forth in the introductory paragraph hereof.

"**Taberna IX Holdings**" has the meaning set forth in the Recitals.

"**Taberna/Kodiak Holdings**" has the meaning set forth in the Recitals.

"**Taberna Transferred Rights**" means any and all of Taberna IX's right, title, and interest in, to and under the Original Security, together with the following:

(i) the Existing Indenture and Trust Agreement;

(ii) all amounts payable to Taberna IX under the Original Security, the Existing Indenture and/or the Trust Agreement, excluding, however, amounts payable on account of interest for the period from January 30, 2009 through May 29, 2009;

(iii) all claims (including "claims" as defined in Bankruptcy Code §101(5)), suits, causes of action, and any other right of Taberna IX, whether known or unknown, against the Company or any of its Affiliates (including the Trusts), or their respective agents, representatives, contractors, advisors, directors, officers and trustees or any other entity or individual that in any way is based upon, arises out of or is related to any of the foregoing, including all claims (including contract claims, tort claims, malpractice claims, and claims under any law governing the exchange of, purchase and sale of, or indentures for, securities), suits, causes of action, and any other right of Taberna IX against any attorney, accountant, financial advisor, or other entity arising under or in connection with the Original Security, the Existing Indenture, the Trust Agreement or the transactions related thereto or contemplated thereby but, excluding the transactions contemplated under this Agreement;

(iv) all guarantees and all collateral and security of any kind for or in respect of the foregoing;

(v) all cash, securities, or other property, and all setoffs and recoupments, to be received, applied, or effected by or for the account of Taberna IX under the Original Security, other than fees, costs and expenses payable to Taberna IX hereunder and all cash, securities, interest, dividends, and other property that may be exchanged for, or distributed or collected with respect to, any of the foregoing; and

(vi) all proceeds of the foregoing.

"**Tax Returns**" has the meaning set forth in Section 4(ee).

"**Trust I**" has the meaning set forth in the Recitals.

"**Trust Agreement**" has the meaning set forth in the Recitals.

2. Exchange of Taberna/Kodiak Holdings for the Securities.

(a) The Company agrees to issue the Securities in accordance with the New Indenture and has requested that each of Taberna IX and Kodiak II accept the applicable Securities in exchange for the respective Taberna/Kodiak Holdings, and each of Taberna IX and Kodiak II, respectively, hereby accepts the respective Securities in exchange for the applicable Taberna/Kodiak Holdings upon the terms and conditions set forth herein.

(b) The closing of the exchange contemplated herein shall occur at the offices of Nixon Peabody, LLP in New York, New York (the "**Closing Room**"), or such other place as the parties hereto and BNYM shall agree, at 11:00 a.m. New York time, on May 29, 2009 (such date and time of delivery the "**Closing Date**"). The Company and each of Taberna IX and Kodiak II hereby agrees that the exchange (the "**Exchange**") will occur in accordance with the following requirements:

(i) Taberna Capital Management, LLC (as collateral manager for Taberna IX) and Kodiak CDO Management, LLC (as collateral manager for Kodiak II) shall each have delivered an issuer order instructing each trustee (in each such capacity, a "**CDO Trustee**") under the applicable indenture pursuant to which such CDO Trustee serves as trustee for the holders of the Original Security to exchange the applicable Taberna/Kodiak Holdings for the applicable Securities.

(ii) The Company shall have executed and delivered the Securities to the Closing Room, copies of which Securities shall have previously been made available for inspection, if so requested.

(iii) The Company shall have directed the New Indenture Trustee to authenticate the Securities and deliver them to the applicable CDO Trustee, as follows: (i) Note 1 to Taberna IX and (ii) Note 2 to Kodiak II.

(iv) The New Indenture Trustee shall have authenticated the Securities in accordance with the terms of the New Indenture and delivered them as provided above.

(v) Intentionally Omitted.

(vi) Simultaneously with the occurrence of the events described in subsection (iv) hereof, (A) each of Taberna IX and Kodiak II Holdings irrevocably transfers, assigns, grants and conveys the related Taberna Transferred Rights or Kodiak Transferred Rights, as applicable, to the Company and the Company assumes all rights and obligations of Taberna IX and Kodiak II with respect to the Taberna IX and Kodiak II's respective interests in the Original Security, the Taberna Transferred Rights and the Kodiak Transferred Rights and (B) each Holder shall be entitled to all of the right, title and interest of a Holder of the Securities under the terms of the Securities, the New Indenture and this Agreement.

(vii) the Company shall have paid to the BNYM such party's legal fees, costs and other expenses in connection with the Exchange as specified in the Fee Agreement, as well as all other accrued and unpaid fees, costs and expenses under the Existing Indenture and the Trust Agreement, if any.

(viii) The Company shall have paid to the Trustee, for application upon the Subordinated Note and corresponding application upon Taberna/Kodiak Holdings and for distribution to Taberna IX and Kodiak II with respect to such respective Taberna/Kodiak Holdings pursuant to the terms of the Existing Indenture, and in satisfaction in full of its interest payment obligations to Taberna IX and Kodiak II with respect to the Taberna/Kodiak Holdings, all accrued interest upon the Subordinated Note and corresponding interest for application upon the Taberna/Kodiak Holdings for the period commencing on January 30, 2009 under the Original Security and continuing through and including May 29, 2009, *provided*, that the Company and Taberna IX and Kodiak II agree that the amount of interest payable for such period with respect to the Original Security shall be based upon (i) an interest rate equal to one-half of one percent (0.50%) per annum and (ii) an outstanding aggregate liquidation amount of Taberna/Kodiak Holdings of \$70,312,500.

(ix) The Operative Documents and a Joint Direction and Release by and among the Company, each of Taberna IX and Kodiak II, as applicable, and the Trustee shall have been fully executed and originals thereof delivered to the Closing Room for release upon the Closing Date.

3. **Conditions Precedent.** The obligations of the parties under this Agreement are subject to the following conditions precedent:

(a) The representations and warranties contained herein shall be accurate as of the date of delivery of the Securities and the parties shall be prepared to complete all actions and consummate the Exchange as set forth in Section 2(b).

(b) Skadden, Arps, Slate, Meagher & Flom LLP, special counsel for the Company, and DLA Piper LLP (US), special Maryland counsel for the Company (the "**Company Counsel**"), shall have delivered one or more opinions, dated the Closing Date, addressed to each Holder and its successors and assigns and to the New Indenture Trustee, in substantially the form set out in Annex A hereto. In rendering its opinion, the Company Counsel may rely as to factual matters upon certificates or other documents furnished by officers, directors and trustees of the Company and by government officials; *provided, however*, that copies of any such certificates or documents are delivered to the Holders and by and upon such other documents as such counsel may, in its reasonable opinion, deem appropriate as a basis for Company Counsel's opinion or opinions. Company Counsel may specify the relevant jurisdiction or jurisdictions in which it is admitted to practice and that it is not admitted to practice in any other jurisdiction and is not an expert in the law of any other jurisdiction. Such Company Counsel Opinion shall not state that it is to be governed or qualified by, or that it is otherwise subject to, any treatise, written policy or other document relating to legal opinions, including, without limitation, the Legal Opinion Accord of the ABA Section of Business Law (1991).

(c) Taberna IX and Kodiak II shall have been furnished the opinion of Company Counsel, dated as of the Closing Date, addressed to Taberna IX, Kodiak II and their respective successors and assigns (excluding the Company, its subsidiaries and/or its Affiliates) and the New Indenture Trustee, in substantially the form set out in Annex B hereto.

(d) Taberna IX and Kodiak II shall have received the opinion of Gardere Wynne Sewell LLP, special counsel for the New Indenture Trustee, dated as of the Closing Date, addressed to Taberna IX and Kodiak II, in substantially the form set out in Annex C hereto.

(e) The Company shall have furnished to Taberna IX and Kodiak II a certificate of the Company, signed by the Chief Executive Officer, President or an Executive Vice President, and Chief Financial Officer, Treasurer or Assistant Treasurer of the Company, dated as of the Closing Date, as to (i) and (ii) below:

- (i) the representations and warranties in this Agreement and the New Indenture are true and correct on and as of the Closing Date, and the Company has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied at or prior to the Closing Date; and
- (ii) since the date of the Interim Financial Statements, there has been no Material Adverse Effect, other than as disclosed to Taberna IX and Kodiak II.

If any of the conditions specified in this Section 3 shall not have been fulfilled when and as provided in this Agreement, or if any of the opinions, certificates and documents mentioned above or elsewhere in this Agreement shall not be reasonably satisfactory in form and substance to the Holders of the Securities or their counsel, this Agreement and any respective obligations of Taberna IX and Kodiak II hereunder, whether as holders of the Taberna/Kodiak Holdings or as prospective Holders of the Securities, may be canceled at, or at any time prior to, the Closing Date by Taberna IX and Kodiak II. Notice of such cancellation shall be given to the Company in writing or by e-mail or facsimile.

Each certificate signed by any officer of the Company and delivered in connection with the Operative Documents and the transactions contemplated hereby and thereby shall be deemed to be a representation and warranty of the Company and not by such officer in any individual capacity.

4. Representations and Warranties of the Company. The Company represents and warrants as of the date hereof, as follows:

(a) It (i) is duly incorporated and validly existing under the laws of the State of Maryland, (ii) is in good standing under such laws and (iii) has full power and authority to execute, deliver and perform its obligations under this Agreement and the other Operative Documents.

(b) It is an "accredited investor" as defined in Rule 501 under the Securities Act. Without characterizing the Original Security, any of the Taberna Transferred Rights or any of the Kodiak Transferred Rights as a "security" within the meaning of applicable securities laws, it is not acquiring the Taberna/Kodiak Holdings, any holdings under the Original Security, the Taberna Transferred Rights, the Kodiak Transferred Rights, or any other rights, under the Original Security, the Existing Indenture or the Trust Agreement with a view towards the sale or distribution thereof in violation of the Securities Act.

(c) None of the Securities, the New Indenture, or the Exchange is or may be subject to any Impairment. The Company has no current intention to initiate any bankruptcy or insolvency proceedings. The Company (i) has not entered into the Exchange or any Operative Documents with the actual intent to hinder, delay, or defraud any creditor and (ii) received reasonably equivalent value in exchange for its obligations under the Operative Documents.

(d) Reserved.

(e) It (i) is a sophisticated entity with respect to the Exchange, (ii) has such knowledge and experience, and has made investments of a similar nature, so as to be aware of the risks and uncertainties inherent in the Exchange and (iii) has independently and without reliance upon Taberna IX, Kodiak II, any Holder of the Securities, Taberna Capital Management, LLC, Kodiak CDO Management, LLC, BNYM or any of their respective affiliates, and based on such information as it has deemed appropriate, made its own analysis and decision to enter into this Agreement, except that it has relied upon Taberna IX and Kodiak II's express representations, warranties, covenants and agreements in this Agreement. The Company acknowledges that none of Taberna IX, Kodiak II, any Holders of the Securities, Taberna Capital Management, LLC, Kodiak CDO Management, LLC, BNYM or any of their respective affiliates has given it any investment advice, credit information or opinion on whether the Exchange is prudent.

(f) It has not engaged any broker, finder or other entity acting under the authority of it or any of its affiliates that is entitled to any broker's commission or other fee in connection with the transaction for which Taberna IX, Kodiak II, any Holder, BNYM or any of their respective affiliates could be responsible.

(g) No interest in the Taberna Transferred Rights or the Kodiak Transferred Rights is being acquired by or on behalf of an entity that is, or at any time while the Taberna Transferred Rights or the Kodiak Transferred Rights are held thereby will be, one or more Benefit Plans.

(h) Neither the Company nor any of its Affiliates nor any person acting on its or their behalf, has, directly or indirectly, made offers or sales of any security, or solicited offers to buy any security, under circumstances that would require the registration of any of the Securities under the Securities Act.

(i) Intentionally omitted.

(j) The Securities (i) are not and have not been listed on a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), or quoted on a U.S. inter-dealer quotation system and (ii) are not of an open-end investment company, unit investment trust or face-amount certificate company that are, or are required to be, registered under Section 8 of the Investment Company Act of 1940, as amended (the "**Investment Company Act**"), and the Securities otherwise satisfy the eligibility requirements of Rule 144A(d)(3) promulgated pursuant to the Securities Act ("**Rule 144A(d)(3)**").

(k) Neither the Company nor any of its Affiliates, nor any person acting on its or their behalf, has engaged, or will engage, in any "directed selling efforts" within the meaning of Regulation S under the Securities Act with respect to the Securities.

(l) The Company is not, and immediately following consummation of the transactions contemplated hereby, will not be, an "investment company" or an entity "controlled" by an "investment company," in each case within the meaning of Section 3(a) of the Investment Company Act.

(m) Each of this Agreement and the New Indenture and the consummation of the transactions contemplated herein and therein have been duly authorized by the Company and, on the Closing Date, will have been duly executed and delivered by the Company, and, assuming due authorization, execution and delivery by Taberna IX, Kodiak II and/or the New Indenture Trustee, as applicable, will be a legal, valid and binding obligations of the Company enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and to general principles of equity.

(n) The Securities have been duly authorized by the Company and, on the Closing Date, will have been duly executed and delivered to the New Indenture Trustee for authentication in accordance with the New Indenture and, when authenticated in the manner provided for in the New Indenture and delivered to the Holders, will constitute legal, valid and binding obligations of the Company entitled to the benefits of the New Indenture, enforceable against the Company in accordance with their terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and to general principles of equity.

(o) Neither the issue of the Securities and exchange of the Securities for the Taberna/Kodiak Holdings, the Taberna Transferred Rights' and the Kodiak Transferred Rights, nor the execution and delivery of and compliance with the Operative Documents by the Company, nor the consummation of the transactions contemplated herein or therein or in the EJV Exchange Agreement, (i) will conflict with or constitute a violation or breach of (x) the charter or bylaws or similar organizational documents of the Company or any Significant Subsidiary of the Company or (y) any applicable law, statute, rule, regulation, judgment, order, writ or decree of any government, governmental authority, agency or instrumentality or court, domestic or foreign, having jurisdiction over the Company or any of its subsidiaries or their respective properties or assets (collectively, the "**Governmental Entities**"), (ii) will conflict with or constitute a violation or breach of, or a default or Repayment Event under, or result in the creation or imposition of any pledge, security interest, claim, lien or other encumbrance of any kind (each, a "**Lien**") upon any property or assets of the Company or any if its Significant Subsidiaries pursuant to any contract, indenture, mortgage, loan agreement, note, lease or other agreement or instrument to which (A) the Company or any of its Significant Subsidiaries is a party or by which it or any of them may be bound, or (B) to which any of the property or assets of any of them is subject, or any judgment, order or decree of any Governmental Entity or arbitrator having jurisdiction over the Company or any of its subsidiaries or their respective properties or assets (an "**Arbitrator**"), or (iii) will require the consent, approval, authorization or order of any court or Governmental Entity, except, in the case of clause (i)(y), (ii), or (iii) for such conflicts, breaches, violations, defaults, Repayment Events (as defined below) or Liens

which (X) would not, singly or in the aggregate, adversely affect the consummation of the transactions contemplated by the Operative Documents and (Y) would not, singly or in the aggregate, have a Material Adverse Effect. As used herein, a "**Repayment Event**" means any event or condition which gives the holder of any note, debenture or other evidence of indebtedness (or any person acting on such holder's behalf) the right to require the repurchase, redemption or repayment of all or a portion of such indebtedness by the Company or any of its Significant Subsidiaries prior to its scheduled maturity.

(p) The Company has all requisite power and authority to own, lease and operate its assets and conduct the business it transacts and proposes to transact, and is duly qualified to transact business and is in good standing in each jurisdiction where the nature of its activities requires such qualification, except where the failure of the Company to have such power and authority or to be so qualified would not, singly or in the aggregate, have a Material Adverse Effect.

