
Section 1: 8-K (8-K)

**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): April 16, 2018

EPR Properties

(Exact name of registrant as specified in its charter)

Maryland
(State or other jurisdiction
of incorporation)

1-13561
(Commission
File Number)

43-1790877
(I.R.S. Employer
Identification No.)

909 Walnut Street, Suite 200
Kansas City, Missouri 64106
(Address of principal executive office)(Zip Code)

(816) 472-1700
(Registrant's telephone number, including area code)

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))

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

Emerging growth company

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

Item 1.01. Entry into a Material Agreement.

On April 16, 2018, EPR Properties (the “Company”) completed the public offering of \$400 million aggregate principal amount of the Company’s 4.950% Senior Notes due 2028 (the “Notes”). The Notes have been registered under the Securities Act of 1933, as amended (the “Securities Act”), pursuant to the Company’s shelf registration statement on Form S-3 (File No. 333-211812), as supplemented by the prospectus supplement dated April 9, 2018, previously filed with the Securities and Exchange Commission under the Securities Act.

The Notes were issued pursuant to an indenture, dated as of April 16, 2018 (the “Indenture”), between the Company and UMB Bank, n.a., as trustee (the “Trustee”).

The Notes are senior unsecured obligations of the Company. The Notes rank equal in right of payment with all of the Company’s existing and future senior indebtedness, including the Company’s unsecured revolving credit facility, unsecured term loan facility, 5.750% Senior Notes due 2022, 5.250% Senior Notes due 2023, 4.350% Senior Notes due 2024, 4.500% Senior Notes due 2025, 4.560% Senior Notes due 2026, 4.750% Senior Notes due 2026 and 4.500% Senior Notes due 2027, and rank senior in right of payment to any of the Company’s existing and future indebtedness that is subordinated to the Notes. The Notes are effectively subordinated to all of the Company’s existing and future secured indebtedness to the extent of the value of the collateral securing such indebtedness. The Notes are structurally subordinated to all liabilities of any of the Company’s subsidiaries. None of the Company’s subsidiaries will initially guarantee the Notes. However, certain of the Company’s domestic subsidiaries will be obligated to guarantee the Notes under certain circumstances as further described in the Indenture.

The Notes accrue interest at a rate of 4.950% per year from April 16, 2018, payable semi-annually in arrears, until maturity or earlier redemption. The Company will pay interest on the Notes on April 15 and October 15 of each year, beginning October 15, 2018, to holders of record on the preceding April 1 and October 1, as the case may be. Interest will be calculated on the basis of a 360-day year of twelve 30-day months. The Notes will mature on April 15, 2028 (the “Maturity Date”), unless earlier redeemed by the Company at its option.

The Company may redeem some or all of the Notes at a redemption price equal to 100% of the principal amount of the Notes, plus accrued and unpaid interest, up to, but excluding, the applicable redemption date, plus a make-whole premium. If the Notes are redeemed on or after January 15, 2028 (three months prior to the Maturity Date), the redemption price will be 100% of the principal amount of the Notes being redeemed, plus accrued and unpaid interest, up to, but excluding, the redemption date.

The Company and its restricted subsidiaries are subject to certain negative covenants under the Indenture. The provisions of the Indenture limit the Company’s and its restricted subsidiaries’ ability to, among other things, (i) incur additional indebtedness and (ii) consolidate, merge or transfer substantially all of their assets. The Company and its restricted subsidiaries must also maintain total unencumbered assets of at least 150% of their unsecured debt.

The Indenture also contains customary events of default. In the case of an event of default resulting from certain events of bankruptcy, insolvency or reorganization, the principal of and accrued and unpaid interest, if any, on all outstanding Notes will become due and payable immediately without further action or notice. If any other event of default under the Indenture occurs and is continuing, the Trustee or holders of not less than 25% in principal amount of the then outstanding Notes may declare all of the Notes due and payable immediately.

The foregoing descriptions of the Indenture and the Notes do not purport to be complete and are subject to, and qualified in their entirety by, reference to the Indenture and form of Note, which are attached hereto as [Exhibits 4.1](#) and [4.2](#), respectively, and are incorporated herein by reference.

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

The information included under Item 1.01 hereof is incorporated by reference in this Item 2.03.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
4.1	Indenture, dated April 16, 2018, between EPR Properties and UMB Bank, n.a., as trustee.
4.2	Form of 4.950% Senior Note due 2028 (included as Exhibit A to Exhibit 4.1 above).
5.1	Opinion of Stinson Leonard Street as to the legality of the Notes.
8.1	Opinion of Stinson Leonard Street regarding certain U.S. Federal Income Tax Matters in connection with the issuance of the Notes.
23.1	Consent of Stinson Leonard Street LLP to the filing of Exhibit 5.1 herewith (included in its opinion filed as Exhibit 5.1).
23.2	Consent of Stinson Leonard Street LLP to the filing of Exhibit 8.1 herewith (included in its opinion filed as Exhibit 8.1).

SIGNATURES

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

EPR PROPERTIES

By: /s/ Craig L. Evans

Name: Craig L. Evans

Title: Senior Vice President, General Counsel and
Secretary

Date: April 16, 2018

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Section 2: EX-4.1 (EX-4.1)

Exhibit 4.1

EPR Properties

INDENTURE

Dated as of April 16, 2018

\$400,000,000

4.950% Senior Notes due 2028

UMB Bank, n.a.

Trustee

CROSS-REFERENCE TABLE*

<i>Trust Indenture Act Section</i>	<i>Indenture Section</i>
310(a)(1)	7.10
(a)(2)	7.10
(a)(3)	N.A.
(a)(4)	N.A.
(a)(5)	7.10
(b)	7.10
(c)	N.A.
311(a)	7.11
(b)	7.11
(c)	N.A.
312(a)	2.05
(b)	12.03
(c)	12.03
313(a)	7.06
(b)(2)	7.06; 7.07
(c)	7.06; 12.02
(d)	7.06
314(a)(4)	12.05
(c)(1)	N.A.
(c)(2)	N.A.
(c)(3)	N.A.
(e)	12.05
(f)	N.A.
315(a)	2.02
(b)	2.02
(c)	2.02
(d)	2.02
(e)	N.A.
316(a) (last sentence)	N.A.
(a)(1)(A)	N.A.
(a)(1)(B)	N.A.
(a)(2)	N.A.
(b)	N.A.

* This Cross Reference Table is not part of this Indenture.

(c)	12.16
317(a)(1)	N.A.
(a)(2)	N.A.
(b)	N.A.
318(a)	N.A.
(b)	N.A.
(c)	12.01

N.A. means not applicable.

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EXHIBITS

Exhibit A	Form of Note
Exhibit B	Form of Supplemental Indenture

INDENTURE dated as of April 16, 2018 between EPR Properties, a Maryland real estate investment trust (the “*Issuer*”), and UMB Bank, n.a., as trustee (the “*Trustee*”).

Each party agrees as follows for the benefit of the other parties and for the equal and ratable benefit of the Holders (as defined herein) of (i) the Issuer’s 4.950% Senior Notes due 2028 issued on the Closing Date (the “*Initial Notes*”) and (ii) any Additional Notes (as defined herein) that may be issued on any other date following the Issue Date (as defined herein) (all such notes in clauses (i) and (ii) being referred to collectively as the “*Notes*”):

ARTICLE 1

DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.01 Definitions.

“*Acquired Debt*” means Debt of a Person (1) existing at the time such Person becomes a Subsidiary or (2) assumed in connection with the acquisition of assets from such Person, in each case, other than Debt incurred in connection with, or in contemplation of, such Person becoming a Subsidiary or such acquisition. Acquired Debt is deemed to be incurred on the date of the related acquisition of assets from any Person or the date the acquired Person becomes a Subsidiary.

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

“*Agent*” means any Registrar, co-registrar, Paying Agent or additional paying agent.

“*Annual Debt Service*” as of any date means the amount which was expensed in the four consecutive fiscal quarters ending on the most recent Measurement Date for interest on Debt of the Issuer and its Restricted Subsidiaries, excluding (1) amortization of debt discount and deferred financing cost, (2) all gains and losses associated with the unwinding or break-funding of interest rate swap agreements, (3) the write-off of unamortized deferred financing fees, (4) prepayment fees, premiums and penalties and (5) non-cash swap ineffectiveness charges.

“*Applicable Premium*” means, with respect to any Note on any redemption date, the excess of:

- (1) the present value at such redemption date of (i) the aggregate principal amount of the Note plus (ii) all required interest payments due on the Note through the Par Call Date (excluding interest paid prior to the redemption date and accrued but unpaid interest to the redemption date), computed using a discount rate equal to the Treasury Rate as of such redemption date plus 35 basis points; over
- (2) the principal amount of the Note.

“*Applicable Procedures*” means, with respect to any transfer or exchange of or for beneficial interests in any Global Note, the rules and procedures of the Depository that apply to such transfer or exchange.

“*Authorized Newspaper*” means a newspaper, printed in the English language or in an official language of the country of publication, customarily published on each Business Day, whether or not published on Saturdays, Sundays or holidays, and of general circulation in each place in connection with which the term is used or in the financial community of each such place. Whenever successive publications are required to be made in Authorized Newspapers, the successive publications may be made in the same or in different Authorized Newspapers in the same city meeting the foregoing requirements and in each case on any Business Day.

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

“*Board of Directors*” means:

- (1) with respect to the Issuer, its Board of Trustees;
- (2) with respect to a corporation, the Board of Directors of the corporation;
- (3) with respect to a partnership, the Board of Directors of the general partner of the partnership or the board or committee of the general partner of the partnership serving a similar function; and
- (4) with respect to any other Person, the board or committee of such Person serving a similar function.

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

“*Broker-Dealer*” means any broker or dealer registered under the Exchange Act.

“*Business Day*” means any day other than a Saturday or Sunday or a day on which banking institutions in the City of New York are required or authorized to close.

“*Capital Stock*” means, with respect to any entity, any capital stock (including preferred stock), shares, interests, participation or other ownership interests (however designated) of such entity and any rights (other than debt securities convertible into or exchangeable for capital stock), warrants or options to purchase any thereof; *provided, however*, that leases of real property that provide for contingent rent based on the financial performance of the tenant shall not be deemed to be Capital Stock.

“*Capitalized Lease Obligation*” means, at the time any determination is to be made, the amount of the liability in respect of a capital lease that would at that time be required to be capitalized on a balance sheet in accordance with GAAP.

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

“*Consolidated Income Available for Debt Service*” for any period means Earnings from Operations of the Issuer and its Restricted Subsidiaries plus amounts which have been deducted, and minus amounts which have been added, for the following (without duplication): (1) total interest expense of the Issuer and its Restricted Subsidiaries for such period, including interest or distributions on Debt of the Issuer and its Restricted Subsidiaries, (2) provision for taxes based on income or profits of the Issuer and its Restricted Subsidiaries for such period, (3) amortization of debt discount and deferred financing costs, (4) provisions for gains and losses on properties, (5) depreciation and amortization (excluding amortization of prepaid cash expenses that were paid in a prior period), (6) the effect of any non-cash charge resulting from a change in accounting principles in determining Earnings from Operations for such period, (7) amortization of deferred charges, (8) the aggregate amount of all non-cash expenses (excluding any such non-cash expense to the extent that it represents an accrual of or reserve for cash expenses in any future period or amortization of a prepaid cash expense that was paid in a prior period), determined on a consolidated basis, to the extent such items increased or decreased Earnings from Operations for such period and (9) straight-lined rental revenue.

“*Corporate Trust Office of the Trustee*” will be at the address of the Trustee specified in Section 12.02 hereof or such other address as to which the Trustee may give notice to the Issuer.

“*Credit Agreement*” means the Second Amended, Restated and Consolidated Credit Agreement, dated as of September 27, 2017, among the Issuer, as borrower, KeyBank National Association, as administrative agent, JP Morgan Chase Bank, N.A., RBC Capital Markets, LLC, Citibank, N.A., Bank of America, N.A. and Barclays Bank PLC, as co-syndication agents, KeyBanc Capital Markets Inc., JP Morgan Chase Bank, N.A., RBC Capital Markets Corporation, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Barclays Bank PLC and Citigroup Global Markets Inc. as joint book runners and joint lead arrangers, Citizens Bank, National Association, SunTrust Bank and Bank of the West, as documentation agents, and the lenders party thereto.

“*Custodian*” means the Trustee, as custodian with respect to the Notes in global form, or any successor entity thereto.

“*Debt*” of the Issuer or any of its Restricted Subsidiaries means, without duplication, any indebtedness of the Issuer or any Restricted Subsidiary, whether or not contingent, in respect of:

(1) borrowed money or evidenced by bonds, notes, debentures or similar instruments;

(2) indebtedness for borrowed money secured by any encumbrance existing on property owned by the Issuer or its Restricted Subsidiaries, to the extent of the lesser of (x) the amount of indebtedness so secured or (y) the Fair Market Value of the property subject to such encumbrance;

(3) the reimbursement obligations in connection with any letters of credit actually drawn or amounts representing the balance deferred and unpaid of the purchase price of any property or services, except any such balance that constitutes an accrued expense, trade payable, conditional sale obligations or obligations under any title retention agreement;

(4) the principal amount of all obligations of the Issuer and its Restricted Subsidiaries with respect to redemption, repayment or other repurchase of any Disqualified Stock; and

(5) any lease of property by the Issuer or any of its Restricted Subsidiaries as lessee which is reflected on the Issuer’s or such Restricted Subsidiaries’ consolidated balance sheet as a Capitalized Lease Obligation, to the extent, in the case of items of indebtedness under clauses (1) through (5) above, that any such items would appear as a liability on the Issuer’s or such Restricted Subsidiaries’ consolidated balance sheet in accordance with GAAP.

Debt also includes, to the extent not otherwise included, any obligation by the Issuer and its Restricted Subsidiaries to be liable for, or to pay, as obligor, guarantor or otherwise (other than for purposes of collection in the ordinary course of business), Debt of another Person (other than the Issuer or any of its Restricted Subsidiaries); it being understood that Debt shall be deemed to be incurred by the Issuer or any of its Restricted Subsidiaries whenever the Issuer or such Restricted Subsidiary shall create, assume, guarantee or otherwise become liable in respect thereof; *provided, however*, that a Person shall not be deemed to have incurred Debt (or be liable with respect to such Debt) by virtue of Standard Securitization Undertakings.

Debt shall not include (a) Debt arising from agreements of the Issuer or any Restricted Subsidiary providing for indemnification, adjustment or holdback of purchase price or similar obligations, in each case, incurred or assumed in connection with the acquisition or disposition of any business, assets or a Subsidiary, other than guarantees of Debt incurred by any Person acquiring all or any portion of such business, assets or Subsidiary for the purpose of financing such acquisition or (b) contingent obligations under performance bonds, performance guarantees, surety bonds, appeal bonds or similar obligations incurred in the ordinary course of business and consistent with past practices. In the case of Debt as of any date issued with original issue discount, the amount of such Debt shall be the accreted value thereof as of such date.

“*Default*” means, with respect to this Indenture and the Notes, any event that is, or with the passage of time or the giving of notice or both would be, an Event of Default.

“*Definitive Note*” means a certificated Note registered in the name of the Holder thereof and issued in accordance with Section 2.06, substantially in the form of Exhibit A hereto, except that such Note shall not bear the Global Note Legend and shall not have the “*Schedule of Exchanges of Interests in the Global Note*” attached thereto.