(q) Each Significant Subsidiary of the Company is listed on Schedule 1 attached hereto, which the Company represents is true, complete and correct. Each Significant Subsidiary is a corporation, trust, partnership or limited liability company duly and properly incorporated or organized or formed, as the case may be, validly existing and, with respect to any such corporation, in good standing under the laws of the jurisdiction in which it is chartered or organized or formed, with all requisite power and authority to own, lease and operate its properties and conduct the business it transacts. Each Significant Subsidiary is duly qualified to transact business in each jurisdiction where the nature of its activities requires such qualification, except where the failure to be so qualified would not, singly or in the aggregate, have a Material Adverse Effect. No Significant Subsidiary of the Company (other than a taxable REIT subsidiary, if any,) is currently prohibited, directly or indirectly, under any agreement or other instrument to which it is a party or to which it or its assets is subject, other than as required by applicable law, from paying any dividends to the Company, from making any other distribution on such Significant Subsidiary's capital stock or other Equity Interests, from repaying to the Company any loans or advances to such Significant Subsidiary from the Company or from transferring any of such Significant Subsidiary's wholly owned properties or assets to the Company or any other subsidiary of the Company except as disclosed to Taberna IX and Kodiak II in writing or in the Company's public filings.

(r) The Company and each of the Company's subsidiaries hold all necessary approvals, authorizations, orders, licenses, consents, registrations, qualifications, certificates and permits (collectively, the "**Governmental Licenses**") of and from Governmental Entities necessary to conduct their respective businesses as now being conducted, and neither the Company nor any of its subsidiaries has received any notice of proceedings relating to the revocation or modification of any such Government License, except where the failure to be so licensed or approved or the receipt of an unfavorable decision, ruling or finding, would not, singly or in the aggregate, have a Material Adverse Effect; all of the Governmental Licenses are valid and in full force and effect, except where the invalidity or the failure of such Governmental Licenses to be in full force and effect, would not, singly or in the aggregate, have a Material Adverse Effect; and the Company and its subsidiaries are in compliance with all applicable laws, rules, regulations, judgments, orders, decrees and consents, except where the failure to be in compliance would not, singly or in the aggregate, have a Material Adverse Effect.

(s) All of the issued and outstanding Equity Interests of the Company and each of its Significant Subsidiaries are validly issued, fully paid and non-assessable; all of the issued and outstanding Equity Interests of each subsidiary of the Company that are owned by the Company, directly or through subsidiaries, are free and clear of any Lien or claim; and none of the issued and outstanding Equity Interests of the Company or any of its subsidiaries was issued in violation of any preemptive or similar rights arising by operation of law, under the charter or by-laws of such entity or under any agreement to which the Company or any of its subsidiaries is a party.

(t) Neither the Company nor any of its subsidiaries is (i) in violation of its respective charter or by-laws or similar organizational documents or (ii) in default in the performance or observance of any obligation, agreement, covenant or condition contained in any contract, indenture, mortgage, loan agreement, note, lease or other agreement or instrument to which the Company or any such Significant Subsidiary is a party or by which it or any of them may be bound or to which any of the property or assets of any of them is subject, except, in the case of clause (ii), where such violation or default would not, singly or in the aggregate, have a Material Adverse Effect.

(u) There is no action, suit or proceeding before or by any Governmental Entity or Arbitrator, now pending or, to the knowledge of the Company after due inquiry, threatened against or affecting the Company or any of its subsidiaries, except for such actions, suits or proceedings as are disclosed in the Company's 1934 Act Reports, or that, if adversely determined, would not, singly or in the aggregate, adversely affect the consummation of the transactions contemplated by the Operative Documents or have a Material Adverse Effect; and, except as disclosed in the Company's 1934 Act Reports, the aggregate of all pending legal or governmental proceedings to which the Company or any of its subsidiaries is a party or of which any of their respective properties or assets is subject, including ordinary routine litigation incidental to the business, are not expected to result in a Material Adverse Effect.

(v) The accountants of the Company who certified the Financial Statements (defined below) are independent public accountants of the Company and its subsidiaries within the meaning of the Securities Act, and the rules and regulations of the Securities and Exchange Commission (the "**Commission**") thereunder.

(w) The audited consolidated financial statements (including the notes thereto) and schedules of the Company and its consolidated subsidiaries for the fiscal year ended December 31, 2008 (the "**Financial Statements**") filed by the Company with the Commission in its Annual Report on Form 10-K and the Interim Financial Statements are the most recent available audited and unaudited, respectively, consolidated financial statements of the Company and its consolidated subsidiaries, respectively, and fairly present in all material respects, in accordance with U.S. generally accepted accounting principles ("**GAAP**"), subject to Schedule 3, the financial position of the Company and its consolidated subsidiaries, and the results of operations and changes in financial condition as of the dates and for the periods therein specified. Such consolidated financial statements and schedules have been prepared in accordance with GAAP consistently applied throughout the periods involved (except as otherwise noted therein).

(x) Neither the Company nor any of its subsidiaries has any material liability, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due, including any liability for taxes and the Company has not received written notice of any action, suit, proceeding, hearing, charge, complaint, claim or demand against the Company or any of its subsidiaries that could give rise to any such liability, except for (i) liabilities set forth in the Financial Statements or the Interim Financial Statements and (ii) normal fluctuations in the amount of the liabilities referred to in clause (i) above occurring in the ordinary course of business of the Company and all of its subsidiaries since the date of the most recent balance sheet included in such Financial Statements, and (iii) liabilities that would not, singly or in the aggregate, have a Material Adverse Effect.

(y) Since the date of the Interim Financial Statements, there has not been (A) any Material Adverse Effect, other than as disclosed to Taberna IX and Kodiak II or (B) any dividend or distribution of any kind declared, paid or made by the Company on any class of its Equity Interests.

(z) The documents and reports of the Company filed with the Commission in accordance with the Exchange Act, from and including the commencement of the fiscal year covered by the Company's most recent Annual Report on Form 10-K, at the time they were filed by the Company with the Commission (collectively, the "**1934 Act Reports**"), complied in all material respects with the requirements of the Exchange Act and the rules and regulations of the Commission thereunder (the "**1934 Act Regulations**"), and, did not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. The Company has filed all reports required to be filed by it under the Exchange Act, including pursuant to Section 13(a) or 15(d) thereof, since January 1, 2005; and has filed all such reports on a timely basis or has received a valid extension of such time of filing and has filed any such reports prior to the expiration of any such extension.

(aa) None of the Company or any of its Significant Subsidiaries has any employees.

(bb) No filing with, or authorization, approval, consent, license, order, registration, qualification or decree of, any Governmental Entity, other than those that have been made or obtained, is necessary or required for the performance by the Company of its obligations under the Operative Documents, as applicable, or the consummation by the Company of the transactions contemplated by the Operative Documents.

(cc) The Company and each of its Significant Subsidiaries has good and valid title to all of its respective real and personal property, in each case free and clear of all Liens and defects, except for Liens for Taxes not yet due or payable and those Liens securing debt in the ordinary course of its business and that would not, singly or in the aggregate, have a Material Adverse Effect; and all of the leases and subleases under which the Company or any of its Significant Subsidiaries holds properties are in full force and effect, except where the failure of such leases and subleases to be in full force and effect would not, singly or in the aggregate, have a Material Adverse Effect, and neither the Company nor any of its Significant Subsidiaries has

any notice of any claim of any sort that has been asserted by anyone adverse to the rights of the Company or any Significant Subsidiary under any such leases or subleases, or affecting or questioning the rights of such entity to the continued possession of the leased or subleased premises under any such lease or sublease, except for such claims that would not, singly or in the aggregate, have a Material Adverse Effect.

(dd) Commencing with its taxable year ended December 31, 2004, the Company has been, and upon the completion of the transactions contemplated hereby, the Company will continue to be, organized and operated in conformity with the requirements for qualification and taxation as a real estate investment trust (a "**REIT**") under Sections 856 through 860 of the Internal Revenue Code of 1986, as amended (the "**Code**") for so long as the judgment of the Company's Board of Directors is that the Company should maintain its status as a REIT, and no actions have been taken (or not taken which are required to be taken) which would cause such qualification to be lost. The Company expects to continue to be organized and to operate in a manner so as to qualify as a REIT in the taxable year ending December 31, 2009 and succeeding taxable years for so long as the judgment of the Company's Board of Directors is that the Company should maintain its status as a REIT.

(ee) The Company and each Significant Subsidiary has timely and duly filed (or filed extensions thereof (and which extensions are presently in effect)) all material Tax Returns (as defined below) required to be filed by them, and all such Tax Returns are true, correct and complete in all material respects. The Company and each Significant Subsidiary has timely and duly paid in full all material Taxes (as defined below) required to be paid by them (whether or not such amounts are shown as due on any Tax Return). There are no federal, state, or other Tax audits or deficiency assessments proposed in writing or pending with respect to the Company or any Significant Subsidiary, and no such audits or assessments are threatened in writing to the Company. As used herein, the terms "*Tax*" or "*Taxes*" mean (i) all federal, state, local, and foreign taxes, and other assessments of a similar nature (whether imposed directly or through withholding), including any interest, additions to tax, or penalties applicable thereto, imposed by any Governmental Entity, and (ii) all liabilities in respect of such amounts arising as a result of being a member of any affiliated, consolidated, combined, unitary or similar group, as a successor to another person or by contract. As used herein, the term "Tax Returns" means all federal, state, local, and foreign Tax returns, declarations, statements, reports, schedules, forms, and information returns and any amendments thereto filed or required to be filed with any Governmental Entity.

(ff) To the knowledge of the Company, interest payable by the Company on the Securities is deductible by the Company for United States Federal income Tax purposes and there are no rulemaking or similar proceedings before the U.S. Internal Revenue Service or comparable federal, state, local or foreign government bodies which involve or, to the knowledge of the Company, affect the Company or any subsidiary, which, if the subject of an action unfavorable to the Company or any subsidiary, could result in a Material Adverse Effect.

(gg) The books, records and accounts of the Company and its Significant Subsidiaries accurately and fairly reflect, in reasonable detail, the transactions in, and dispositions of, the assets of, and the results of operations of, the Company and its subsidiaries. The Company and each of its subsidiaries maintains a system of internal accounting controls

sufficient to provide reasonable assurance regarding the Company and each of its consolidated subsidiaries that (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP and to maintain asset accountability, and (iii) access to assets is permitted only in accordance with management's general or specific authorization.

(hh) The Company and its Significant Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts in all material respects as are customary in the businesses in which they are engaged (the ownership of commercial real estate related loans and securities) after giving effect to the transactions contemplated hereby. All policies of insurance insuring the Company or any of its Significant Subsidiaries' respective businesses, assets, employees, officers and directors are in full force and effect. The Company and each of the Significant Subsidiaries are in compliance with the terms of such policies and instruments in all material respects. Neither the Company nor any Significant Subsidiary has reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be available and necessary to continue its business at a cost that would not have a Material Adverse Effect, except (i) for such failures to renew or obtain such insurance coverage due to conditions then applicable to the insurance industry or the commercial mortgage REIT industry in general, and (ii) that the Company is currently in renewal discussions with the provider of its directors' and officers' insurance policy, which may result in reduced coverage levels for the Company and its directors and officers thereunder, as a result of significant premium increases relative to historical pricing and coverage levels. Within the past twelve months, neither the Company nor any Significant Subsidiary has been denied any insurance coverage it has sought or for which it has applied, except that one of its current insurers would not provide Clause B or C coverage (though they would still provide Clause A coverage) with respect to the excess layer of Directors & Officers Liability insurance coverage (i.e., providing coverage between \$10 million and \$20 million) that it has historically provided to the Company.

(ii) Neither the Company and its Significant Subsidiaries, nor, to the knowledge of the Company, any person acting on behalf of the Company and/or its Significant Subsidiaries including, without limitation, any director, officer, manager, agent or employee of the Company or its Significant Subsidiaries has, directly or indirectly, while acting on behalf of the Company and/or its Significant Subsidiaries (i) used any corporate, partnership or company funds for unlawful contributions, gifts, entertainment or other unlawful expenses relating to political activity; (ii) made any unlawful payment to foreign or domestic government officials or employees or to foreign or domestic political parties or campaigns from corporate, partnership or company funds; (iii) violated any provision of the Foreign Corrupt Practices Act of 1977, as amended; or (iv) made any other unlawful payment.

(jj) The information provided by the Company pursuant to the Operative Documents does not, as of the date hereof, and will not as of the Closing Date, contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(kk) None of the Company or any of its Significant Subsidiaries owns any real property.

(ll) Intentionally Omitted.

Except as expressly stated in the Operative Documents or any of the other documents delivered by the company in connection herewith, the Company makes no representations or warranties, express or implied, with respect to the Exchange, the Taberna Transferred Rights, the Original Security, the Existing Indenture or any other matter.

5. Representations and Warranties of Taberna IX and Kodiak II, Respectively. Each of Taberna IX and Kodiak II, for itself, represents and warrants to the Company as follows:

(a) It is a company duly formed, validly existing and in good standing under the laws of the jurisdiction in which it is organized with all requisite (i) power and authority to execute, deliver and perform under Operative Documents to which it is a party, to make the representations and warranties specified herein and therein and to consummate the transactions contemplated in the Operative Documents.

(b) This Agreement and the consummation of the transactions contemplated herein has been duly authorized by it and, on the Closing Date, will have been duly executed and delivered by it and, assuming due authorization, execution and delivery by the Company and Trustee of the Operative Documents to which each is a party, will be a legal, valid and binding obligation of such entity, enforceable against such entity in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and to general principles of equity.

(c) No filing with, or authorization, approval, consent, license, order registration, qualification or decree of, any Governmental Entity or any other Person, other than those that have been made or obtained, is necessary or required for the performance by such entity of its respective obligations under this Agreement or to consummate the transactions contemplated herein. Neither the execution and delivery of this Agreement, nor the transactions contemplated herein, will conflict with or result in any violation of (i) any provision of the organizational documents of such entity or (ii) any statute, law, rule or regulation applicable to such entity.

(d) Taberna IX is the legal and beneficial owner of the Taberna IX Holdings and the related Taberna Transferred Rights and shall deliver the Taberna IX Holdings free and clear of any Lien created by such entity. Kodiak II is the legal and beneficial owner of the Kodiak II Holdings and the related Kodiak Transferred Rights and shall deliver the Kodiak II Holdings free and clear of any Lien created by such entity.

(e) There is no action, suit or proceeding before or by any Governmental Entity, arbitrator or court, domestic or foreign, now pending or, to its knowledge, threatened against or affecting it, except for such actions, suits or proceedings that, if adversely determined, would not, singly or in the aggregate, adversely affect the consummation of the transactions contemplated by the Operative Documents.

(f) Intentionally omitted.

(g) It is aware that the Securities have not been and will not be registered under the Securities Act and may not be offered or sold within the United States or to "U.S. persons" (as defined in Regulation S under the Securities Act) unless registered with the Commission, except in accordance with Rule 903 of Regulation S under the Securities Act or pursuant to an exemption from the registration requirements of the Securities Act.

(h) It is an "accredited investor," as such term is defined in Rule 501(a) of Regulation D under the Securities Act and was not organized for the purpose of acquiring any of the Securities. Without characterizing the Original Security, the Taberna IX Holdings and the Taberna Transferred Rights, or the Kodiak II Holdings and the Kodiak Transferred Rights as a "security" within the meaning of applicable securities laws, it has not made any offers to sell, or solicitations of any offers to buy, all or any portion of the Original Security, the Taberna IX Holdings, Taberna Transferred Rights, Kodiak II Holdings, or Kodiak Transferred Rights in violation of any applicable securities laws.

(i) Neither it nor any of its Affiliates, nor any person acting on its or its Affiliates' behalf, has engaged, or will engage, any form of "general solicitation or general advertising" (within the meaning of Regulation D) in connection with any offer or sale of the Securities.