“*Depository*” means, with respect to the Notes issuable or issued in whole or in part in global form, the Person specified in Section 2.03 hereof as the Depository with respect to the Notes, and any and all successors thereto appointed as depository hereunder and having become such pursuant to the applicable provision of this Indenture.

“*Disqualified Stock*” means, with respect to any entity, any Capital Stock of such entity which by the terms of such Capital Stock (or by the terms of any security into which it is convertible or for which it is exchangeable or exercisable), upon the happening of any event or otherwise, (1) matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise (other than Capital Stock which is redeemable solely in exchange for Capital Stock which is not Disqualified Stock or for Subordinated Debt), (2) is convertible into or exchangeable or exercisable for Debt, other than Subordinated Debt or Disqualified Stock, or (3) is redeemable at the option of the holder thereof, in whole or in part (other than Capital Stock which is redeemable solely in exchange for Capital Stock which is not Disqualified Stock or for Subordinated Debt), in each case on or prior to the stated maturity of the Notes.

“*Domestic Subsidiary*” means any Restricted Subsidiary that was formed under the laws of the United States or any state of the United States or the District of Columbia.

“*Earnings from Operations*” for any period means the consolidated net income of the Issuer and its Restricted Subsidiaries (excluding non-controlling interests), excluding gains and losses on sales of investments, extraordinary items (including, in any event, losses on extinguishment of debt), distributions on equity securities, property valuation losses, and the net income of any Person, other than a Restricted Subsidiary of the Issuer (except to the extent of cash dividends or distributions paid to the Issuer or any Restricted Subsidiary) as reflected in the financial statements of the Issuer and its Restricted Subsidiaries for such period, on a consolidated basis determined in accordance with GAAP, and excluding the cumulative effect of changes in accounting principles.

“*Equity Interests*” means Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any debt security that is convertible into, or exchangeable for, Capital Stock).

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

“*Existing Notes*” means the Issuer’s 5.750% Senior Notes due 2022, 5.250% Senior Notes due 2023, 4.350% Senior Notes due 2024, 4.500% Senior Notes due 2025, 4.560% Senior Notes due 2026, 4.750% Senior Notes due 2026 and 4.500% Senior Notes due 2027.

“*Fair Market Value*” means, with respect to any asset, the price (after taking into account any liabilities relating to such assets) which could be negotiated in an arm’s-length free market transaction between a willing seller and a willing buyer, neither of which is under pressure or compulsion to complete the transaction. Fair Market Value shall be determined by the Board of Directors of the Issuer in good faith.

“*Foreign Currency*” means any currency, currency unit or composite currency issued by the government of one or more countries other than the United States of America or by any recognized confederation or association of such governments.

“*GAAP*” means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession, which are in effect on the date of determination.

“*Global Note*” means a global note substantially in the form of Exhibit A hereto bearing the Global Note Legend and deposited with or on behalf of, and registered in the name of, the Depository or its nominee that will be issued in a denomination equal to the outstanding principal amount of the Notes sold.

“*Global Note Legend*” means the legend set forth in Section 2.06(g), which is required to be placed on all Global Notes issued under this Indenture.

“*Government Obligations*” means securities which are (1) direct obligations of the United States of America or the government which issued the Foreign Currency in which the Notes are payable, for the payment of which its full faith and credit is pledged or (2) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America or such government which issued the Foreign Currency in which Notes are payable, the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America or such other government, which, in either case, are not callable or redeemable at the option of the issuer thereof, and shall also include a depository receipt issued by a bank or trust company as custodian with respect to any such Government Obligation or a specific payment of interest on or principal of any such Government Obligation held by such custodian for the account of the holder of a depository receipt, *provided that* (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the Government Obligation or the specific payment of interest on or principal of the Government Obligation evidenced by such depository receipt.

“*Guarantee*” means a guarantee other than by endorsement of negotiable instruments for collection in the ordinary course of business, direct or indirect, in any manner including, without limitation, by way of a pledge of assets or through letters of credit or reimbursement agreements in respect thereof, of all or any part of any Debt.

“*Guarantors*” means each Domestic Subsidiary of the Issuer that is a guarantor of or borrower with respect to any Specified Indebtedness and executes a supplemental indenture to the Indenture or a Guarantee of the Notes in accordance with the provisions of this Indenture; and their respective successors and assigns; provided, however, that any Person constituting a Guarantor as described above shall cease to constitute a Guarantor when its Guarantee of the Notes is released in accordance with the terms of this Indenture.

“*Hedging Obligation*” means, with respect to any specified Person, the obligations of such Person under:

- (1) interest rate swap agreements, interest rate cap agreements and interest rate collar agreements; and
- (2) other agreements or arrangements designed to protect such Person against fluctuations in interest rates or foreign exchange rates.

“*Holder*” means a Person in whose name a Note is registered.

“*incur*” means issue, create, assume, guarantee, incur or otherwise become liable for; *provided, however*, that any Debt or Capital Stock of a Person existing at the time such Person becomes a Restricted Subsidiary (whether by merger, consolidation, acquisition or otherwise) shall be deemed to be incurred by such Subsidiary at the time it becomes a Restricted Subsidiary. Neither the accrual of interest nor the accretion of original issue discount shall be deemed to be an incurrence of Debt. The term “incurrence” when used as a noun shall have a correlative meaning.

“*Indenture*” means this Indenture, as amended or supplemented from time to time.

“*Indirect Participant*” means a Person who holds a beneficial interest in a Global Note through a Participant.

“*Interest Payment Date*” has the meaning set forth in the Notes.

“*Issue Date*” means April 16, 2018.

“*Issuer*” has the meaning set forth in the preamble hereto.

“*Lien*” means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law, including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction.

“*Non-Recourse Debt*” means Debt:

(1) as to which neither the Issuer nor any of its Restricted Subsidiaries (a) provides credit support of any kind (including any undertaking, agreement or instrument that would constitute Debt), other than pursuant to Standard Securitization Undertakings, or (b) is directly or indirectly liable as a guarantor or otherwise, other than pursuant to Standard Securitization Undertakings; and

(2) as to which the lenders have been notified in writing that they will not have any recourse to the stock or assets of the Issuer or any of its Restricted Subsidiaries, other than pursuant to Standard Securitization Undertakings.

“*Note*” has the meaning stated in the preamble to this Indenture.

“*Notes Guarantee*” means the Guarantee by each Guarantor of the Issuer’s payment obligations under this Indenture and on the Notes, executed pursuant to the provisions of this Indenture.

“*Officer*” means, with respect to any Person, the Chief Executive Officer, the President, the Chief Operating Officer, the Chief Financial Officer, the Chief Investment Officer, the Treasurer, any Assistant Treasurer, the Controller, the Secretary or any Vice-President of such Person.

“*Officers’ Certificate*” means a certificate signed on behalf of the Issuer by two Officers of the Issuer, one of whom must be the principal executive officer, the principal financial officer, the principal investment officer, the treasurer or the principal accounting officer of the Issuer or a general partner of the Issuer, that meets the requirements of Section 2.02, 8.04 or 12.05, as applicable.

“*Opinion of Counsel*” means an opinion from legal counsel who is reasonably acceptable to the Trustee, that meets the requirements of Section 2.02, 8.04 or 12.05, as applicable. The counsel may be an employee of or counsel to the Issuer, any Subsidiary of the Issuer or the Trustee.

“*Outstanding*” shall have the meaning ascribed thereto in Section 2.08.

“*Participant*” means, with respect to the Depository, a Person who has an account with the Depository.

“*Person*” means any individual, corporation, partnership, joint venture, real estate investment trust, association, joint-stock company, trust, unincorporated organization, limited liability company or government or other entity.