(j) It understands and acknowledges that (i) no public market exists for any of the Securities and that it is unlikely that a public market will ever exist for the Securities, (ii) such Holder is purchasing the Securities for its own account, for investment and not with a view to, or for offer or sale in connection with, any fractionalization, division or distribution thereof in violation of the Securities Act or other applicable securities laws, subject to any requirement of law that the disposition of its property be at all times within its control and subject to its ability to resell such Securities pursuant to an effective registration statement under the Securities Act or pursuant to an exemption therefrom or in a transaction not subject thereto, and it agrees to the legends and transfer restrictions applicable to the Securities contained in the New Indenture, and (iii) it has had the opportunity to ask questions of, and receive answers and request additional information from, the Company and is aware that it may be required to bear the economic risk of an investment in the Securities. It has not received and is not relying on any representations of the Company other than as set forth in the Operative Documents, or in any public filings. It has not entered into any contract to sell, transfer or pledge to any person the Securities that it is acquiring.

(k) It has not engaged any broker, finder or other entity acting under its authority that is entitled to any broker's commission or other fee in connection with this Agreement and the consummation of transactions contemplated in this Agreement and the New Indenture for which the Company could be responsible.

(l) It (i) is a sophisticated entity with respect to the Exchange, (ii) has such knowledge and experience, and has made investments of a similar nature, so as to be aware of the risks and uncertainties inherent in the Exchange and (iii) has independently and without reliance upon the Company or any of their affiliates, and based on such information as it has

deemed appropriate, made its own analysis and decision to enter into this Agreement, except that it has relied upon the Company's express representations, warranties, covenants and agreements in the Operative Documents and the other documents delivered by the Company in connection therewith. It acknowledges that the Company has not given it any investment advice or opinion on whether the Exchange is prudent.

(m) It understands that the Exchange contemplated herein will be made in reliance upon an exemption from registration under the Securities Act pursuant to Section 4(2) thereof.

Except as expressly stated in this Agreement, neither Taberna IX nor Kodiak II makes any representations or warranties, express or implied, with respect to the Exchange, the Taberna IX Holdings, the Kodiak II Holdings, the Taberna Transferred Rights, the Kodiak Transferred Rights, the Original Security, the Existing Indenture, or any other matter.

6. Covenants and Agreements of the Company.

(a) The Company has taken all action reasonably necessary or appropriate to cause its representations and warranties contained in Section 4 hereof to be true as of the Closing Date and giving effect to the Exchange.

(b) The Company will use commercially reasonable efforts to arrange for the qualification of the Securities for sale under the laws of such jurisdictions as the Holders of the Securities may designate and will maintain such qualifications in effect so long as required for the sale of the Securities; provided that the Company shall not be required to qualify as a foreign corporation or take any action that would subject it to general service of process in any jurisdiction where it is not presently qualified or where it would be subject to taxation as a foreign corporation. The Company will promptly advise the Holders of the Securities of the receipt by the Company of any notification with respect to the suspension of the qualification of the Securities for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose.

(c) Reserved.

(d) The Company will use its reasonable best efforts to continue to meet the requirements to qualify as a REIT under sections 856 through 860 of the Code, effective for the taxable year ending December 31, 2009 (and each fiscal quarter of such year) and succeeding taxable years for so long as the judgment of the Company's Board of Directors is that the Company should maintain its status as a REIT.

(e) The Company will not, and will not permit any of its Affiliates or any person acting on its or their behalf to, directly or indirectly, make offers or sales of any security, or solicit offers to buy any security, under circumstances that would require the registration of any of the Securities under the Securities Act, except in accordance with the terms of the Registration Rights Agreement.

(f) The Company will not, and will not permit any of its Affiliates or any person acting on its or their behalf to, engage in (i) any form of "general solicitation or general

advertising" (within the meaning of Regulation D), or (ii) any "directed selling efforts" within the meaning of Regulation S under the Securities Act, in connection with any offer or sale of the any of the Securities.

(g) So long as any of the Securities are outstanding, (i) the Securities shall not be listed on a national securities exchange registered under Section 6 of the Exchange Act or quoted in a U.S. automated inter-dealer quotation system and (ii) the Company shall not be an open-end investment company, unit investment trust or face-amount certificate company that is, or is required to be, registered under Section 8 of the Investment Company Act, and, the Securities shall otherwise satisfy the eligibility requirements of Rule 144A(d)(3).

(h) Intentionally omitted.

(i) The Company will, during any period in which it is not subject to and in compliance with Section 13 or 15(d) of the Exchange Act, or it is not exempt from such reporting requirements pursuant to and in compliance with Rule 12g3-2(b) under the Exchange Act, provide to each Holder of the Securities, upon the request of such Holder, any information required to be provided by Rule 144A(d)(4) under the Securities Act. This covenant is intended to be for the benefit of the Holders of the Securities.

(j) The Company will not, until one hundred eighty (180) days following the Closing Date, without the Holders' prior written consent, except in accordance with the terms of the Registration Rights Agreement, offer, sell, contract to sell, grant any option to purchase or otherwise dispose of, directly or indirectly, in any offering registered with the Commission (i) any Securities or other securities substantially similar to the Securities other than as expressly contemplated by the New Indenture, if at all, or (ii) any other securities convertible into, or exercisable or exchangeable for, any of the Securities or other securities substantially similar to the Securities unless in either case the Company, either on its own or upon the request of the Holders provides the Holders with an opinion of counsel (such counsel to have experience and sophistication in the matters addressed in such opinion) addressed to the Holders stating that any such offer, sale, contract, option or other disposition will not result in the Securities being required to be registered under the Securities Act.

(k) The Company will not identify any of the Indemnified Parties (as defined below) in a press release or any other public statement without the prior written consent of such Indemnified Party, unless such identification is required by law.

7. Payment of Expenses. The Company agrees to pay all obligations under Section 2(b)(vii) herein and all costs and expenses of the Company incident to the performance of the obligations of the Company under this Agreement, whether or not the transactions contemplated herein are consummated or this Agreement is terminated, including all costs and expenses of the Company incident to (i) the authorization, issuance, sale and delivery of the Securities and any taxes payable in connection therewith; (ii) the fees and expenses of counsel, accountants and any other experts or advisors retained by the Company; and (iv) the fees and all reasonable expenses of the New Indenture Trustee and any other trustee or paying agent appointed under the Operative Documents, including the fees and disbursements of counsel for such trustees, as set forth in that certain Fee Agreement dated as of the date hereof between the Company and

BNYM. Except as otherwise provided herein, Taberna represents that there are no other payments, fees, costs, expenses or reimbursements required by the Company as a result of the Exchange contemplated in this Agreement.

8. **Indemnification.** (a) The Company agrees to indemnify and hold harmless BNYM, the Holders, Taberna IX, Kodiak II, Taberna Capital Management, LLC, Taberna Securities, LLC, Kodiak CDO Management, LLC and their respective affiliates (collectively, the "**Indemnified Parties**") each person, if any, who controls any of the Indemnified Parties within the meaning of the Securities Act or the Exchange Act, and the Indemnified Parties' respective directors, officers, employees and agents against any and all losses, claims, damages or liabilities, joint or several, to which the Indemnified Parties may become subject, under the Securities Act, the Exchange Act or other federal or state statutory law or regulation, at common law or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based on (i) the breach or alleged breach of any representation, warranty, or agreement of the Company contained herein, or (ii) the execution and delivery by the Company of the Operative Documents and the consummation of the transactions contemplated herein and therein, and agrees to reimburse each such Indemnified Party, as incurred, for any legal or other expenses reasonably incurred by the Indemnified Parties in connection with investigating or defending any such loss, claim, damage, liability or action except to the extent any such loss, claim, damage, liability or action is the direct result of any bad faith, fraudulent misrepresentation, willful misconduct or breach of the representations and warranties and agreements, by such Indemnified Party. This indemnity agreement will be in addition to any liability that the Company may otherwise have. For the avoidance of doubt, the indemnity provided by this Section 8 does not apply to any tax liability that arises out of or is based on the acquisition, ownership, modification or disposition of the Subordinated Note, the Original Security, or any direct or indirect interest therein.

(b) Promptly after receipt by an Indemnified Party under this Section 8 of notice of the commencement of any action, such Indemnified Party will, if a claim in respect thereof is to be made against the indemnifying party under this Section 8, promptly notify the indemnifying party in writing of the commencement thereof; but the failure so to notify the indemnifying party will not relieve the indemnifying party from liability under paragraph (a) above unless and to the extent that such failure results in the forfeiture by the indemnifying party of material rights and defenses. The Indemnified Parties shall be entitled to appoint counsel to represent the Indemnified Parties in any action for which indemnification is sought. An indemnifying party may participate at its own expense in the defense of any such action; *provided*, that counsel to the indemnifying party shall not (except with the consent of the Indemnified Party) also be counsel to the Indemnified Party. In no event shall the indemnifying parties be liable for fees and expenses of more than one counsel (in addition to any local counsel) separate from their own counsel for all Indemnified Parties in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances, unless an Indemnified Party elects to engage separate counsel because such Indemnified Party believes that its interests are not aligned with the interests of another Indemnified Party or that a conflict of interest might result. An indemnifying party will not, without the prior written consent of the Indemnified Parties, settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim, action, suit or proceeding in respect of which indemnification may be sought hereunder (whether or not the

Indemnified Parties are actual or potential parties to such claim, action, suit or proceeding) unless such settlement, compromise or consent includes an unconditional release of each Indemnified Party from all liability arising out of such claim, action, suit or proceeding.

9. **Representations and Indemnities to Survive.** The respective agreements, representations, warranties, indemnities and other statements of the Company and/or its officers set forth in or made pursuant to this Agreement will remain in full force and effect and will survive the Exchange. The provisions of Sections 7 and 8 shall survive the termination or cancellation of this Agreement.

10. **Recourse to Kodiak II.** Recourse hereunder solely with respect to Kodiak II shall be limited solely to the assets of Kodiak II. No recourse will be available to the assets of any collateral manager to Kodiak II, including without limitation, Kodiak CDO Management, LLC, for any reason or purpose whatsoever. To the extent the assets of Kodiak II or the proceeds of such assets, when applied in accordance with the applicable priority of payment to which such assets or proceeds are subject, are insufficient to meet the obligations of Kodiak II hereunder in full, Kodiak II shall have no further liability in respect of such outstanding obligations and such outstanding obligations shall be extinguished. The Company hereby agrees not to institute against, or join any other person in instituting against, Kodiak II any bankruptcy, reorganization, arrangement, insolvency, moratorium or liquidation proceedings or other proceedings under U.S. federal or state bankruptcy or similar laws until at least one year and one day or the then applicable preference period under the United States Bankruptcy Code, Title 11 of the United States Code, as amended, or, where the context requires, the applicable insolvency provisions of the laws of the Cayman Islands plus ten (10) days after the payment in full of all the Securities; provided, that nothing in this Section 10 shall preclude the Company from taking any action against Kodiak II prior to the expiration of the aforementioned period in (x) any case or proceeding voluntarily filed or commenced by Kodiak II, or (y) any involuntary insolvency proceeding filed or commenced against the Company, by a person other than the Company.

11. **Amendments.** This Agreement may not be modified, amended, altered or supplemented, except upon the execution and delivery of a written agreement by each of the parties hereto.

12. **Notices.** All communications hereunder will be in writing and effective only on receipt, and will be mailed, delivered by hand or courier or sent by facsimile and confirmed or by any other reasonable means of communication, including by electronic mail, to the relevant party at its address specified in Exhibit D.

13. **Successors and Assigns.** This Agreement will inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns. Nothing expressed or mentioned in this Agreement is intended or shall be construed to give any person other than the parties hereto and the affiliates, directors, officers, employees, agents and controlling persons referred to in Section 8 hereof and their successors, assigns, heirs and legal representatives, any right or obligation hereunder. None of the rights or obligations of the Company under this Agreement may be assigned, whether by operation of law or otherwise, without Taberna's prior written consent.

14. **Applicable Law.** THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK WITHOUT REFERENCE TO PRINCIPLES OF CONFLICTS OF LAW (OTHER THAN SECTIONS 5-1401 AND 5-1402 OF THE GENERAL OBLIGATIONS LAW).

15. **Submission to Jurisdiction.** ANY LEGAL ACTION OR PROCEEDING BY OR AGAINST ANY PARTY HERETO OR WITH RESPECT TO OR ARISING OUT OF THIS AGREEMENT MAY BE BROUGHT IN OR REMOVED TO THE COURTS OF THE STATE OF NEW YORK, IN AND FOR THE COUNTY OF NEW YORK, OR OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK (IN EACH CASE SITTING IN THE BOROUGH OF MANHATTAN). BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH PARTY ACCEPTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS (AND COURTS OF APPEALS THEREFROM) FOR LEGAL PROCEEDINGS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.

16. **Counterparts and Facsimile.** This Agreement may be executed by any one or more of the parties hereto in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same instrument. This Agreement may be executed by any one or more of the parties hereto by facsimile.

17. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties to this Agreement and supercedes all prior written or oral and all contemporaneous oral agreements, understandings and negotiations with respect to the subject matter hereof.

[Signature Page Follows]

IN WITNESS WHEREOF, this Agreement has been entered into as of the date first written above.

JER INVESTORS TRUST INC.

By: /s/ Mark S. Weiss

Name: Mark S. Weiss

Title: President

(Signatures continue on the next page)

TABERNA PREFERRED FUNDING IX, LTD.

By: /s/ Mora Goddard

Name: Mora Goddard

Title: Director

KODIAK CDO II, LTD.

By: Kodiak CDO Management LLC,
its Collateral Manager

By: Kodiak Funding, L.P.,
its Sole Member

By: Kodiak Funding Company,
Inc., its General Partner

By: /s/ Robert M. Hurley

Name: Robert M. Hurley

Title: Chief Financial Officer

ACKNOWLEDGED AND AGREED TO:

EJF DISTRESSED MASTER FUND II, LP

By: EJF Distressed II GP, LLC, as General Partner
By: EJF Capital LLC, as Sole Member
By: /s/ Neal J. Wilson
Name: Neal J. Wilson
Title: Chief Operating Officer

EXCHANGE AGREEMENT

among

JER INVESTORS TRUST INC.

and

EJF DISTRESSED MASTER FUND II, LP

Dated as of May 29, 2009

EXCHANGE AGREEMENT

THIS EXCHANGE AGREEMENT, dated as of May 29, 2009 (this "**Agreement**"), is entered into by and between JER INVESTORS TRUST INC., a Maryland corporation (the "**Company**") and EJF Distressed Master Fund II, LP ("**EJF**"), a limited partnership organized under the laws of Delaware.

RECITAL:

A. Reference is made to that certain Junior Subordinated Indenture dated as of April 9, 2007 (the "**Existing Indenture**") by and between the Company and The Bank of New York Mellon Trust Company, National Association ("**BNYM**"), as trustee (the "**Existing Indenture Trustee**").

B. Reference is made to that certain Amended and Restated Trust Agreement dated as of April 9, 2007 (the "**Trust Agreement**") by and among the Company, as depositor, BNYM, as Property Trustee, BNY Mellon Trust of Delaware, as Delaware Trustee, and the administrative trustee named therein.

C. JERIT TS Statutory Trust I, a Delaware statutory trust ("**Trust I**") is the holder of the Junior Subordinated Note due 2037 in the amount of Sixty-One Million Eight Hundred Sixty Thousand Dollars (\$61,860,000) issued by the Company pursuant to the Existing Indenture (the "**Subordinated Note**").

D. Pursuant to the Trust Agreement, Trust I issued one or more Preferred Securities Certificate (as such term is defined in the Trust Agreement) in the aggregate liquidation amount of Sixty Million Dollars (\$60,000,000) (the "**Original Security**"), which Original Security is a global security.

E. EJF is the holder of \$3,750,000 in aggregate liquidation amount of a beneficial interest in the Original Security (the "**EJF Holdings**").

F. The Company proposes that EJF exchange the EJF Holdings for 541,906 shares (the "**Shares**") of the Company's duly authorized and issued unregistered common stock, par value \$0.01 per share (the "**Common Stock**") and other consideration described herein.

G. On the terms and subject to the conditions set forth in this Agreement, the Company and EJF have agreed to exchange the EJF Holdings for the Shares and such other consideration as set forth above.

NOW, THEREFORE, in consideration of the mutual agreements and subject to the terms and conditions herein set forth, the parties hereto agree as follows:

1. **Definitions.**

"**1934 Act Regulations**" has the meaning set forth in [Section 4\(z\)](#).

"**1934 Act Reports**" has the meaning set forth in [Section 4\(z\)](#).

"**Affiliate**" of any specified person means any other Person directly or indirectly Controlled, Controlling or Controlled by, or under direct or common Control with such specified Person.

"**Arbitrator**" has the meaning set forth in Section 4(l).

"**Bankruptcy Code**" means the Bankruptcy Reform Act of 1978, 11 U.S.C. §§101 et seq., as amended.

"**Benefit Plan**" means an "employee benefit plan" (as defined in ERISA) that is subject to Title I of ERISA, a "plan" as defined in Section 4975 of the Code or any entity whose assets include the assets of any such "employee benefit plan" or "plan" for purposes of Section 3(42) of ERISA and U.S. Department of Labor Regulations promulgated thereunder at 29 C.F.R. Section 2510.3-101.

"**BNYM**" has the meaning set forth in the Recitals.

"**Cash Consideration**" has the meaning set forth in Section 2(a).

"**Closing Cash Consideration**" has the meaning set forth in Section 2(a).

"**Code**" means the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated under it.

"**Closing Date**" has the meaning set forth in Section 2(b).

"**Closing Room**" has the meaning set forth in Section 2(b).

"**Company**" has the meaning set forth in the introductory paragraph hereof.

"**Company Counsel**" has the meaning set forth in Section 3(b).

"**Commission**" has the meaning set forth in Section 4(v).

"**Common Stock**" has the meaning set forth in the Recitals.

"**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.

"**EJF**" has the meaning set forth in the Recitals.

"**EJF Holdings**" has the meaning set forth in the Recitals.

"**EJF Transferred Rights**" means any and all of EJF's right, title, and interest in, to and under the Original Security, and the following:

- i. the Existing Indenture and Trust Agreement;

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- ii. all amounts payable to EJV under the Original Security, the Existing Indenture and/or the Trust Agreement, excluding, however, amounts payable on account of interest for the period from January 30, 2009 through May 29, 2009;
 - iii. all claims (including "claims" as defined in Bankruptcy Code §101(5)), suits, causes of action, and any other right of EJV, whether known or unknown, against the Company or any of its Affiliates (including the Trusts), or its respective agents, representatives, contractors, advisors, directors, officers and trustees or any other entity that in any way is based upon, arises out of or is related to any of the foregoing, including all claims (including contract claims, tort claims, malpractice claims, and claims under any law governing the exchange of, purchase and sale of, or indentures for, securities), suits, causes of action, and any other right of EJV against any attorney, accountant, financial advisor, or other entity arising under or in connection with the Original Security, the Existing Indenture, the Trust Agreement or the transactions related thereto or contemplated thereby but, excluding the transactions contemplated under this Agreement;
 - iv. all guarantees and all collateral and security of any kind for or in respect of the foregoing;
 - v. all cash, securities, or other property, and all setoffs and recoupments, to be received, applied, or effected by or for the account of EJV under the Original Security, other than fees, costs and expenses payable to EJV hereunder and all cash, securities, interest, dividends, and other property that may be exchanged for, or distributed or collected with respect to, any of the foregoing; and
 - vi. all proceeds of the foregoing.

"**Equity Interests**" means with respect to any Person (a) if such a Person is a partnership, the partnership interests (general or limited) in a partnership, (b) if such Person is a limited liability company, the membership interests in a limited liability company (c) if such Person is a corporation, the shares or stock interests (both common stock and preferred stock) in a corporation and (d) if such person is a trust, the common or preferred securities issued by such trust.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated under it.

"**Exchange**" has the meaning set forth in [Section 2\(b\)](#).

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

"**Existing Indenture**" has the meaning set forth in the Recitals.

"**Existing Indenture Trustee**" has the meaning set forth in the Recitals.

"**Financial Statements**" has the meaning set forth in Section 4(w).

"**GAAP**" has the meaning set forth in Section 4(w).

"**Governmental Entities**" has the meaning set forth in Section 4(o).

"**Governmental Licenses**" has the meaning set forth in Section 4(r).

"**Impairment**" means any claim, counterclaim, setoff, defense, action, demand, litigation (including administrative proceedings or derivative actions), encumbrance, right (including expungement, avoidance, reduction, contractual or equitable subordination, or otherwise) or defect.

"**Indemnified Party**" has the meaning set forth in Section 8(a). "**Indemnified Parties**" shall have the correlative meaning.

"**Interim Financial Statements**" means those certain unaudited consolidated financial statements (including the notes thereto) and schedules of the Company and its consolidated subsidiaries filed with the Commission for the quarterly period ended March 31, 2009 filed by the Company with the Commission in its Quarterly Report on Form 10-Q on May 11, 2009.

"**Investment Company Act**" has the meaning set forth in Section 4(j).

"**Joint Direction and Release**" means that certain Joint Direction and Release between the Company and BNYM, acknowledged and agreed to by EJF, executed in connection with the Exchange.

"**Lien**" has the meaning set forth in Section 4(o).

"**Material Adverse Effect**" means a material adverse effect on or change in the condition (financial or otherwise), earnings, business, liabilities or assets of the Company and its subsidiaries taken as a whole.

"**Original Security**" has the meaning set forth in the Recitals.

"**Person**" means a legal person, including any individual, corporation, estate, partnership, joint venture, association, joint stock company, company, limited liability company, trust, unincorporated association, or government or any agency or political subdivision thereof, or any other entity of whatever nature.

"**Post-Closing Cash Consideration**" has the meaning set forth in Section 2(a).

"**Preferred Stock**" has the meaning set forth in Section 4(s).

"**Registration Rights Agreement**" shall mean that certain Registration Rights Agreement by and between the Company, EJF and Kodiak CDO II, Ltd. dated the date hereof, wherein the Company agrees, upon the request of EJF under the circumstances provided therein, to register the Common Stock under the Securities Act and to provide for the right of EJF to participate in but not demand any registration of the Company's stock for resale.

"**Regulation D**" has the meaning set forth in Section 4(h).

"**REIT**" has the meaning set forth in Section 4(dd).

"**Repayment Event**" has the meaning set forth in Section 4(o).

"**Securities Act**" means the Securities Act of 1933, 15 U.S.C. §§77a et seq., as amended, and the rules and regulations promulgated under it.

"**Shares**" has the meaning set forth in the Recitals.

"**Significant Subsidiary**" means any significant subsidiary of the Company within the definition of such term in Regulation S-X. "**Significant Subsidiaries**" means, collectively, each and every Significant Subsidiary.

"**SOXA**" means the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated thereunder, all as the same shall be in effect from time to time.

"**Subordinated Note**" has the meaning set forth in the Recitals.

"**Tax Returns**" has the meaning set forth in Section 4(ee).

"**Trust I**" has the meaning set forth in the Recitals.

"**Trust Agreement**" has the meaning set forth in the Recitals.

2. Exchange of EJF Holdings for the Common Stock and Cash Consideration.

(a) The Company agrees to deliver to EJF (i) on the Closing Date (x) the Shares, (y) the amount of One Hundred Sixteen Thousand Five Hundred Twenty-Six Dollars (\$116,526) and (z) accrued interest on the EJF Holdings as set forth below, by wire transfer of immediately available funds (the "**Closing Cash Consideration**") and (ii) on a post-closing basis as set forth herein, the aggregate amount of Two Hundred Twenty Thousand Dollars (\$220,000), as set forth on Schedule 4 hereof (the "**Post-Closing Cash Consideration**," together with the Closing Cash Consideration, the "**Cash Consideration**"), and has requested that EJF accept such Shares and Cash Consideration in exchange for the EJF Holdings, and EJF hereby accepts the Shares and Cash Consideration in exchange for the EJF Holdings upon the terms and conditions set forth herein; provided however, it is agreed that the EJF Holdings shall be exchanged in accordance with Schedule 4.

(b) The closing of the exchange contemplated herein shall occur at the offices of Nixon Peabody, LLP in New York, New York (the "**Closing Room**"), or such other place as the parties hereto shall agree, at 11:00 a.m. New York time, on May 29, 2009 (such date and time of delivery the "**Closing Date**"). The Company and EJF hereby agree that the exchange (the "**Exchange**") will occur in accordance with the following requirements:

- (i) The Company shall have delivered stock certificates and powers evidencing the Shares to the Closing Room.

(ii) The Company shall have delivered to EJV the Closing Cash Consideration.

(iii) The Company shall have delivered to EJV the amount of \$6,197.92 representing accrued interest on the EJV Holdings from January 30, 2009 to the Closing Date, which amount shall satisfy in full the Company's interest payment obligations to EJV with respect to the EJV Holdings.

(iv) Simultaneously with the occurrence of the events described in subsections (i) – (iii) hereof, EJV irrevocably transfers, assigns, grants and conveys the EJV Transferred Rights in accordance with the exchange as contemplated in Schedule 4 to the Company and the Company assumes all rights and obligations of EJV with respect to the EJV Transferred Rights.

(v) Intentionally omitted.

(vi) EJV shall have acknowledged and agreed to and the Company shall have executed and delivered to the Existing Trustee the Joint Direction and Release.

(c) No later than June 30, 2009, the Company shall deliver to EJV by wire transfer of immediately available funds the amount of One Hundred Ten Thousand Dollars (\$110,000).

(d) No later than July 30, 2009, the Company shall deliver to EJV by wire transfer of immediately available funds the amount of One Hundred Ten Thousand Dollars (\$110,000).

3. **Conditions Precedent.** The obligations of the parties under this Agreement are subject to the following conditions precedent:

(a) The representations and warranties contained herein shall be accurate as of the date of delivery of the Shares, the Exchange and the parties shall be prepared to complete all actions and consummate the Exchange as set forth in Section 2(b).

(b) Skadden, Arps, Slate, Meagher & Flom LLP, special counsel for the Company, and DLA Piper LLP (US), special Maryland counsel for the Company (the "**Company Counsel**"), shall have delivered one or more opinions, dated the Closing Date, addressed to EJV and its successors and assigns, in substantially the form set out in Annex A hereto. In rendering its opinion, the Company Counsel may rely as to factual matters upon certificates or other documents furnished by officers, directors and trustees of the Company and by government officials; *provided, however*, that copies of any such certificates or documents are delivered to EJV and by and upon such other documents as such counsel may, in its reasonable opinion, deem appropriate as a basis for Company Counsel's opinion or opinions. Company Counsel may specify the relevant jurisdiction or jurisdictions in which it is admitted to practice and that it is not admitted to practice in any other jurisdiction and is not an expert in the law of

any other jurisdiction. Such Company Counsel Opinion shall not state that it is to be governed or qualified by, or that it is otherwise subject to, any treatise, written policy or other document relating to legal opinions, including, without limitation, the Legal Opinion Accord of the ABA Section of Business Law (1991).

(c) Intentionally omitted.

(d) Intentionally omitted.

(e) The Company shall have furnished to EJV a certificate of the Company, signed by the Chief Executive Officer, President or an Executive Vice President, and Chief Financial Officer, Treasurer or Assistant Treasurer of the Company, dated as of the Closing Date, as to (i) and (ii) below:

(i) the representations and warranties in this Agreement are true and correct on and as of the Closing Date, and the Company has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied at or prior to the Closing Date; and

(ii) since the date of the Interim Financial Statements, there has been no Material Adverse Effect, other than as disclosed to EJV.

(f) The Company and EJV shall have entered into the Registration Rights Agreement.

(g) Intentionally omitted.

If any of the conditions specified in this Section 3 shall not have been fulfilled when and as provided in this Agreement, or if any of the opinions, certificates and documents mentioned above or elsewhere in this Agreement shall not be reasonably satisfactory in form and substance to EJV or its counsel, this Agreement and any obligations of EJV hereunder may be canceled at, or at any time prior to, the Exchange by EJV. Notice of such cancellation shall be given to the Company in writing or by e-mail or facsimile.

Each certificate signed by any officer of the Company and delivered in connection herewith and the transactions contemplated hereby shall be deemed to be a representation and warranty of the Company and not by such officer in any individual capacity.

4. **Representations and Warranties of the Company.** The Company represents and warrants as of the date hereof, as follows:

(a) It (i) is duly incorporated and validly existing under the laws of the State of Maryland, (ii) is in good standing under such laws and (iii) has full power and authority to execute, deliver and perform its obligations under this Agreement.

(b) It is an "accredited investor" as defined in Rule 501 under the Securities Act. Without characterizing the Original Security, the EJV Holdings or any of the EJV Transferred Rights as a "security" within the meaning of applicable securities laws, it is not

acquiring the EJV Holdings or any holdings under the Original Security, or the EJV Transferred Rights or any other rights, under the Original Security, the Existing Indenture or the Trust Agreement with a view towards the sale or distribution thereof in violation of the Securities Act.

(c) Neither the Common Stock nor the Exchange are or may be subject to any Impairment. The Company has no current intention to initiate any bankruptcy or insolvency proceedings. The Company (i) has not entered into the Exchange or this Agreement with the actual intent to hinder, delay, or defraud any creditor and (ii) received reasonably equivalent value in exchange for its obligations under this Agreement.

(d) The Company is and for the ninety (90) days immediately prior to the Exchange has been subject to the reporting requirements of Sections 13 or 15(d) of the Exchange Act and has filed all reports required thereunder, as applicable, during the twelve (12) months preceding the Exchange.

(e) It (i) is a sophisticated entity with respect to the Exchange, (ii) has such knowledge and experience, and has made investments of a similar nature, so as to be aware of the risks and uncertainties inherent in the Exchange and (iii) has independently and without reliance upon EJV, EJV Capital LLC or any of its respective affiliates, and based on such information as it has deemed appropriate, made its own analysis and decision to enter into this Agreement, except that it has relied upon EJV's express representations, warranties, covenants and agreements in this Agreement. The Company acknowledges that none of EJV, EJV Capital LLC or any of its respective affiliates has given it any investment advice, credit information or opinion on whether the Exchange is prudent.

(f) It has not engaged any broker, finder or other entity acting under the authority of it or any of its affiliates that is entitled to any broker's commission or other fee in connection with the transaction for which EJV or any of its affiliates could be responsible.

(g) No interest in the EJV Transferred Rights is being acquired by or on behalf of an entity that is, or at any time while the EJV Transferred Rights are held thereby will be, one or more Benefit Plans.

(h) Neither the Company nor any of its Affiliates nor any person acting on its or its behalf, has, directly or indirectly, made offers or sales of any security, or solicited offers to buy any security, under circumstances that would cause the Exchange to fail to meet the conditions in Rule 502(c) of Regulation D ("**Regulation D**") under the Securities Act. Without limitation upon the generality of the foregoing, neither the Company nor any person acting on its behalf has taken any action, including any offering of any securities of the Company under circumstances which could require the integration of such offering with the Exchange under the Securities Act, and thereby subject the Exchange to the registration requirements of the Securities Act.

(i) The issuance of the Common Stock (i) does not require the approval of the shareholders of the Company, or (ii) any filing with the Commission other than the filing of a Current Report on Form 8-K within four (4) business days following the Closing Date.

(j) The Common Stock is not issued by an open-end investment company, unit investment trust or face-amount certificate company that is, or is required to be, registered under Section 8 of the Investment Company Act of 1940, as amended (the "**Investment Company Act**").