“*Place of Payment*” means the place or places where the principal of (and premium, if any) and interest on the Notes are payable as specified.

“*Real Estate Assets*” means, as of any date, the real estate, mortgage and lease assets of such Person and its Restricted Subsidiaries on such date, on a consolidated basis determined in accordance with GAAP.

“*Record Date*” has the meaning set forth in the Notes.

“*Responsible Officer*,” when used with respect to the Trustee, means any officer within the Corporate Trust Office (or any successor group of the Trustee) or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject.

“*Restricted Subsidiary*” of a Person means any Subsidiary of the referenced Person that is not an Unrestricted Subsidiary.

“*Secured Debt*” means, for any Person, Debt secured by a Lien on the property of such Person or any of its Restricted Subsidiaries.

“*Securities Act*” means the Securities Act of 1933, as amended.

“*Significant Subsidiary*” means each Restricted Subsidiary that is a significant subsidiary, if any, of the Issuer, as defined in Regulation S-X under the Securities Act.

“*Specified Indebtedness*” means (i) any Debt under the Credit Agreement and any Debt that refinances such Debt or (ii) any Existing Notes.

“*Standard Securitization Undertakings*” means representations, warranties, covenants and indemnities entered into by the Issuer or any Restricted Subsidiary which are reasonably customary in commercial mortgage backed securities transactions by the parent or sponsoring entity.

“*Subordinated Debt*” means Debt which by the terms of such Debt is subordinated in right of payment to the principal of and interest and premium, if any, on the Notes or any Guarantee thereof.

“*Subsidiary*” means, for any Person, any corporation or other entity of which a majority of the Voting Stock is owned, directly or indirectly, by such Person or one or more other Subsidiaries of such Person.

“*TIA*” means the Trust Indenture Act of 1939 (15 U.S.C. §§ 77aaa-77bbb), as amended, as in effect on the date on which this Indenture is qualified under the TIA.

“*Total Assets*” means, for any Person as of any date, the sum of (a) Undepreciated Real Estate Assets plus (b) the book value of all assets (excluding Real Estate Assets and intangibles) of such Person and its Restricted Subsidiaries as of such date of determination on a consolidated basis determined in accordance with GAAP.

“*Total Unencumbered Assets*” means, for any Person as of any date, the sum of, without duplication:

(1) those Undepreciated Real Estate Assets that are not subject to a Lien securing Debt; and

(2) all other assets (excluding accounts receivable and intangibles) of such Person and its Restricted Subsidiaries not subject to a Lien securing Debt,

all determined on a consolidated basis in accordance with GAAP; *provided* that in determining Total Unencumbered Assets as a percentage of outstanding Unsecured Debt for purposes of Section 4.07, all investments in unconsolidated joint ventures, unconsolidated limited partnerships, unconsolidated limited liability companies and other unconsolidated entities shall be excluded from Total Unencumbered Assets.

“*Treasury Rate*” means, as of any redemption date, the yield to maturity as of such redemption date of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 that has become publicly available at least two Business Days prior to the redemption date (or in the case of a satisfaction and discharge, at least two Business Days prior to the deposit of funds with the Trustee to pay and discharge the entire indebtedness of the Notes) (or, if such Statistical Release is no longer published, any publicly available source of similar market data)) most nearly equal to the period from the redemption date to the Par Call Date; *provided, however*, that if the period from the redemption date to the Par Call Date, is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year will be used.

“*Trustee*” means the Person named as the “*Trustee*” in the preamble to this Indenture 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.

“*Undepreciated Real Estate Assets*” means, as of any date, the cost (being the original cost to the Issuer or any of its Restricted Subsidiaries plus capital improvements) of Real Estate Assets of the Issuer and its Restricted Subsidiaries on such date, before depreciation and amortization of such Real Estate Assets, determined on a consolidated basis in conformity with GAAP.

“*Unrestricted Subsidiary*” means any Subsidiary created or acquired after June 30, 2010, but only to the extent that such Subsidiary:

(1) has no Debt other than Non-Recourse Debt;

(2) is not party to any agreement, contract, arrangement or understanding with the Issuer or any of its Restricted Subsidiaries unless the terms of any such agreement, contract, arrangement or understanding are no less favorable to the Issuer or such Restricted Subsidiary in the aggregate than those that might be obtained at the time from Persons who are not Affiliates of the Issuer;

(3) is a Person with respect to which neither the Issuer nor any of its Restricted Subsidiaries has any direct or indirect obligation (a) to subscribe for additional Equity Interests or (b) to maintain or preserve such Person’s financial condition or to cause such Person to achieve any specified levels of operating results; and

(4) has not guaranteed or otherwise directly or indirectly provided credit support for any Debt of the Issuer or any of its Restricted Subsidiaries, other than pursuant to Standard Securitization Undertakings.

If, at any time, any Unrestricted Subsidiary would fail to meet the preceding requirements as an Unrestricted Subsidiary, it will thereafter cease to be an Unrestricted Subsidiary for purposes of the Indenture and any Debt of such Subsidiary will be deemed to be incurred by a Restricted Subsidiary of the Issuer as of such date and, if such Debt is not permitted to be incurred as of such date under Section 4.06, the Issuer will be in default of such covenant.

“*Unsecured Debt*” means, for any Person, any Debt of such Person or its Restricted Subsidiaries which is not Secured Debt.

“*Voting Stock*” of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of Directors of such Person.

Section 1.02 Other Definitions.

<u>Term</u>	<u>Defined in Section</u>
“Additional Notes”	2.02
“Adjusted Total Assets”	4.06
“Covenant Defeasance”	8.03
“DTC”	2.03
“Event of Default”	6.01
“Legal Defeasance”	8.02
“Measurement Date”	4.06
“Par Call Date”	3.07
“Paying Agent”	2.03
“Registrar”	2.03

Section 1.03 Incorporation by Reference of Trust Indenture Act.

Whenever this Indenture refers to a provision of the TIA, the provision is incorporated by reference in and made a part of this Indenture.

The following TIA terms used in this Indenture have the following meanings:

“obligor” on the Notes and any Notes Guarantees means the Issuer and any Guarantors, respectively, and any successor obligor upon the Notes and any Notes Guarantees, respectively.

All other terms used in this Indenture that are defined by the TIA, defined by TIA reference to another statute or defined by Commission rule under the TIA have the meanings so assigned to them.

Section 1.04 Rules of Construction.

Unless the context otherwise requires:

- (1) a term has the meaning assigned to it;
- (2) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;
- (3) “or” is not exclusive;
- (4) words in the singular include the plural, and in the plural include the singular;
- (5) “will” shall be interpreted to express a command;
- (6) provisions apply to successive events and transactions; and
- (7) references to sections of or rules under the Securities Act will be deemed to include substitute, replacement of successor sections or rules adopted by the Commission from time to time.

ARTICLE 2
THE NOTES

Section 2.01 Form, Dating and Denominations.

(a) *General.* The Notes will be substantially in the form of Exhibit A hereto, shall have such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture, and may have such letters, numbers or other marks of identification or designation and such legends or endorsements placed thereon as the Issuer may deem appropriate and as are not inconsistent with the provisions of this Indenture, or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any stock exchange on which the Notes may be listed, or to conform to usage. Each Note will be dated the date of its authentication. The Notes shall be in denominations of \$2,000 and integral multiples of \$1,000 in excess thereof.

The terms and provisions contained in the Notes will constitute, and are hereby expressly made, a part of this Indenture and the Issuer and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby. However, to the extent any provision of any Note conflicts with the express provisions of this Indenture, the provisions of this Indenture shall govern and be controlling.