(k) Neither the Company nor any of its Affiliates, nor any person acting on its or its behalf, has engaged, or will engage, in any "directed selling efforts" within the meaning of Regulation S under the Securities Act with respect to the Common Stock.

(l) The Company is not, and immediately following consummation of the transactions contemplated hereby, will not be, an "investment company" or an entity "controlled" by an "investment company," in each case within the meaning of Section 3(a) of the Investment Company Act.

(m) This Agreement and the Registration Rights Agreement and the consummation of the transactions contemplated herein and therein have been duly authorized by the Company and, on the Closing Date, will have been duly executed and delivered by the Company, and, assuming due authorization, execution and delivery by EJV will be a legal, valid and binding obligations of the Company enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and to general principles of equity.

(n) Intentionally omitted.

(o) Neither the delivery and exchange of the Common Stock and Cash Consideration for the EJV Holdings, and the EJV Transferred Rights, nor the execution and delivery of and compliance with this Agreement and the Registration Rights Agreement by the Company, nor the consummation of the transactions contemplated herein (i) will conflict with or constitute a violation or breach of (x) the charter or bylaws or similar organizational documents of the Company or any Significant Subsidiary of the Company or (y) any applicable law, statute, rule, regulation, judgment, order, writ or decree of any government, governmental authority, agency or instrumentality or court, domestic or foreign, having jurisdiction over the Company or any of its subsidiaries or their respective properties or assets (collectively, the "**Governmental Entities**"), (ii) will conflict with or constitute a violation or breach of, or a default or Repayment Event under, or result in the creation or imposition of any pledge, security interest, claim, lien or other encumbrance of any kind (each, a "**Lien**") upon any property or assets of the Company or any of its Significant Subsidiaries pursuant to any contract, indenture, mortgage, loan agreement, note, lease or other agreement or instrument to which (A) the Company or any of its Significant Subsidiaries is a party or by which it or any of them may be bound, or (B) to which any of the property or assets of any of them is subject, or any judgment, order or decree of any Governmental Entity or arbitrator having jurisdiction over the Company or any of its subsidiaries or its respective properties or assets (an "**Arbitrator**"), or (iii) will require the consent, approval, authorization or order of any court or Governmental Entity, except, in the case of clause (i)(y), (ii), or (iii) for such conflicts, breaches, violations, defaults, Repayment Events (as defined below) or Liens which (X) would not, singly or in the aggregate, adversely affect the consummation of the transactions contemplated by this Agreement and (Y) would not, singly or in the aggregate, have a Material Adverse Effect. As used herein, a "**Repayment Event**" means

any event or condition which gives the holder of any note, debenture or other evidence of indebtedness (or any person acting on such holder's behalf) the right to require the repurchase, redemption or repayment of all or a portion of such indebtedness by the Company or any of its Significant Subsidiaries prior to its scheduled maturity.

(p) The Company has all requisite power and authority to own, lease and operate its assets and conduct the business it transacts and proposes to transact, and is duly qualified to transact business and is in good standing in each jurisdiction where the nature of its activities requires such qualification, except where the failure of the Company to have such power and authority or to be so qualified would not, singly or in the aggregate, have a Material Adverse Effect.

(q) Each Significant Subsidiary of the Company is listed on Schedule 1 attached hereto, which the Company represents is true, complete and correct. Each Significant Subsidiary is a corporation, trust, partnership or limited liability company duly and properly incorporated or organized or formed, as the case may be, validly existing and, with respect to any such corporation, in good standing under the laws of the jurisdiction in which it is chartered or organized or formed, with all requisite power and authority to own, lease and operate its properties and conduct the business it transacts. Each Significant Subsidiary is duly qualified to transact business in each jurisdiction where the nature of its activities requires such qualification, except where the failure to be so qualified would not, singly or in the aggregate, have a Material Adverse Effect. No Significant Subsidiary of the Company (other than a taxable REIT subsidiary, if any,) is currently prohibited, directly or indirectly, under any agreement or other instrument to which it is a party or to which it or its assets is subject, other than as required by applicable law, from paying any dividends to the Company, from making any other distribution on such Significant Subsidiary's capital stock or other Equity Interests, from repaying to the Company any loans or advances to such Significant Subsidiary from the Company or from transferring any of such Significant Subsidiary's wholly owned properties or assets to the Company or any other subsidiary of the Company except as disclosed to EJF in writing or in the Company's public filings.

(r) The Company and each of the Company's subsidiaries hold all necessary approvals, authorizations, orders, licenses, consents, registrations, qualifications, certificates and permits (collectively, the "**Governmental Licenses**") of and from Governmental Entities necessary to conduct their respective businesses as now being conducted, and neither the Company nor any of its subsidiaries has received any notice of proceedings relating to the revocation or modification of any such Government License, except where the failure to be so licensed or approved or the receipt of an unfavorable decision, ruling or finding, would not, singly or in the aggregate, have a Material Adverse Effect; all of the Governmental Licenses are valid and in full force and effect, except where the invalidity or the failure of such Governmental Licenses to be in full force and effect, would not, singly or in the aggregate, have a Material Adverse Effect; and the Company and its subsidiaries are in compliance with all applicable laws, rules, regulations, judgments, orders, decrees and consents, except where the failure to be in compliance would not, singly or in the aggregate, have a Material Adverse Effect.

(s) The authorized capital stock of the Company as of the date hereof consists solely of 100,000,000 shares of Common Stock and 50,000,000 shares of Preferred Stock, par

value \$0.01 per share ("**Preferred Stock**"), of which 4,987,369 shares of Common Stock and no shares of Preferred Stock are issued and outstanding prior to giving effect to the Exchange and other issuances on the Closing Date. All of the issued and outstanding shares of Common Stock of the Company have been duly authorized and validly issued, are fully paid and non-assessable, are not subject to any preemptive rights, and were not issued in violation of the Securities Act or any other applicable laws (including, without limitation, state securities or "blue sky" laws). The authorized, issued and outstanding capital stock of the Company immediately after the Closing Date will be as set forth in Schedule 3 hereto. Other than as set forth on Schedule 3 hereto and other than restricted stock units outstanding as of the date hereof, the Company does not have outstanding any securities directly or indirectly convertible into or exercisable or exchangeable for any shares of its capital stock nor does it have outstanding any rights to subscribe for or to purchase, or any warrants, options or other rights for the purchase of, or any agreements providing for the direct or indirect issuance (contingent or otherwise) of any of its capital stock. The outstanding capital stock of the Company is not subject to any voting trust agreement or other agreement or commitment restricting or otherwise relating to the voting, dividend rights or disposition of such capital stock. The Shares have been duly authorized and issued and, upon the delivery by EJJ of the EJJ Holdings, will be validly issued, fully paid and non-assessable. All of the issued and outstanding Equity Interests of each of the Company's Significant Subsidiaries are validly issued, fully paid and non-assessable; all of the issued and outstanding Equity Interests of each subsidiary of the Company that are owned by the Company, directly or through subsidiaries, are free and clear of any Lien or claim.

(t) Neither the Company nor any of its subsidiaries is (i) in violation of its respective charter or by-laws or similar organizational documents or (ii) in default in the performance or observance of any obligation, agreement, covenant or condition contained in any contract, indenture, mortgage, loan agreement, note, lease or other agreement or instrument to which the Company or any such Significant Subsidiary is a party or by which it or any of them may be bound or to which any of the property or assets of any of them is subject, except, in the case of clause (ii), where such violation or default would not, singly or in the aggregate, have a Material Adverse Effect.

(u) There is no action, suit or proceeding before or by any Governmental Entity or Arbitrator, now pending or, to the knowledge of the Company after due inquiry, threatened against or affecting the Company or any of its subsidiaries, except for such actions, suits or proceedings as are disclosed in the Company's 1934 Act Reports, or that, if adversely determined, would not, singly or in the aggregate, adversely affect the consummation of the transactions contemplated by this Agreement or have a Material Adverse Effect; and, except as disclosed in the Company's 1934 Act Reports, the aggregate of all pending legal or governmental proceedings to which the Company or any of its subsidiaries is a party or of which any of their respective properties or assets is subject, including ordinary routine litigation incidental to the business, are not expected to result in a Material Adverse Effect.

(v) The accountants of the Company who certified the Financial Statements (defined below) are independent public accountants of the Company and its subsidiaries within the meaning of the Securities Act, and the rules and regulations of the Securities and Exchange Commission (the "**Commission**") thereunder.

(w) The audited consolidated financial statements (including the notes thereto) and schedules of the Company and its consolidated subsidiaries for the fiscal year ended December 31, 2008 (the "**Financial Statements**") filed by the Company with the Commission in its Annual Report on Form 10-K and the Interim Financial Statements are the most recent available audited and unaudited, respectively, consolidated financial statements of the Company and its consolidated subsidiaries, respectively, and fairly present in all material respects, in accordance with U.S. generally accepted accounting principles ("**GAAP**"), subject to Schedule 3, the financial position of the Company and its consolidated subsidiaries, and the results of operations and changes in financial condition as of the dates and for the periods therein specified. Such consolidated financial statements and schedules have been prepared in accordance with GAAP consistently applied throughout the periods involved (except as otherwise noted therein).

(x) Neither the Company nor any of its subsidiaries has any material liability, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due, including any liability for taxes and the Company has not received written notice of any action, suit, proceeding, hearing, charge, complaint, claim or demand against the Company or any of its subsidiaries that could give rise to any such liability, except for (i) liabilities set forth in the Financial Statements or the Interim Financial Statements and (ii) normal fluctuations in the amount of the liabilities referred to in clause (i) above occurring in the ordinary course of business of the Company and all of its subsidiaries since the date of the most recent balance sheet included in such Financial Statements, and (iii) liabilities that would not, singly or in the aggregate, have a Material Adverse Effect.

(y) Since the date of the Interim Financial Statements, there has not been (A) any Material Adverse Effect, other than as disclosed to EJJ or (B) any dividend or distribution of any kind declared, paid or made by the Company on any class of its Equity Interests.

(z) The documents and reports of the Company filed with the Commission in accordance with the Exchange Act, from and including the commencement of the fiscal year covered by the Company's most recent Annual Report on Form 10-K, at the time they were filed by the Company with the Commission (collectively, the "**1934 Act Reports**"), complied in all material respects with the requirements of the Exchange Act and the rules and regulations of the Commission thereunder (the "**1934 Act Regulations**"), and, did not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. The Company has filed all reports required to be filed by it under the Exchange Act, including pursuant to Section 13(a) or 15(d) thereof, since January 1, 2005; and has filed all such reports on a timely basis or has received a valid extension of such time of filing and has filed any such reports prior to the expiration of any such extension.

(aa) None of the Company or any of its Significant Subsidiaries has any employees.

(bb) No filing with, or authorization, approval, consent, license, order, registration, qualification or decree of, any Governmental Entity, other than those that have been made or obtained, is necessary or required for the performance by the Company of its obligations

under this Agreement and the Registration Rights Agreement, as applicable, or the consummation by the Company of the transactions contemplated by this Agreement and the Registration Rights Agreement.

(cc) The Company and each of its Significant Subsidiaries has good and valid title to all of its respective real and personal property, in each case free and clear of all Liens and defects, except for Liens for Taxes not yet due or payable and those Liens securing debt in the ordinary course of its business and that would not, singly or in the aggregate, have a Material Adverse Effect; and all of the leases and subleases under which the Company or any of its Significant Subsidiaries holds properties are in full force and effect, except where the failure of such leases and subleases to be in full force and effect would not, singly or in the aggregate, have a Material Adverse Effect, and neither the Company nor any of its Significant Subsidiaries has any notice of any claim of any sort that has been asserted by anyone adverse to the rights of the Company or any Significant Subsidiary under any such leases or subleases, or affecting or questioning the rights of such entity to the continued possession of the leased or subleased premises under any such lease or sublease, except for such claims that would not, singly or in the aggregate, have a Material Adverse Effect.

(dd) Commencing with its taxable year ended December 31, 2004, the Company has been, and upon the completion of the transactions contemplated hereby, the Company will continue to be, organized and operated in conformity with the requirements for qualification and taxation as a real estate investment trust (a "REIT") under Sections 856 through 860 of the Internal Revenue Code of 1986, as amended (the "Code") for so long as the judgment of the Company's Board of Directors is that the Company should maintain its status as a REIT, and no actions have been taken (or not taken which are required to be taken) which would cause such qualification to be lost. The Company expects to continue to be organized and to operate in a manner so as to qualify as a REIT in the taxable year ending December 31, 2009 and succeeding taxable years for so long as the judgment of the Company's Board of Directors is that the Company should maintain its status as a REIT.

(ee) The Company and each Significant Subsidiary has timely and duly filed (or filed extensions thereof (and which extensions are presently in effect)) all material Tax Returns (as defined below) required to be filed by them, and all such Tax Returns are true, correct and complete in all material respects. The Company and each Significant Subsidiary has timely and duly paid in full all material Taxes (as defined below) required to be paid by them (whether or not such amounts are shown as due on any Tax Return). There are no material federal, state, or other Tax audits or deficiency assessments proposed in writing or pending with respect to the Company or any Significant Subsidiary, and no such audits or assessments are threatened in writing to the Company. As used herein, the terms "*Tax*" or "*Taxes*" mean (i) all federal, state, local, and foreign taxes, and other assessments of a similar nature (whether imposed directly or through withholding), including any interest, additions to tax, or penalties applicable thereto, imposed by any Governmental Entity, and (ii) all liabilities in respect of such amounts arising as a result of being a member of any affiliated, consolidated, combined, unitary or similar group, as a successor to another person or by contract. As used herein, the term "Tax Returns" means all federal, state, local, and foreign Tax returns, declarations, statements, reports, schedules, forms, and information returns and any amendments thereto filed or required to be filed with any Governmental Entity.

(ff) (i) The Company has in place the "disclosure controls and procedures" (as defined in Rules 13a-15(e) and 15d-15(e) of the Exchange Act) reasonably designed to ensure that information required to be disclosed by the Company in the reports that it files under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the Commission (including any permitted extension thereof), and that such information is accumulated and communicated to the Company's management, as appropriate to allow timely decisions regarding required disclosure. There is and has been no failure on the part of the Company or, to the Company's knowledge, any of the Company's directors or officers, in their capacities as such, to comply with any applicable provision of SOXA in any material respect.

(ii) The books, records and accounts of the Company and its Significant Subsidiaries accurately and fairly reflect, in reasonable detail, the transactions in, and dispositions of, the assets of, and the results of operations of, the Company and its subsidiaries. The Company and each of its subsidiaries maintains a system of internal accounting controls sufficient to provide reasonable assurance as regards the Company and each of its consolidated subsidiaries regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles, including, but not limited to, internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP and to maintain asset accountability, and (iii) access to assets is permitted only in accordance with management's general or specific authorization.

(gg) The Company and its Significant Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts in all material respects as are customary in the businesses in which they are engaged (the ownership of commercial real estate related loans and securities) after giving effect to the transactions contemplated hereby. All policies of insurance insuring the Company or any of its Significant Subsidiaries' respective businesses, assets, employees, officers and directors are in full force and effect. The Company and each of the Significant Subsidiaries are in compliance with the terms of such policies and instruments in all material respects. Neither the Company nor any Significant Subsidiary has reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be available and necessary to continue its business at a cost that would not have a Material Adverse Effect, except (i) for such failures to renew or obtain such insurance coverage due to conditions then applicable to the insurance industry or the commercial mortgage REIT industry in general, and (ii) that the Company is currently in renewal discussions with the provider of its directors' and officers' insurance policy, which may result in reduced coverage levels for the Company and its directors and officers thereunder or as a result of significant premium increases relative to historical pricing and coverage levels. Within the past twelve months, neither the Company nor any Significant Subsidiary has been denied any insurance coverage it has sought or for which it has applied, except that one of its current insurers would not provide Clause B or C coverage (though they would still provide Clause A coverage) with respect to the excess layer of Directors & Officers Liability insurance coverage (i.e., providing coverage between \$10 million and \$20 million) that it has historically provided to the Company.

(hh) Neither the Company and its Significant Subsidiaries, nor, to the knowledge of the Company, any person acting on behalf of the Company and/or its Significant Subsidiaries including, without limitation, any director, officer, manager, agent or employee of the Company or its Significant Subsidiaries has, directly or indirectly, while acting on behalf of the Company and/or its Significant Subsidiaries (i) used any corporate, partnership or company funds for unlawful contributions, gifts, entertainment or other unlawful expenses relating to political activity; (ii) made any unlawful payment to foreign or domestic government officials or employees or to foreign or domestic political parties or campaigns from corporate, partnership or company funds; (iii) violated any provision of the Foreign Corrupt Practices Act of 1977, as amended; or (iv) made any other unlawful payment.

(ii) The information provided by the Company pursuant to this Agreement does not, as of the date hereof, and will not as of the Closing Date, contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(jj) Neither the Company nor any of its Significant Subsidiaries own any real property.

Except as expressly stated in this Agreement and the Registration Rights Agreement, or any of the other documents delivered by the Company in connection herewith, the Company makes no representations or warranties, express or implied, with respect to the Exchange, the EJV Holdings, the EJV Transferred Rights, the Original Security, the Existing Indenture or any other matter.

5. Representations and Warranties of EJV. EJV represents and warrants to the Company as follows:

(a) It is a limited partnership duly formed, validly existing and in good standing under the laws of the jurisdiction in which it is organized with all requisite (i) power and authority to execute, deliver and perform under this Agreement to which it is a party, to make the representations and warranties specified herein and therein and to consummate the transactions contemplated in this Agreement.

(b) This Agreement and the consummation of the transactions contemplated herein has been duly authorized by it and, on the Closing Date, will have been duly executed and delivered by it and, assuming due authorization, execution and delivery by the Company of this Agreement to which each is a party, will be a legal, valid and binding obligation of such entity, enforceable against such entity in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and to general principles of equity.

(c) No filing with, or authorization, approval, consent, license, order registration, qualification or decree of, any Governmental Entity or any other Person, other than those that have been made or obtained, is necessary or required for the performance by such entity of its respective obligations under this Agreement or to consummate the transactions contemplated herein. Neither the execution and delivery of this Agreement, nor the transactions

contemplated herein, will conflict with or result in any violation of (i) any provision of the organizational documents of such entity or (ii) any statute, law, rule or regulation applicable to such entity.

(d) EJF is the legal and beneficial owner of the EJF Holdings and the related EJF Transferred Rights and shall deliver the EJF Holdings free and clear of any Lien created by EJF.

(e) There is no action, suit or proceeding before or by any Governmental Entity, arbitrator or court, domestic or foreign, now pending or, to its knowledge, threatened against or affecting it, except for such actions, suits or proceedings that, if adversely determined, would not, singly or in the aggregate, adversely affect the consummation of the transactions contemplated by this Agreement.

(f) Intentionally omitted.

(g) It is aware that the Shares have not been and will not be registered under the Securities Act and may not be offered or sold within the United States or to "U.S. persons" (as defined in Regulation S under the Securities Act) unless registered with the Commission, except in accordance with Rule 903 of Regulation S under the Securities Act or pursuant to an exemption from the registration requirements of the Securities Act.

(h) It is an "accredited investor," as such term is defined in Rule 501(a) of Regulation D and was not organized for the purpose of acquiring any of the Shares. Without characterizing any of the Original Security, the EJF Holdings or the EJF Transferred Rights as a "security" within the meaning of applicable securities laws, it has not made any offers to sell, or solicitations of any offers to buy, all or any portion of the Original Security, the EJF Holdings or the EJF Transferred Rights in violation of any applicable securities laws.

(i) Neither it nor any of its Affiliates, nor any person acting on its or its Affiliates' behalf has engaged, or will engage, any form of "general solicitation or general advertising" (within the meaning of Rule 502(c) of Regulation D) in connection with any offer or sale of the EJF Holdings.

(j) It understands and acknowledges that (i) EJF is acquiring the Shares for its own account, for investment and not with a view to, or for offer or sale in connection with, any fractionalization, division or distribution thereof in violation of the Securities Act or other applicable securities laws, subject to any requirement of law that the disposition of its property be at all times within its control and subject to its ability to resell such Shares pursuant to an effective registration statement under the Securities Act or pursuant to an exemption therefrom or in a transaction not subject thereto, and it agrees to the legends and transfer restrictions applicable to the Shares, and (ii) it has had the opportunity to ask questions of, and receive answers and request additional information from, the Company and is aware that it may be required to bear the economic risk of an investment in the Shares. It has not received and is not relying on any representations of the Company other than as set forth in this Agreement, or in any public filings. It has not entered into any contract to sell, transfer or pledge to any person the Shares that it is acquiring.

(k) It has not engaged any broker, finder or other entity acting under its authority that is entitled to any broker's commission or other fee in connection with this Agreement and the consummation of transactions contemplated in this Agreement and the New Indenture for which the Company could be responsible.

(l) It (i) is a sophisticated entity with respect to the Exchange, (ii) has such knowledge and experience, and has made investments of a similar nature, so as to be aware of the risks and uncertainties inherent in the Exchange and (iii) has independently and without reliance upon the Company or any of its affiliates, and based on such information as it has deemed appropriate, made its own analysis and decision to enter into this Agreement, except that it has relied upon the Company's express representations, warranties, covenants and agreements in this Agreement and the other documents delivered by the Company in connection therewith. It acknowledges that the Company has not given it any investment advice or opinion on whether the Exchange is prudent.

(m) It understands that the Exchange contemplated herein will be made in reliance upon an exemption from registration under the Securities Act pursuant to Section 4(2) thereof.

(n) EJV represents that, as of the date hereof, it does not own any stock of the Company.

(o) Payments made on the date hereof by the Company to EJV in respect of the EJV Holdings shall satisfy in full the interest payment obligations due to EJV by the Company and the Trust with respect to the EJV Holdings (including any portion of the EJV Holdings to be delivered to the Company after the date hereof) for the interest payment dates of April 30, 2009 and July 30, 2009, provided that all payments are made by the Company pursuant to Sections 2(c) and 2(d).

Except as expressly stated in this Agreement, EJV makes no representations or warranties, express or implied, with respect to the Exchange, the EJV Holdings, the EJV Transferred Rights, the Original Security, the Existing Indenture, or any other matter.

6. Covenants and Agreements of the Company

(a) The Company has taken all action reasonably necessary or appropriate to cause its representations and warranties contained in Section 4 hereof to be true as of the Closing Date and giving effect to the Exchange.

(b) The Company shall comply with the requirements of Sections 2 (c) and (d) with regard to the payments of the Post-Closing Cash Consideration without demand or any further notice to do so and without any grace period.

(c) Reserved.

(d) The Company will use its reasonable best efforts to continue to meet the requirements to qualify as a REIT under sections 856 through 860 of the Code, effective for the taxable year ending December 31, 2009 (and each fiscal quarter of such year) and succeeding taxable years for so long the judgment of the Company's Board of Directors is that the Company should maintain its status as a REIT.

(e) The Company will not, and will not permit any of its Affiliates or any person acting on its or its behalf to, directly or indirectly, make offers or sales of any security, or solicit offers to buy any security, under circumstances that would require the registration of any of the Shares under the Securities Act except in accordance with the terms of the Registration Rights Agreement.

(f) The Company will not, and will not permit any of its Affiliates or any person acting on its or its behalf to, engage in (i) any form of "general solicitation or general advertising" (within the meaning of Rule 502(c) of Regulation D), or (ii) any "directed selling efforts" within the meaning of Regulation S under the Securities Act, in connection with any offer or sale of the any of the Shares.

(g) Intentionally omitted.

(h) For a period of one year following the Closing Date, the Company will remain subject to and comply with all reporting requirements of Sections 13 or 15(d) of the Exchange Act and the regulations thereunder, including without limitation, making and keeping public information available (as those terms are understood and defined in Rule 144(c) under the Securities Act) and filing with the Commission in a timely manner (taking into account all permitted grace periods) all reports and other documents required of the Company under Section 13 or 15(d) Exchange Act. During such one-year period the Company shall furnish to each holder of Shares forthwith upon written request a written statement by the Company as to its compliance with the reporting requirements of the Exchange Act and the public information condition of Rule 144 under the Securities Act.

(i) At such time as any Shares are eligible for transfer under Rule 144, without the requirement for the Company to be in compliance with the current public information requirement under Rule 144 as to such Shares and without volume or manner-of-sale restrictions, the Company upon the request of any holder of such Shares shall cause any restrictive legend on the certificates evidencing such Shares to be removed at no cost to such holder. At such time as any Shares are eligible for transfer under Rule 144 subject to current public information requirements or volume or manner-of-sale restrictions, the Company upon the request of any purchaser of such Shares in a transaction meeting the applicable requirements of Rule 144 shall cause any restrictive legend on the certificates evidencing such Shares to be removed at no cost to such purchaser. The Company acknowledges and agrees that EJV will not, by virtue of its acquisition of the Shares in the Exchange, become an "affiliate" of the Company for purposes of Rule 144; and the Company will not at any time following the Exchange take the position that EJV is such an "affiliate" of the Company for purposes of Rule 144 or any other rule or regulation of the Commission permitting sales of the Shares without registration, absent significant increase in the Control of EJV and its Affiliates over the Company or a change in applicable law.

(j) The Company will not, until one hundred eighty (180) days following the Closing Date, without EJV's prior written consent or otherwise in accordance with the terms of

the Registration Rights Agreement, offer, sell, contract to sell, grant any option to purchase or otherwise dispose of, directly or indirectly, in any offering registered with the Commission any shares of Common Stock, unless the Company, either on its own or upon the request of EJV provides EJV with an opinion of counsel (such counsel to have experience and sophistication in the matters addressed in such opinion) addressed to EJV, its successors and assigns, stating that any such offer, sale, contract, option or other disposition will not result in the Shares being required to be registered under the Securities Act; provided that the Company shall be permitted to register shares of Common Stock issued pursuant to any employee benefit or compensation plan and that the Company shall not be prohibited from selling or otherwise transferring any shares of Shares in a transaction exempt from registration under the Securities Act.

(k) The Company will not identify any of the Indemnified Parties (as defined below) in a press release or any other public statement without the prior written consent of such Indemnified Party, unless such identification is required by law.

(l) Without acknowledging any conflict under Article VII of the Charter, if at any time the Company determines that solely by virtue of (i) the 541,906 shares of Common Stock being acquired by EJV pursuant to this Agreement, and (ii) the 238,347 shares of Common Stock being acquired by Kodiak pursuant to a Letter Agreement, dated the date hereof, between the Company and Kodiak (excluding any other shares of Capital Stock hereafter acquired, other than through stock split, stock dividend or similar capital transaction of the Company), that either EJV or Kodiak CDO Management, LLC individually or, if applicable attribution rules of the Code so require under the Charter, both such entities in the aggregate Beneficially Own or Constructively Own shares of Common Stock in excess of the Aggregate Stock Ownership Limit under Article VII of the Company's Articles of Incorporation (as then in effect, the "Charter"), then the Company shall forthwith present to its Board of Directors, and use reasonable best efforts to approval of the Board of Directors for, the creation of an Excepted Holder Limit under the Charter for EJV and/or Kodiak, as the case may be, to the extent necessary to permit EJV and/or Kodiak to continue to own their respective shares of Common Stock specified in clauses (i) and (ii) above without the imposition of any penalties pursuant to Sections 7.2.1(b), 7.2.2 or 7.2.5 of the Charter. Each of EJV and Kodiak hereby agree to deliver reasonable and customary representations, warranties and covenants satisfactory to the Company preceding any such creation of an Excepted Holder Limit under the Charter for such entity. As used in this Section 6(l), the terms "Beneficially Own," "Capital Stock," "Constructively Own," "Aggregate Stock Ownership Limit" and "Excepted Holder Limit" have the respective meanings given to them in Article VII of the Charter. The foregoing rights of EJV and Kodiak shall not be transferable to any other party.

7. Payment of Expenses. The Company agrees to pay all costs and expenses of the Company incident to the performance of the obligations of the Company under this Agreement, whether or not the transactions contemplated herein are consummated or this Agreement is terminated, including all costs and expenses incident to (i) the authorization, issuance, sale and delivery of the Common Stock and any taxes payable in connection therewith; (ii) the fees and expenses of counsel, accountants and any other experts or advisors retained by the Company; and (iii) the fees and all reasonable expenses of the BNYM in connection with the Joint Direction and Release.

8. **Indemnification.** (a) The Company agrees to indemnify and hold harmless BNYM, as applicable, EJF, EJF Capital Management, LLC and their respective affiliates (collectively, the "**Indemnified Parties**") each person, if any, who controls any of the Indemnified Parties within the meaning of the Securities Act or the Exchange Act, and the Indemnified Parties' respective directors, officers, employees and agents against any and all losses, claims, damages or liabilities, joint or several, to which the Indemnified Parties may become subject, under the Securities Act, the Exchange Act or other federal or state statutory law or regulation, at common law or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based on (i) the breach or alleged breach of any representation, warranty, or agreement of the Company contained in this Agreement, or (ii) the execution and delivery by the Company of this Agreement and the consummation of the transactions contemplated herein, and agrees to reimburse each such Indemnified Party, as incurred, for any legal or other expenses reasonably incurred by the Indemnified Parties in connection with investigating or defending any such loss, claim, damage, liability or action except to the extent any such loss, claim, damage, liability or action is the direct result of any bad faith, fraudulent misrepresentation, willful misconduct or breach of the representations and warranties and agreements, by such Indemnified Party. This indemnity agreement will be in addition to any liability that the Company may otherwise have. For avoidance of doubt, the indemnity provided by this Section 8 does not apply to any tax liability that arises out of or is based on the acquisition, ownership, modification, or disposition of the Subordinated Note, the Original Security, or any direct or indirect interest therein.

(b) Promptly after receipt by an Indemnified Party under this Section 8 of notice of the commencement of any action, such Indemnified Party will, if a claim in respect thereof is to be made against the indemnifying party under this Section 8, promptly notify the indemnifying party in writing of the commencement thereof; but the failure so to notify the indemnifying party will not relieve the indemnifying party from liability under paragraph (a) above unless and to the extent that such failure results in the forfeiture by the indemnifying party of material rights and defenses. The Indemnified Parties shall be entitled to appoint counsel to represent the Indemnified Parties in any action for which indemnification is sought. An indemnifying party may participate at its own expense in the defense of any such action; *provided*, that counsel to the indemnifying party shall not (except with the consent of the Indemnified Party) also be counsel to the Indemnified Party. In no event shall the indemnifying parties be liable for fees and expenses of more than one counsel (in addition to any local counsel) separate from its own counsel for all Indemnified Parties in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances, unless an Indemnified Party elects to engage separate counsel because such Indemnified Party believes that its interests are not aligned with the interests of another Indemnified Party or that a conflict of interest might result. An indemnifying party will not, without the prior written consent of the Indemnified Parties, settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim, action, suit or proceeding in respect of which indemnification may be sought hereunder (whether or not the Indemnified Parties are actual or potential parties to such claim, action, suit or proceeding) unless such settlement, compromise or consent includes an unconditional release of each Indemnified Party from all liability arising out of such claim, action, suit or proceeding.

9. **Representations and Indemnities to Survive.** The respective agreements, representations, warranties, indemnities and other statements of the Company and/or its officers set forth in or made pursuant to this Agreement will remain in full force and effect and will survive the Exchange. The provisions of Sections 7 and 8 shall survive the termination or cancellation of this Agreement.