(b) *Form of Trustee's Certificate of Authentication.* Subject to Section 2.02, the Trustee's certificate of authentication shall be in substantially the following form:

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

UMB Bank, n.a.,
As Trustee

By: _____
Authorized Signatory

(c) *Global Notes.* The Notes shall initially be issued in the form of one or more Global Notes and shall include the Global Note Legend and a related schedule of exchanges of interests in the Global Notes attached thereto. Each Global Note shall provide that it represents the Outstanding Notes as specified therein and each shall provide that it represents the aggregate principal amount of Outstanding Notes from time to time endorsed thereon and that the aggregate principal amount of Outstanding Notes represented thereby may from time to time be reduced or increased, as appropriate, to reflect exchanges and redemptions. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the aggregate principal amount of Outstanding Notes represented thereby will be made by the Trustee or the Custodian, at the direction of the Trustee, in accordance with instructions given by the Holder thereof as required by Section 2.06 hereof.

Section 2.02 Execution and Authentication.

Two Officers must sign the Notes for the Issuer by manual or facsimile signature.

If an Officer whose signature is on a Note no longer holds that office at the time a Note is authenticated, the Note will nevertheless be valid.

A Note will not be valid until authenticated by the manual signature of the Trustee. The signature will be conclusive evidence that the Note has been authenticated under this Indenture.

The Trustee will authenticate (i) Initial Notes for original issue on the Issue Date in an aggregate principal amount of \$400,000,000, (ii) subject to receipt of an Officers' Certificate that certifies the issuance of such Notes complies with Section 4.06, Notes ("*Additional Notes*") for original issue after the Issue Date (such Notes to

be substantially in the form of Exhibit A) in an unlimited amount if such Additional Notes are fungible with the Initial Notes for U.S. federal income tax purposes, in each case upon written order of the Issuer in the form of an Officers' Certificate, which Officers' Certificate shall, in the case of any issuance of Additional Notes, certify that such issuance is in compliance with Section 4.06, together with an enforceability opinion that contains customary exceptions. In addition, each such Officers' Certificate shall specify the amount of Notes to be authenticated, the date on which the Notes are to be authenticated, whether the securities are to be Initial Notes or Additional Notes and the aggregate principal amount of Notes outstanding on the date of authentication, and shall further specify the amount of such Notes to be issued as Global Notes or Definitive Notes. Such Notes shall initially be in the form of one or more Global Notes, which (i) shall represent, and shall be denominated in an amount equal to the aggregate principal amount of, the Notes to be issued, (ii) shall be registered in the name of the Depository or its nominee and (iii) shall be delivered by the Trustee to the Depository or pursuant to the Depository's instruction. All Notes issued under this Indenture shall vote and consent together on all matters as one class and no series of Notes will have the right to vote or consent as a separate class on any matter.

The Trustee may appoint an authenticating agent acceptable to the Issuer to authenticate Notes. An authenticating agent may authenticate Notes whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as an Agent to deal with Holders or an Affiliate of the Issuer.

In authenticating Notes, and accepting the additional responsibilities under this Indenture in relation to such Notes, the Trustee shall be entitled to receive, and (subject to TIA §§ 315(a) through 315(d)) shall be fully protected in relying upon,

(1) an Opinion of Counsel stating that:

(i) the form of such Notes have been established in conformity with the provisions of this Indenture;

(ii) the terms of such Notes have been established in conformity with the provisions of this Indenture; and

(iii) such Notes, when completed by appropriate insertions and executed and delivered by the Issuer to the Trustee for authentication in accordance with this Indenture, authenticated and delivered by the Trustee in accordance with this Indenture and issued by the Issuer in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute legal, valid and binding obligations of the Issuer, enforceable in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganization and other similar laws of general applicability relating to or affecting the enforcement of creditors' rights, to general equitable principles and to such other qualifications as such counsel shall conclude do not materially affect the rights of Holders of such Notes; and

(2) an Officers' Certificate stating that all conditions precedent provided for in this Indenture relating to the issuance of the Notes have been complied with and that, to the best of the knowledge of the signers of such Officers' Certificate, no Event of Default with respect to any of the Notes shall have occurred and be continuing.

Section 2.03 Registrar and Paying Agent.

The Issuer will maintain in each Place of Payment for the Notes an office or agency where such Notes may be presented for registration of transfer or for exchange ("*Registrar*") and an office or agency where such Notes may be presented for payment ("*Paying Agent*"). The Registrar will keep a register of the Notes and of their transfer and exchange. The Issuer may appoint one or more co-registrars and one or more additional paying agents. The term "*Registrar*" includes any co-registrar and the term "*Paying Agent*" includes any additional paying agent. The Issuer may change any Paying Agent or Registrar without notice to any Holder. The Issuer will notify the Trustee in writing of the name and address of any Agent not a party to this Indenture. If the Issuer fails to appoint or maintain another entity as Registrar or Paying Agent, the Trustee shall act as such. The Issuer or any of its Subsidiaries may act as Paying Agent or Registrar.

The Issuer initially appoints The Depository Trust Company (“DTC”) to act as Depository with respect to the Global Notes.

The Issuer initially appoints the Trustee to act as the Registrar and Paying Agent and to act as Custodian with respect to the Global Notes.

Section 2.04 Paying Agent to Hold Money in Trust.

The Issuer will require each Paying Agent for Notes other than the Trustee to agree in writing that the Paying Agent will hold in trust for the benefit of Holders or the Trustee all money held by the Paying Agent for the payment of principal, premium or interest on the Notes, and will notify the Trustee of any default by the Issuer in making any such payment. While any such default continues, the Trustee may require a Paying Agent to pay all money held by it to the Trustee. The Issuer at any time may require a Paying Agent to pay all money held by it to the Trustee. Upon payment over to the Trustee, the Paying Agent (if other than the Issuer or a Subsidiary of the Issuer) will have no further liability for the money. If the Issuer or a Subsidiary of the Issuer acts as Paying Agent, it will segregate and hold in a separate trust fund for the benefit of the Holders all money held by it as Paying Agent. Upon any bankruptcy or reorganization proceedings relating to the Issuer, the Trustee will serve as Paying Agent for the Notes.

Section 2.05 Holder Lists.

The Trustee in respect of the Notes will preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of all Holders of Notes and shall otherwise comply with TIA § 312(a). If the Trustee is not the Registrar of the Notes, the Issuer will furnish to the Trustee at least seven Business Days before each Interest Payment Date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of the Holders of the Notes and the Issuer shall otherwise comply with TIA § 312(a).

Section 2.06 Transfer and Exchange.

(a) *Transfer and Exchange of Global Notes.* A Global Note may not be transferred as a whole except by the Depository to a nominee of the Depository, by a nominee of the Depository to the Depository or to another nominee of the Depository, or by the Depository or any such nominee to a successor Depository or a nominee of such successor Depository. All Global Notes will be exchanged by the Issuer for Definitive Notes if:

- (1) the Issuer delivers to the Trustee notice from the Depository that it is unwilling or unable to continue to act as Depository or that it is no longer a clearing agency registered under the Exchange Act and, in either case, a successor Depository is not appointed by the Issuer within 120 days after the date of such notice from the Depository; or
- (2) the Issuer in its sole discretion determines that the Global Notes (in whole but not in part) should be exchanged for Definitive Notes and deliver a written notice to such effect to the Trustee.

Upon the occurrence of either of the preceding events in subparagraph (1) or (2) above, Definitive Notes shall be issued in such names as the Depository shall instruct the Trustee. Global Notes also may be exchanged or replaced, in whole or in part, as provided in Sections 2.07 and 2.10. Every Note authenticated and delivered in exchange for, or in lieu of, a Global Note or any portion thereof, pursuant to this Section 2.06 or Section 2.07 or 2.10 hereof, shall be authenticated and delivered in the form of, and shall be, a Global Note. A Global Note may not be exchanged for another Note other than as provided in this Section 2.06(a), however, beneficial interests in a Global Note may be transferred and exchanged as provided in Section 2.06(b) or (c).