10. **Reserved.**

11. **Amendments.** This Agreement may not be modified, amended, altered or supplemented, except upon the execution and delivery of a written agreement by each of the parties hereto.

12. **Notices.** All communications hereunder will be in writing and effective only on receipt, and will be mailed, delivered by hand or courier or sent by facsimile and confirmed or by any other reasonable means of communication, including by electronic mail, to the relevant party at its address specified in Exhibit B.

13. **Successors and Assigns.** This Agreement will inure to the benefit of and be binding upon the parties hereto and its respective successors and permitted assigns. Nothing expressed or mentioned in this Agreement is intended or shall be construed to give any person other than the parties hereto and the affiliates, directors, officers, employees, agents and controlling persons referred to in Section 8 hereof and its successors, assigns, heirs and legal representatives, any right or obligation hereunder. None of the rights or obligations of the Company under this Agreement may be assigned, whether by operation of law or otherwise, without EJF's prior written consent.

14. **Applicable Law.** THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK WITHOUT REFERENCE TO PRINCIPLES OF CONFLICTS OF LAW (OTHER THAN SECTIONS 5-1401 AND 5-1402 OF THE GENERAL OBLIGATIONS LAW).

15. **Submission to Jurisdiction.** ANY LEGAL ACTION OR PROCEEDING BY OR AGAINST ANY PARTY HERETO OR WITH RESPECT TO OR ARISING OUT OF THIS AGREEMENT MAY BE BROUGHT IN OR REMOVED TO THE COURTS OF THE STATE OF NEW YORK, IN AND FOR THE COUNTY OF NEW YORK, OR OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK (IN EACH CASE SITTING IN THE BOROUGH OF MANHATTAN). BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH PARTY ACCEPTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS (AND COURTS OF APPEALS THEREFROM) FOR LEGAL PROCEEDINGS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.

16. **Counterparts and Facsimile.** This Agreement may be executed by any one or more of the parties hereto in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same instrument. This Agreement may be executed by any one or more of the parties hereto by facsimile.

17. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties to this Agreement and supercedes all prior written or oral and all contemporaneous oral agreements, understandings and negotiations with respect to the subject matter hereof.

[Signature Page Follows]

IN WITNESS WHEREOF, this Agreement has been entered into as of the date first written above.

JER INVESTORS TRUST INC.

By: /s/ Mark S. Weiss

Name: Mark S. Weiss

Title: President

(Signatures continue on the next page)

EJF DISTRESSED MASTER FUND II, L.P.

By: EJF Distressed II GP, LLC, as General Partner
By: EJF Capital LLC, as Sole Member
By: /s/ Neal J. Wilson
Name: Neal J. Wilson
Title: Chief Operating Officer

JER Investors Trust Inc.
1650 Tysons Boulevard, Suite 1600
McLean, Virginia 22102

May 29, 2009

Kodiak CDO II, Ltd.
c/o Kodiak CDO Management, LLC
2107 Wilson Boulevard, Suite 400
Arlington, VA 22201

Ladies and Gentlemen:

Reference is made to that certain Exchange Agreement by and among JER Investors Trust Inc., a Maryland corporation (the "**Company**"), Taberna Preferred Funding IX, Ltd. and Kodiak CDO II, Ltd. ("**Kodiak**"), and acknowledged and agreed to by EJF Distressed Master Fund II, LP ("**EJF**"), dated as of May 29, 2009 (the "**Exchange Agreement**"), providing for *inter alia* the exchange by the Company with Kodiak of \$28,125,000 aggregate liquidation amount of preferred securities of JERIT TS Statutory Trust I, a Delaware statutory trust, owned by Kodiak for \$35,157,000 aggregate principal amount of Junior Subordinated Notes (the "**New Notes**") due 2037 (the "**Exchange**").

A. The Company hereby agrees that on or about the date hereof it will (i) pay to Kodiak an amount of \$140,625 (the "**Cash Reimbursement**"), and (ii) issue to Kodiak 238,347 shares (the "**Shares**") of its common stock, par value \$0.01 per share (the "**Common Stock**"), as reimbursement of certain third party costs for (a) outside legal counsel and (b) financial advisory and/or due diligence services (together, "**Third Party Costs**") incurred or to be incurred by Kodiak in connection with the Exchange and related transactions.

B. Kodiak acknowledges that upon receipt of the Cash Reimbursement and the issuance of the Shares the Company will have satisfied all Third Party Costs owed to it whatsoever in connection with the Exchange and related transactions, and Kodiak agrees that neither it nor any of its affiliates will seek additional reimbursement. Kodiak agrees that if the aggregate value of Third Party Costs incurred by Kodiak through June 12, 2009:

- is greater than the amount of the Cash Reimbursement, Kodiak shall be entitled to keep the Cash Reimbursement in full; or
- is less than the amount of the Cash Reimbursement, Kodiak covenants to purchase from the Company, and the Company covenants to sell to Kodiak on June 19, 2009 (or such other date agreed by the Company and Kodiak), a number of shares of Common Stock (valued at \$0.59 per share) equal to the difference between (x) the amount of the Cash Reimbursement and (y) the greater of \$100,000 and the amount of Third Party Costs actually incurred by Kodiak through such date.

C. Kodiak represents and warrants to, and agrees with, the Company as follows:

1) It is aware that the Shares have not been and will not be registered under the Securities Act of 1933 (the "**Securities Act**"); that the Shares may not be offered or sold within the United States or to "U.S. persons" (as defined in Regulation S under the Securities Act) unless registered with the Securities and Exchange Commission (the "**Commission**"), except in accordance with Rule 903 of Regulation S ("**Regulation S**") under the Securities Act or pursuant to an exemption from the registration requirements of the Securities Act; and that the Shares will bear a restrictive legend.

2) It is an "accredited investor," as such term is defined in Rule 501(a) of Regulation D ("**Regulation D**") under the Securities Act, and was not organized for the purpose of acquiring any of the Shares.

3) It has not engaged any broker, finder or other entity acting under the authority of it or any of its affiliates that is entitled to any broker's commission or other fee in connection with the issuance of the Shares pursuant hereto for which the Company or any of its affiliates could be responsible.

4) It understands and acknowledges that (i) it is purchasing the Shares for its own account, for investment and not with a view to, or for offer or sale in connection with, any fractionalization, division or distribution thereof in violation of the Securities Act or other applicable securities laws, subject to any requirement of law that the disposition of its property be at all times within its control and subject to its ability to resell such Shares pursuant to an effective registration statement under the Securities Act or pursuant to an exemption therefrom or in a transaction not subject thereto, and it agrees to the legends and transfer restrictions applicable to the Shares contained or to be contained in the stock certificate or certificates evidencing the Shares, and (ii) it has had the opportunity to ask questions of, and receive answers and request additional information from, the Company and is aware that it may be required to bear the economic risk of an investment in the Shares. It has not received and is not relying on any representations of the Company other than as set forth herein, in the Exchange Agreement or in any of the Company's public filings. It has not entered into any contract to sell, transfer or pledge to any person the Shares that it is acquiring.

5) It (i) is a sophisticated entity with respect to the acquisition of the Shares contemplated herein, (ii) has such knowledge and experience, and has made investments of a similar nature, so as to be aware of the risks and uncertainties inherent such transactions, and (iii) has independently and without reliance upon the Company or any of its affiliates, and based on such information as it has deemed appropriate, made its own analysis and decision to enter into the Exchange Agreement, except that it has relied upon the Company's express representations, warranties, covenants and agreements in this letter agreement, the Exchange Agreement and the other documents delivered by the Company to it in connection therewith. It acknowledges that the Company has not given it any investment advice or opinion on whether the transactions contemplated herein are prudent.

6) It understands that the issuance of the Shares contemplated herein will be made in reliance upon an exemption from registration under the Securities Act pursuant to Section 4(2) thereof.

D. The Company agrees with Kodiak as follows:

1) For a period of at least one year following the date of closing, the Company will remain subject to and comply with all reporting requirements of Sections 13 or 15(d) of the Securities Exchange Act of 1934 (the "**Exchange Act**") and the regulations thereunder, including without limitation, making and keeping public information available (as those terms are understood and defined in Rule 144(c) under the Securities Act) and filing with the Commission in a timely manner (taking into account all permitted grace periods) all reports and other documents required of the Company under Section 13 or 15(d) of the Exchange Act. During such one-year period the Company shall furnish to each holder of Shares forthwith upon written request a written statement by the Company as to its compliance with the reporting requirements of the Exchange Act and the public information condition of Rule 144 ("**Rule 144**") under the Securities Act.

2) At such time as any Shares are eligible for transfer under Rule 144, without the requirement for the Company to be in compliance with the current public information requirement under Rule 144 as to such Shares and without volume or manner-of-sale restrictions, the Company upon the request of any holder of such Shares shall cause any restrictive legend on the certificates evidencing such Shares to be removed at no cost to such holder. At such time as any Shares are eligible for transfer under Rule 144 subject to current public information requirements or volume or manner-of-sale restrictions, the Company upon the request of any purchaser of such Shares in a transaction meeting the applicable requirements of Rule 144 shall cause any restrictive legend on the certificates evidencing such Shares to be removed at no cost to such purchaser. The Company acknowledges and agrees that Kodiak will not, by virtue of its acquisition of the Shares pursuant to this letter agreement, become an "affiliate" of the Company for purposes of Rule 144; and the Company will not at any time following the Exchange take the position that Kodiak is such an "affiliate" of the Company for purposes of Rule 144 or any other rule or regulation of the Commission permitting sales of the Shares without registration, absent significant increase in the Control of Kodiak and its Affiliates over the Company or a change in applicable law.

3) Without acknowledging any conflict under Article VII of the Charter (as defined below), if at any time the Company determines that solely by virtue of (i) the 541,906 shares of Common Stock being acquired by EJF pursuant to the Exchange Agreement, and (ii) the Shares being acquired by Kodiak pursuant to this letter agreement (excluding any other shares of Capital Stock hereafter acquired, other than through stock split, stock dividend or similar capital transaction of the Company), that either EJF or Kodiak individually or, if applicable attribution rules of the Internal Revenue Code of 1986, as amended (the "**Code**") and the rules and regulations promulgated thereunder so require, both such entities in the aggregate Beneficially Own or Constructively Own shares of Common Stock in excess of the Aggregate Stock Ownership Limit under Article VII of the Company's

Articles of Incorporation (as then in effect, the "**Charter**"), then the Company shall forthwith present to its Board of Directors, and use reasonable best efforts to obtain the approval of the Board of Directors for, the creation of an Excepted Holder Limit under the Charter for EJJ and/or Kodiak, as the case may be, to the extent necessary to permit EJJ and/or Kodiak to continue to own their respective shares of Common Stock specified in clauses (i) and (ii) above without the imposition of any penalties pursuant to Sections 7.2.1(b), 7.2.2 or 7.2.5 of the Charter. Kodiak hereby agrees to deliver reasonable and customary representations, warranties and covenants satisfactory to the Company preceding any such creation of an Excepted Holder Limit under the Charter for it. As used in this paragraph D(3), the terms "Beneficially Own," "Capital Stock," "Constructively Own," "Aggregate Stock Ownership Limit" and "Excepted Holder Limit" have the respective meanings given to them in Article VII of the Charter. The foregoing rights of EJJ and Kodiak shall not be transferable to any other party.

E. The Company represents and warrants as of the date hereof as follows:

1) The Company is and for the ninety (90) days immediately prior to the date hereof has been subject to the reporting requirements of Sections 13 or 15(d) of the Exchange Act and has filed all reports required thereunder, as applicable, during the twelve (12) months preceding the date hereof.

2) It has not engaged any broker, finder or other entity acting under the authority of it or any of its affiliates that is entitled to any broker's commission or other fee in connection with the transaction for which Kodiak or any of its affiliates could be responsible.

3) Neither the Company nor any of its affiliates nor any person acting on its or their behalf, has, directly or indirectly, made offers or sales of any security, or solicited offers to buy any security, under circumstances that would cause the offering and issuance of the Shares hereunder to fail to meet the conditions in Rule 502(c) of Regulation D. Without limitation upon the generality of the foregoing, neither the Company nor any person acting on its behalf has taken any action, including any offering of any securities of the Company under circumstances which could require the integration under the Securities Act of such offering with the offering and issuance of the Shares hereunder, and thereby subject the Company to the registration requirements of the Securities Act.

4) Neither the Company nor any of its Affiliates, nor any person acting on its or its behalf, has engaged, or will engage, in any "directed selling efforts" within the meaning of Regulation S with respect to the Shares.

5) It (i) is duly incorporated and validly existing under the laws of the State of Maryland, (ii) is in good standing under such laws and (iii) has full power and authority to execute, deliver and perform its obligations under this letter agreement.

6) Neither the Shares nor this letter agreement are subject to any claim, counterclaim, setoff, defense, action, demand, litigation (including administrative proceedings or derivative actions), encumbrance, right (including expungement, avoidance,

reduction, contractual or equitable subordination, or otherwise) or defect. The Company has no current intention to initiate any bankruptcy or insolvency proceedings. The Company (i) has not issued the Shares or entered into this letter agreement with the actual intent to hinder, delay, or defraud any creditor and (ii) received reasonably equivalent value in exchange for its obligations under this letter agreement.

7) Neither the Company nor any of its affiliates nor any person acting on its or their behalf, has, directly or indirectly, made offers or sales of any security, or solicited offers to buy any security, under circumstances that would require the registration of any of the Shares under the Securities Act.

8) The Shares are not of an open-end investment company, unit investment trust or face-amount certificate company that is, or is required to be, registered under Section 8 of the Investment Company Act of 1940, as amended (the "**Investment Company Act**").

9) The Company is not, and immediately following consummation of the transactions contemplated hereby, will not be, an "investment company" or an entity "controlled" by an "investment company," in each case within the meaning of Section 3(a) of the Investment Company Act.

10) This letter agreement and the Registration Rights Agreement dated the date hereof by and among the Company, EJV and Kodiak (the "**Registration Rights Agreement**"), and the consummation of the transactions contemplated herein and therein have been duly authorized by the Company and, on the date hereof, will have been duly executed and delivered by the Company, and, assuming due authorization, execution and delivery by Kodiak (and by EJV, in the case of the Registration Rights Agreement), will be legal, valid and binding obligations of the Company enforceable against it in accordance with their terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and to general principles of equity.

11) Neither the issuance of the Shares nor the execution and delivery of and compliance with this letter agreement by the Company, nor the consummation of the transactions contemplated herein, (i) will conflict with or constitute a violation or breach of (x) the charter or bylaws or similar organizational documents of the Company or any Significant Subsidiary (as defined in the Exchange Agreement) of the Company or (y) any applicable law, statute, rule, regulation, judgment, order, writ or decree of any government, governmental authority, agency or instrumentality or court, domestic or foreign, having jurisdiction over the Company or any of its subsidiaries or their respective properties or assets (collectively, the "**Governmental Entities**"), (ii) will conflict with or constitute a violation or breach of, or a default or Repayment Event (as defined below) under, or result in the creation or imposition of any pledge, security interest, claim, lien or other encumbrance of any kind (each, a "**Lien**") upon any property or assets of the Company or any of its Significant Subsidiaries pursuant to any contract, indenture, mortgage, loan agreement, note, lease or other agreement or instrument to which (A) the Company or any of its Significant Subsidiaries is a party or by which it or any of them may be bound, or (B) to which any of the property or assets of any of them is subject, or any judgment, order or decree of any

Governmental Entity or arbitrator having jurisdiction over the Company or any of its subsidiaries or their respective properties or assets (an "**Arbitrator**"), or (iii) will require the consent, approval, authorization or order of any court or Governmental Entity, except, in the case of clause (i)(y), (ii), or (iii) for such conflicts, breaches, violations, defaults, Repayment Events (as defined below) or Liens which (X) would not, singly or in the aggregate, adversely affect the consummation of the transactions contemplated by this letter agreement and (Y) would not, singly or in the aggregate, have a material adverse effect on or cause a change in the condition (financial or otherwise), earnings, business, liabilities or assets of the Company and its subsidiaries taken as a whole (a "**Material Adverse Effect**"). As used herein, a "**Repayment Event**" means any event or condition which gives the holder of any note, debenture or other evidence of indebtedness (or any person acting on such holder's behalf) the right to require the repurchase, redemption or repayment of all or a portion of such indebtedness by the Company or any of its Significant Subsidiaries prior to its scheduled maturity.

12) The Company has all requisite power and authority to own, lease and operate its assets and conduct the business it transacts and proposes to transact, and is duly qualified to transact business and is in good standing in each jurisdiction where the nature of its activities requires such qualification, except where the failure of the Company to have such power and authority or to be so qualified would not, singly or in the aggregate, have a Material Adverse Effect.

13) Each Significant Subsidiary of the Company is listed on Schedule 1 of the Exchange Agreement, which the Company represents is true, complete and correct. Each Significant Subsidiary is a corporation, trust, partnership or limited liability company duly and properly incorporated or organized or formed, as the case may be, validly existing and, with respect to any such corporation, in good standing under the laws of the jurisdiction in which it is chartered or organized or formed, with all requisite power and authority to own, lease and operate its properties and conduct the business it transacts. Each Significant Subsidiary is duly qualified to transact business in each jurisdiction where the nature of its activities requires such qualification, except where the failure to be so qualified would not, singly or in the aggregate, have a Material Adverse Effect. No Significant Subsidiary of the Company (other than a taxable REIT subsidiary, if any,) is currently prohibited, directly or indirectly, under any agreement or other instrument to which it is a party or to which it or its assets is subject, other than as required by applicable law, from paying any dividends to the Company, from making any other distribution on such Significant Subsidiary's capital stock or other Equity Interests, from repaying to the Company any loans or advances to such Significant Subsidiary from the Company or from transferring any of such Significant Subsidiary's wholly owned properties or assets to the Company or any other subsidiary of the Company except as disclosed to Kodiak in writing or in the Company's public filings.

14) The Company and each of the Company's subsidiaries hold all necessary approvals, authorizations, orders, licenses, consents, registrations, qualifications, certificates and permits (collectively, the "**Governmental Licenses**") of and from Governmental Entities necessary to conduct their respective businesses as now being conducted, and neither the Company nor any of its subsidiaries has received any notice of proceedings relating to the

revocation or modification of any such Government License, except where the failure to be so licensed or approved or the receipt of an unfavorable decision, ruling or finding, would not, singly or in the aggregate, have a Material Adverse Effect; all of the Governmental Licenses are valid and in full force and effect, except where the invalidity or the failure of such Governmental Licenses to be in full force and effect, would not, singly or in the aggregate, have a Material Adverse Effect; and the Company and its subsidiaries are in compliance with all applicable laws, rules, regulations, judgments, orders, decrees and consents, except where the failure to be in compliance would not, singly or in the aggregate, have a Material Adverse Effect.

15) The authorized capital stock of the Company as of the date hereof consists solely of 100,000,000 shares of Common Stock and 50,000,000 shares of Preferred Stock, par value \$0.01 per share ("**Preferred Stock**"), of which 4,987,369 shares of Common Stock and no shares of Preferred Stock are issued and outstanding prior to giving effect to the Exchange and other issuances on the date hereof. All of the issued and outstanding shares of Common Stock have been duly authorized and validly issued, are fully paid and non-assessable, are not subject to any preemptive rights, and were not issued in violation of the Securities Act or any other applicable laws (including, without limitation, state securities or "blue sky" laws). The authorized, issued and outstanding capital stock of the Company immediately after the date hereof will be as set forth in Schedule 1 hereto. Other than as set forth on Schedule 1 hereto and other than restricted stock units outstanding as of the date hereof, the Company does not have outstanding any securities directly or indirectly convertible into or exercisable or exchangeable for any shares of its capital stock nor does it have outstanding any rights to subscribe for or to purchase, or any warrants, options or other rights for the purchase of, or any agreements providing for the direct or indirect issuance (contingent or otherwise) of any of its capital stock. The outstanding capital stock of the Company is not subject to any voting trust agreement or other agreement or commitment restricting or otherwise relating to the voting, dividend rights or disposition of such capital stock. The Shares have been duly authorized, and are validly issued, fully paid and non-assessable. All of the issued and outstanding Equity Interests of each of the Company's Significant Subsidiaries are validly issued, fully paid and non-assessable; all of the issued and outstanding Equity Interests of each subsidiary of the Company that are owned by the Company, directly or through subsidiaries, are free and clear of any Lien or claim. As used herein, "**Equity Interests**" means with respect to any entity (a) if such a entity is a partnership, the partnership interests (general or limited) in a partnership, (b) if such entity is a limited liability company, the membership interests in a limited liability company (c) if such entity is a corporation, the shares or stock interests (both common stock and preferred stock) in a corporation and (d) if such entity is a trust, the common or preferred securities issued by such trust.

16) Neither the Company nor any of its subsidiaries is (i) in violation of its respective charter or by-laws or similar organizational documents or (ii) in default in the performance or observance of any obligation, agreement, covenant or condition contained in any contract, indenture, mortgage, loan agreement, note, lease or other agreement or instrument to which the Company or any such Significant Subsidiary is a party or by which it or any of them may be bound or to which any of the property or assets of any of them is subject, except, in the case of clause (ii), where such violation or default would not, singly or in the aggregate, have a Material Adverse Effect.

17) There is no action, suit or proceeding before or by any Governmental Entity or Arbitrator, now pending or, to the knowledge of the Company after due inquiry, threatened against or affecting the Company or any of its subsidiaries, except for such actions, suits or proceedings as are disclosed in the Company's 1934 Act Reports (as defined below), or that, if adversely determined, would not, singly or in the aggregate, adversely affect the consummation of the transactions contemplated by this letter agreement or have a Material Adverse Effect; and, except as disclosed in the Company's 1934 Act Reports, the aggregate of all pending legal or governmental proceedings to which the Company or any of its subsidiaries is a party or of which any of their respective properties or assets is subject, including ordinary routine litigation incidental to the business, are not expected to result in a Material Adverse Effect.

18) The accountants of the Company who certified the Financial Statements (defined below) are independent public accountants of the Company and its subsidiaries within the meaning of the Securities Act, and the rules and regulations of the Commission thereunder.

19) The audited consolidated financial statements (including the notes thereto) and schedules of the Company and its consolidated subsidiaries for the fiscal year ended December 31, 2008 (the "**Financial Statements**") filed by the Company with the Commission in its Annual Report on Form 10-K and the Interim Financial Statements (as defined in the Exchange Agreement) are the most recent available audited and unaudited, respectively, consolidated financial statements of the Company and its consolidated subsidiaries, respectively, and fairly present in all material respects, in accordance with U.S. generally accepted accounting principles ("**GAAP**"), subject to Schedule 3 of the Exchange Agreement, the financial position of the Company and its consolidated subsidiaries, and the results of operations and changes in financial condition as of the dates and for the periods therein specified. Such consolidated financial statements and schedules have been prepared in accordance with GAAP consistently applied throughout the periods involved (except as otherwise noted therein).

20) Neither the Company nor any of its subsidiaries has any material liability, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due, including any liability for taxes and the Company has not received written notice of any action, suit, proceeding, hearing, charge, complaint, claim or demand against the Company or any of its subsidiaries that could give rise to any such liability, except for (i) liabilities set forth in the Financial Statements or the Interim Financial Statements and (ii) normal fluctuations in the amount of the liabilities referred to in clause (i) above occurring in the ordinary course of business of the Company and all of its subsidiaries since the date of the most recent balance sheet included in such Financial Statements, and (iii) liabilities that would not, singly or in the aggregate, have a Material Adverse Effect.

21) Since the date of the Interim Financial Statements, there has not been (A) any Material Adverse Effect, other than as disclosed to Kodiak or (B) any dividend or distribution of any kind declared, paid or made by the Company on any class of its Equity Interests.

22) The documents and reports of the Company filed with the Commission in accordance with the Exchange Act, from and including the commencement of the fiscal year covered by the Company's most recent Annual Report on Form 10-K, at the time they were filed by the Company with the Commission (collectively, the "**1934 Act Reports**"), complied in all material respects with the requirements of the Exchange Act and the rules and regulations of the Commission thereunder, and did not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. The Company has filed all reports required to be filed by it under the Exchange Act, including pursuant to Section 13(a) or 15(d) thereof, since January 1, 2005; and has filed all such reports on a timely basis or has received a valid extension of such time of filing and has filed any such reports prior to the expiration of any such extension.

23) None of the Company or any of its Significant Subsidiaries has any employees.

24) No filing with, or authorization, approval, consent, license, order, registration, qualification or decree of, any Governmental Entity, other than those that have been made or obtained, is necessary or required for the performance by the Company of its obligations under this letter agreement or the Registration Rights Agreement, or the consummation by the Company of the transactions contemplated by this letter agreement and the Registration Rights Agreement.

25) The Company and each of its Significant Subsidiaries has good and valid title to all of its respective real and personal property, in each case free and clear of all Liens and defects, except for Liens for Taxes (as defined below) not yet due or payable and those Liens securing debt in the ordinary course of its business and that would not, singly or in the aggregate, have a Material Adverse Effect; and all of the leases and subleases under which the Company or any of its Significant Subsidiaries holds properties are in full force and effect, except where the failure of such leases and subleases to be in full force and effect would not, singly or in the aggregate, have a Material Adverse Effect, and neither the Company nor any of its Significant Subsidiaries has any notice of any claim of any sort that has been asserted by anyone adverse to the rights of the Company or any Significant Subsidiary under any such leases or subleases, or affecting or questioning the rights of such entity to the continued possession of the leased or subleased premises under any such lease or sublease, except for such claims that would not, singly or in the aggregate, have a Material Adverse Effect.

26) Commencing with its taxable year ended December 31, 2004, the Company has been, and upon the completion of the transactions contemplated hereby, the Company will continue to be, organized and operated in conformity with the requirements

for qualification and taxation as a real estate investment trust (a "**REIT**") under Sections 856 through 860 of the Code for so long as the judgment of the Company's Board of Directors is that the Company should maintain its status as a REIT, and no actions have been taken (or not taken which are required to be taken) which would cause such qualification to be lost. The Company expects to continue to be organized and to operate in a manner so as to qualify as a REIT in the taxable year ending December 31, 2009 and succeeding taxable years for so long as the judgment of the Company's Board of Directors is that the Company should maintain its status as a REIT.

27) The Company and each Significant Subsidiary has timely and duly filed (or filed extensions thereof (and which extensions are presently in effect)) all material Tax Returns (as defined below) required to be filed by them, and all such Tax Returns are true, correct and complete in all material respects. The Company and each Significant Subsidiary has timely and duly paid in full all material Taxes (as defined below) required to be paid by them (whether or not such amounts are shown as due on any Tax Return). There are no federal, state, or other Tax audits or deficiency assessments proposed in writing or pending with respect to the Company or any Significant Subsidiary, and no such audits or assessments are threatened in writing to the Company. As used herein, the terms "**Tax**" or "**Taxes**" mean (i) all federal, state, local, and foreign taxes, and other assessments of a similar nature (whether imposed directly or through withholding), including any interest, additions to tax, or penalties applicable thereto, imposed by any Governmental Entity, and (ii) all liabilities in respect of such amounts arising as a result of being a member of any affiliated, consolidated, combined, unitary or similar group, as a successor to another person or by contract. As used herein, the term "**Tax Returns**" means all federal, state, local, and foreign Tax returns, declarations, statements, reports, schedules, forms, and information returns and any amendments thereto filed or required to be filed with any Governmental Entity.

28) (i) The books, records and accounts of the Company and its Significant Subsidiaries accurately and fairly reflect, in reasonable detail, the transactions in, and dispositions of, the assets of, and the results of operations of, the Company and its subsidiaries. The Company and each of its subsidiaries maintains a system of internal accounting controls sufficient to provide reasonable assurance as regards the Company and each of its consolidated subsidiaries regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles, including, but not limited to, internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP and to maintain asset accountability, and (iii) access to assets is permitted only in accordance with management's general or specific authorization.

(ii) The Company has in place the "disclosure controls and procedures" (as defined in Rules 13a-15(e) and 15d-15(e) of the Exchange Act) reasonably designed to ensure that information required to be disclosed by the Company in the reports that it files under the Exchange Act is recorded, processed, summarized and reported within the time

periods specified in the rules and forms of the Commission (including any permitted extension thereof), and that such information is accumulated and communicated to the Company's management, as appropriate to allow timely decisions regarding required disclosure. There is and has been no failure on the part of the Company or, to the Company's knowledge, any of the Company's directors or officers, in their capacities as such, to comply in any material respect with any applicable provision of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated thereunder, as in effect from time to time.

29) The Company and its Significant Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts in all material respects as are customary in the businesses in which they are engaged (the ownership of commercial real estate related loans and securities) after giving effect to the transactions contemplated hereby. All policies of insurance insuring the Company or any of its Significant Subsidiaries' respective businesses, assets, employees, officers and directors are in full force and effect. The Company and each of the Significant Subsidiaries are in compliance with the terms of such policies and instruments in all material respects. Neither the Company nor any Significant Subsidiary has reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be available and necessary to continue its business at a cost that would not have a Material Adverse Effect, except (i) for such failures to renew or obtain such insurance coverage due to conditions then applicable to the insurance industry or the commercial mortgage REIT industry in general, and (ii) that the Company is currently in renewal discussions with the provider of its directors' and officers' insurance policy, which may result in reduced coverage levels for the Company and its directors and officers thereunder or result in significant premium increases relative to historical pricing and coverage levels. Within the past twelve months, neither the Company nor any Significant Subsidiary has been denied any insurance coverage it has sought or for which it has applied, except that one of its current insurers would not provide Clause B or C coverage (though they would still provide Clause A coverage) with respect to the excess layer of Directors & Officers Liability insurance coverage (i.e., providing coverage between \$10 million and \$20 million) that it has historically provided to the Company.

30) Neither the Company and its Significant Subsidiaries, nor, to the knowledge of the Company, any person acting on behalf of the Company and/or its Significant Subsidiaries including, without limitation, any director, officer, manager, agent or employee of the Company or its Significant Subsidiaries has, directly or indirectly, while acting on behalf of the Company and/or its Significant Subsidiaries (i) used any corporate, partnership or company funds for unlawful contributions, gifts, entertainment or other unlawful expenses relating to political activity; (ii) made any unlawful payment to foreign or domestic government officials or employees or to foreign or domestic political parties or campaigns from corporate, partnership or company funds; (iii) violated any provision of the Foreign Corrupt Practices Act of 1977, as amended; or (iv) made any other unlawful payment.

31) The information provided by the Company pursuant to this letter agreement does not, as of the date hereof, contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

32) None of the Company or any of its Significant Subsidiaries owns any real property.

33) The issuance of the Shares (i) does not require the approval of the shareholders of the Company, or (ii) any filing with the Commission other than the filing of a Current Report on Form 8-K within four (4) business days following the Closing Date.

Except as expressly stated in this letter agreement, neither the Company nor Kodiak makes any representations or warranties, express or implied, with respect to the Shares.

Sincerely,

JER INVESTORS TRUST INC.

By: /s/ J. Michael McGillis

Name: J. Michael McGillis

Title: Chief Financial Officer

Acknowledged and Agreed:

KODIAK CDO II, LTD.

By: Kodiak CDO Management, LLC

Its: Collateral Manager

By: Kodiak Funding, LP

Its: Sole Member

By: Kodiak Funding Company, Inc.

Its: General Partner

By: /s/ Robert M. Hurley

Name: Robert M. Hurley

Title: Chief Financial Officer