(b) *Transfer and Exchange of Beneficial Interests in the Global Notes.* The transfer and exchange of beneficial interests in the Global Notes will be effected through the Depositary, in accordance with the provisions of this Indenture and the Applicable Procedures. Transfers of beneficial interests in the Global Notes also will require compliance with the subparagraphs below:

(1) *Transfer of Beneficial Interests in the Same Global Note.* Beneficial interests in a Global Note may be transferred to Persons who take delivery thereof in the form of a beneficial interest in a Global Note. No written orders or instructions shall be required to be delivered to the Registrar to effect the transfers described in this Section 2.06(b)(1).

(2) *All Other Transfers and Exchanges of Beneficial Interests in Global Notes.* In connection with all transfers and exchanges of beneficial interests that are not subject to Section 2.06(b)(1) above, the transferor of such beneficial interest must deliver to the Registrar either:

(i) both:

(A) a written order from a Participant or an Indirect Participant given to the Depositary in accordance with the Applicable Procedures directing the Depositary to credit or cause to be credited a beneficial interest in another Global Note in an amount equal to the beneficial interest to be transferred or exchanged; and

(B) instructions given in accordance with the Applicable Procedures containing information regarding the Participant account to be credited with such increase; or

(ii) both:

(A) a written order from a Participant or an Indirect Participant given to the Depositary in accordance with the Applicable Procedures directing the Depositary to cause to be issued a Definitive Note in an amount equal to the beneficial interest to be transferred or exchanged; and

(B) instructions given by the Depositary to the Registrar containing information regarding the Person in whose name such Definitive Note shall be registered to effect the transfer or exchange referred to in subparagraph (1) above.

Upon satisfaction of all of the requirements for transfer or exchange of beneficial interests in Global Notes contained in this Indenture and the Notes or otherwise applicable under the Securities Act, the Trustee shall adjust the principal amount of the relevant Global Note(s) pursuant to Section 2.06(h).

(c) *Transfer or Exchange of Beneficial Interests in Global Notes for Definitive Notes.* Subject to Section 2.06(a), if any holder of a beneficial interest in a Global Note proposes to exchange such beneficial interest for a Definitive Note or to transfer such beneficial interest to a Person who takes delivery thereof in the form of a Definitive Note, then, upon satisfaction of the conditions set forth in subparagraph (b)(2) above, the Trustee shall cause the aggregate principal amount of the applicable Global Note to be reduced accordingly pursuant to paragraph (h) below, and the Issuer shall execute and the Trustee shall authenticate and deliver to the Person designated in the certificate a Definitive Note in the appropriate principal amount. Any Definitive Note issued in exchange for a beneficial interest pursuant to this subparagraph (c) shall be registered in such name or names and in such authorized denomination or denominations as the holder of such beneficial interest shall instruct the Registrar through instructions from the Depositary and the Participant or Indirect Participant. The Trustee shall deliver such Definitive Notes to the Persons in whose names such Notes are so registered.

(d) *Transfer and Exchange of Definitive Notes for Beneficial Interests in Global Notes.* A Holder of a Definitive Note may exchange such Note for a beneficial interest in a Global Note or transfer such Definitive Notes to a Person who takes delivery thereof in the form of a beneficial interest in a Global Note at any time. Upon receipt of a request for such an exchange or transfer, the Trustee shall cancel the applicable Definitive Note and increase or cause to be increased the aggregate principal amount of one of the Global Notes.

If any such exchange or transfer from a Definitive Note to a beneficial interest is effected at a time when a Global Note has not yet been issued, the Issuer shall issue and, upon receipt of an authentication order in accordance with Section 2.02, the Trustee shall authenticate one or more Global Notes in an aggregate principal amount equal to the principal amount of Definitive Notes so transferred.

(e) *Transfer and Exchange of Definitive Notes for Definitive Notes.* Upon request by a Holder of Definitive Notes and such Holder's compliance with the provisions of this Section 2.06(e), the Registrar will register the transfer of such Holder's Definitive Notes to a Person who takes delivery thereof in the form of one or more Definitive Notes, of any authorized denominations and of like aggregate principal amount or the exchange of such Holder's Definitive Notes for Definitive Notes, of any authorized denominations and of like aggregate principal amount. Prior to such registration of transfer or exchange, the requesting Holder must present or surrender to the Registrar the Definitive Notes duly endorsed or accompanied by a written instrument of transfer in form satisfactory to the Registrar duly executed by such Holder or by its attorney, duly authorized in writing.

(f) *Transfer of Definitive Notes to Definitive Notes.* A Holder of Definitive Notes may transfer such Notes to a Person who takes delivery thereof in the form of a Definitive Note. Upon receipt of a request to register such a transfer, the Registrar shall register the Definitive Notes pursuant to the instructions from the Holder thereof.

(g) *Global Note Legend.* The following legend will appear on the face of all Global Notes issued under this Indenture:

“THIS GLOBAL NOTE IS HELD BY THE DEPOSITARY (AS DEFINED IN THE INDENTURE GOVERNING THIS NOTE) OR ITS NOMINEE IN CUSTODY FOR THE BENEFIT OF THE BENEFICIAL OWNERS HEREOF, AND IS NOT TRANSFERABLE TO ANY PERSON UNDER ANY CIRCUMSTANCES EXCEPT THAT (1) THE TRUSTEE MAY MAKE SUCH NOTATIONS HEREON AS MAY BE REQUIRED PURSUANT TO SECTION 2.06 OF THE INDENTURE, (2) THIS GLOBAL NOTE MAY BE EXCHANGED IN WHOLE BUT NOT IN PART PURSUANT TO SECTION 2.06(a) OF THE INDENTURE, (3) THIS GLOBAL NOTE MAY BE DELIVERED TO THE TRUSTEE FOR CANCELLATION PURSUANT TO SECTION 2.11 OF THE INDENTURE AND (4) THIS GLOBAL NOTE MAY BE TRANSFERRED TO A SUCCESSOR DEPOSITARY WITH THE PRIOR WRITTEN CONSENT OF THE ISSUER.

UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR NOTES IN DEFINITIVE FORM, THIS NOTE MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY. UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY TRUST COMPANY (55 WATER STREET, NEW YORK, NEW YORK) (“DTC”), TO THE ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR SUCH OTHER ENTITY AS MAY BE 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.”

(h) *Cancellation and/or Adjustment of Global Notes.* At such time as all beneficial interests in a particular Global Note have been exchanged for Definitive Notes or a particular Global Note has been redeemed, repurchased or canceled in whole and not in part, each such Global Note will be returned to or retained and canceled by the Trustee in accordance with Section 2.11. At any time prior to such cancellation, if any

beneficial interest in a Global Note is exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Note or for Definitive Notes, the principal amount of Notes represented by such Global Note will be reduced accordingly and an endorsement will be made on such Global Note by the Trustee or by the Depository at the direction of the Trustee to reflect such reduction; and if the beneficial interest is being exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Note, such other Global Note will be increased accordingly and an endorsement will be made on such Global Note by the Trustee or by the Depository at the direction of the Trustee to reflect such increase.

(i) *General Provisions Relating to Transfers and Exchanges.*

(1) To permit registrations of transfers and exchanges, the Issuer will execute and the Trustee will authenticate Global Notes and Definitive Notes upon receipt of an authentication order in accordance with Section 2.02 or at the Registrar's request.

(2) No service charge will be made to a Holder of a Global Note or to a Holder of a Definitive Note for any registration of transfer or exchange, but the Issuer may require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith (other than any such transfer taxes or similar governmental charge payable upon exchange or transfer pursuant to Sections 2.10, 3.06, and 9.05 hereof). The Registrar will not be required to register the transfer of or exchange any Note selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part.

(3) All Global Notes and Definitive Notes issued upon any registration of transfer or exchange of Global Notes or Definitive Notes will be the valid obligations of the Issuer, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Global Notes or Definitive Notes surrendered upon such registration of transfer or exchange.

(4) The Issuer will not be required:

(i) to issue, to register the transfer of or to exchange any Notes during a period beginning at the opening of business 15 days before the day of any selection of Notes for redemption under Section 3.02 hereof and ending at the close of business on the day of selection;

(ii) to register the transfer of or to exchange any Note selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part;

(iii) to register the transfer of or to exchange a Note between a Record Date and the next succeeding Interest Payment Date; or

(iv) to register the transfer of any Note which has been surrendered for repayment at the option of Holder, except the portion, if any, of such Note not to be so repaid.

(5) Prior to due presentment for the registration of a transfer of any Note, the Trustee, any Agent and the Issuer may deem and treat the Person in whose name any Note is registered as the absolute owner of such Note for the purpose of receiving payment of principal of and interest on such Notes and for all other purposes, and none of the Trustee, any Agent or the Issuer shall be affected by notice to the contrary.

(6) The Trustee will authenticate Global Notes and Definitive Notes in accordance with the provisions of Section 2.02 hereof.

(7) All orders and instructions required to be submitted to the Registrar or the Issuer pursuant to this Section 2.06 to effect a registration of transfer or exchange may be submitted by facsimile.

Section 2.07 Replacement Notes.

If any mutilated Note is surrendered to the Trustee or the Issuer or the Trustee receives evidence to its satisfaction of the destruction, loss or theft of any Note, the Issuer will issue and the Trustee, upon receipt of an authentication order in accordance with Section 2.02, will authenticate a replacement Note if the Trustee's requirements are met. In every case of any request for a substitute or replacement Note, security or indemnity must be supplied by the Holder of such Note that is sufficient in the judgment of the Trustee and the Issuer to protect the Issuer, the Trustee, any Agent and any authenticating agent from any loss that any of them may suffer if a Note is replaced. The Issuer may charge for its expenses in replacing a Note.

Every replacement Note is an additional obligation of the Issuer and will be entitled to all of the benefits of this Indenture equally and proportionately with all other Notes duly issued hereunder.

Notwithstanding the provisions of the previous two paragraphs, in case any such mutilated, destroyed, lost or stolen Note has become or is about to become due and payable, the Issuer in its discretion may, instead of issuing a new Note, pay such Note.

Section 2.08 Outstanding Notes.

The Notes "Outstanding" at any time are all the Notes authenticated by the Trustee except for:

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

(2) Notes, or portions thereof, for whose payment or redemption or repayment at the option of the Holder money in the necessary amount has been theretofore deposited with the Trustee or any Paying Agent (other than the Issuer) in trust or set aside and segregated in trust by the Issuer (if the Issuer shall act as its own Paying Agent) for the Holders of such Notes, *provided* that if such Notes 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;

(3) Notes, except to the extent provided in Sections 8.02 and 8.03, with respect to which the Issuer has effected defeasance and/or covenant defeasance as provided in Article 8; and

(4) Notes which have been paid pursuant to Section 4.01 or 11.01 or in exchange for or in lieu of which other Notes have been authenticated and delivered pursuant to this Indenture, other than any such Notes in respect of which there shall have been presented to the Trustee proof satisfactory to it that such Notes are held by a bona fide purchaser in whose hands such Notes are valid obligations of the Issuer.

Section 2.09 Treasury Notes.

In determining whether the Holders of the requisite principal amount of Outstanding Notes have given any request, demand, authorization, direction, notice, waiver or consent, and for the purpose of making the calculations required by TIA § 313, Notes owned by the Issuer or any other obligor upon the Notes or any Affiliate of the Issuer or of such other obligor shall be disregarded and deemed not to be Outstanding, except that in determining whether the Trustee shall be protected in making such calculation or in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Notes which a Responsible Officer actually knows to be so owned shall be so disregarded. Notes so owned which 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 Notes and that the pledgee is not the Issuer or any other obligor upon the Notes or any Affiliate of the Issuer or of such other obligor.

Section 2.10 Temporary Notes.

Until certificates representing Notes are ready for delivery, the Issuer may prepare and the Trustee, upon receipt of an authentication order in accordance with Section 2.02, will authenticate temporary Notes. Temporary Notes will be substantially in the form of certificated Notes but may have variations that the Issuer considers appropriate for temporary Notes and as may be reasonably acceptable to the Trustee. Without unreasonable delay, the Issuer will prepare and the Trustee will authenticate definitive Notes in exchange for temporary Notes.

Holders of temporary Notes will be entitled to all of the benefits of this Indenture.

Section 2.11 Cancellation.

The Issuer at any time may deliver Notes to the Trustee for cancellation. The Registrar and Paying Agent will forward to the Trustee any Notes surrendered to them for registration of transfer, exchange or payment. The Trustee and no one else will cancel all Notes surrendered for registration of transfer, exchange, payment, replacement or cancellation and will dispose of canceled Notes (subject to the record retention requirement of the Exchange Act). The Issuer may not issue new Notes to replace Notes that it has paid or that have been delivered to the Trustee for cancellation, except for replacement Notes for mutilated Notes pursuant to Section 2.07 hereof.

Section 2.12 Defaulted Interest.

If the Issuer defaults in a payment of interest on the Notes, it will pay the defaulted interest in any lawful manner plus, to the extent lawful, interest payable on the defaulted interest, to the Persons who are Holders of the Notes on a subsequent special record date, in each case at the rate provided in the Notes and in Section 4.01 hereof. The Issuer will notify the Trustee in writing of the amount of defaulted interest proposed to be paid on each Note and the date of the proposed payment. The Issuer will fix or cause to be fixed each such special record date and payment date, *provided* that no such special record date may be less than 10 days prior to the related payment date for such defaulted interest. At least 15 days before the special record date, the Issuer (or, upon the written request of the Issuer, the Trustee in the name and at the expense of the Issuer) will mail or cause to be mailed to Holders of Notes a notice that states the special record date, the related payment date and the amount of such interest to be paid on such Notes.

ARTICLE 3

REDEMPTION AND PREPAYMENT

Section 3.01 Notices to Trustee.

The election of the Issuer to redeem or purchase in an offer to purchase Notes shall be evidenced by a Board Resolution. The Issuer shall, at least 45 days prior to the redemption date fixed by the Issuer (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee of such redemption date and of the principal amount of Notes to be redeemed by delivering to the Trustee an Officers' Certificate setting forth:

- (1) the paragraph of the Notes and/or Section of this Indenture pursuant to which the redemption shall occur;
- (2) the redemption date;
- (3) the principal amount of Notes to be redeemed, plus accrued interest, if any, to the redemption date; and
- (4) the redemption price, including any make-whole amount or premium, if applicable.

Section 3.02 Selection of Notes to Be Redeemed.

If less than all of the Notes are to be redeemed or purchased in an offer to purchase at any time, the Trustee will select the particular Notes for redemption or purchase from the Outstanding Notes not previously called for redemption, as follows:

- (1) if the Notes are listed on any national securities exchange, in compliance with the requirements of the principal national securities exchange on which the Notes are listed; or

(2) if the Notes are not listed on any national securities exchange, on a pro rata basis, by lot or by any such similar method in accordance with the procedures of DTC.

In the event of partial redemption by lot, the particular Notes to be redeemed will be selected, unless otherwise provided in this Indenture, not less than 30 nor more than 60 days prior to the redemption date by the Trustee.

The Trustee will promptly notify the Issuer in writing of the Notes selected for redemption or purchase and, in the case of any Note selected for partial redemption or purchase, the principal amount thereof to be redeemed or purchased. Notes and portions of Notes selected will be in amounts equal to \$2,000 or any integral multiple of \$1,000; *provided, however*, that if all of the Outstanding Notes of a Holder are to be redeemed or purchased, the entire amount of such Notes held by such Holder, even if not a multiple of \$1,000, shall be redeemed or purchased. Except as provided in the preceding sentence, provisions of this Indenture that apply to Notes called for redemption or purchase also apply to portions of Notes called for redemption or purchase.

Section 3.03 Notice of Redemption.

At least 30 days but not more than 60 days before a redemption date, the Issuer will mail or cause to be mailed, by first class mail, a notice of redemption to each Holder whose Notes are to be redeemed at its registered address, except that redemption notices may be mailed more than 60 days prior to a redemption date if the notice is issued in connection with a defeasance of the Notes or a satisfaction and discharge of this Indenture pursuant to Article 8 or 11 of this Indenture. Any notice that is mailed to the Holders of Notes in the manner herein provided shall be conclusively presumed to have been duly given, whether or not the Holder receives such notice.

The notice will identify the Notes to be redeemed and will state:

- (1) the redemption date;
- (2) the redemption price, including the accrued interest to the redemption date and any make-whole amount or premium, if applicable;
- (3) if any Note is being redeemed in part, the portion of the principal amount of such Note to be redeemed and that, after the redemption date upon surrender of such Note, a new Note or Notes in principal amount equal to the unredeemed portion will be issued upon cancellation of the original Note;
- (4) the name and address of the Paying Agent;
- (5) that Notes called for redemption must be surrendered to the Paying Agent at the Place of Payment to collect the redemption price;
- (6) that, unless the Issuer defaults in making such redemption payment, interest on Notes called for redemption ceases to accrue on and after the redemption date;
- (7) the paragraph of the Notes and/or Section of this Indenture pursuant to which the Notes called for redemption are being redeemed; and
- (8) that no representation is made as to the correctness or accuracy of the CUSIP number, if any, listed in such notice or printed on the Notes.

At the Issuer's request, the Trustee will give the notice of redemption in the Issuer's name and at its expense; *provided, however*, that the Issuer has delivered to the Trustee, at least 45 days (or such shorter period of time as is satisfactory to the Trustee) prior to the redemption date, an Officers' Certificate requesting that the Trustee give such notice and setting forth the information to be stated in such notice as provided in the preceding paragraph.

Section 3.04 Effect of Notice of Redemption.

Once notice of redemption is mailed in accordance with Section 3.03 hereof, Notes called for redemption become irrevocably due and payable on the redemption date at the redemption price therein specified. A notice of redemption of Notes may not be conditional.

Section 3.05 Deposit of Redemption or Purchase Price.

Prior to 10:00 a.m. Eastern Time on the redemption or purchase date, the Issuer will deposit with the Trustee or with the Paying Agent money in the currency or currencies, currency unit or units or composite currency or currencies in which the Notes are payable sufficient to pay the redemption or purchase price of and accrued interest on all Notes to be redeemed or purchased on that date. The Trustee or the Paying Agent will promptly return to the Issuer any money deposited with the Trustee or the Paying Agent by the Issuer in excess of the amounts necessary to pay the redemption or purchase price of, and accrued interest on, all Notes to be redeemed or purchased.

If the Issuer complies with the provisions of the preceding paragraph, on and after the redemption or purchase date, interest will cease to accrue on the Notes or the portions of Notes called for redemption or purchase. If a Note is redeemed or purchased on or after a Record Date but on or prior to the related Interest Payment Date, then any accrued and unpaid interest shall be paid to the Person in whose name such Note was registered at the close of business on such Record Date; *provided, however*, that installments of interest on Notes whose maturity is on or prior to the redemption date shall be payable to the Holders of such Notes, or one or more predecessor Notes, registered as such at the close of business on the Record Date. If any Note called for redemption or purchase is not so paid upon surrender for redemption or purchase because of the failure of the Issuer to comply with the preceding paragraph, interest shall be paid on the unpaid principal, from the redemption or purchase date until such principal is paid, and to the extent lawful on any interest not paid on such unpaid principal, in each case at the rate provided in the Notes and in Section 4.01 hereof.

Section 3.06 Notes Redeemed or Purchased in Part.

Upon surrender of a Note that is redeemed or purchased in part at a Place of Payment therefor (with, if the Issuer or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Issuer and the Trustee duly executed by, the Holder thereof or his attorney duly authorized in writing), the Issuer will issue and, upon receipt of an authentication order in accordance with Section 2.02, the Trustee will promptly authenticate and mail, or cause to be transferred by book entry, to each Holder at the expense of the Issuer a new Note of any authorized denomination as requested by the Holder in an aggregate principal amount equal to and in exchange for the unredeemed or unpurchased portion of the principal of the Note so surrendered and the Paying Agent will promptly mail to each Holder of Notes to be redeemed or purchased payment for such Notes.

Section 3.07 Optional Redemption.

The Issuer will not be entitled to redeem all or any portion of the Notes at its option except as provided in this section. The Issuer will be entitled at its option to redeem all or any portion of the Notes at a redemption price equal to 100% of the principal amount of such Notes plus the Applicable Premium as of, and any accrued and unpaid interest to, but not including, the redemption date (subject to the right of the holders of Notes on the relevant record date to receive interest due on the relevant interest payment date); provided that if the Notes are redeemed on or after January 15, 2028 (three months prior to the maturity date, the “*Par Call Date*”), the redemption price shall equal 100% of the principal amount of the Notes being redeemed plus accrued and unpaid interest to, but not including, the redemption date.

Any redemption pursuant to this Section 3.07 shall be made pursuant to the provisions of Sections 3.01 through 3.06.

Section 3.08 Mandatory Redemption.

The Issuer is not required to make mandatory redemption payments with respect to the Notes.

ARTICLE 4
COVENANTS

Section 4.01 Payment of Notes.

The Issuer will pay or cause to be paid the principal of, premium, if any, and interest on the Notes on the dates, in the currency or currency unit and in the manner provided in the terms of the Notes and this Indenture. Principal, premium, if any, and interest will be considered paid on the date due if the Paying Agent, if other than the Issuer, or a Subsidiary thereof, holds as of 10:00 a.m. Eastern Time on the due date money deposited by the Issuer in immediately available funds and designated for and sufficient to pay all principal, premium, if any, and interest then due.

The Issuer will pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal at the rate equal to 1% per annum in excess of the then applicable interest rate on the Notes to the extent lawful; the Issuer will pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest (without regard to any applicable grace period) at the same rate to the extent lawful.

Section 4.02 Maintenance of Office or Agency.

The Issuer will maintain in each Place of Payment for the Notes an office or agency (which may be an office of the Trustee or an Affiliate of the Trustee, Registrar or co-registrar) where the Notes may be presented or surrendered for payment, where the Notes may be surrendered for registration of transfer or for exchange and where notices and demands to or upon the Issuer in respect of the Notes and this Indenture may be served. The Issuer will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Issuer fails to maintain any such required office or agency or fails to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee.

The Issuer may also from time to time designate one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided, however*, that no such designation or rescission will in any manner relieve the Issuer of its obligation to maintain an office or agency in the Place of Payment for such purposes. The Issuer will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

The Issuer hereby designates as a Place of Payment for the Notes the Corporate Trust Office of the Trustee in Kansas City, Missouri as one such office or agency of the Issuer in accordance with Section 2.03 hereof.

Section 4.03 Reports.

Whether or not required by the Commission, so long as any Notes are outstanding, the Issuer shall furnish to the Holders of Notes, within the time periods specified in the Commission's rules and regulations:

(1) all quarterly and annual financial information that would be required to be contained in a filing with the Commission on Forms 10-Q and 10-K if the Issuer were required to file such Forms, including a "*Management's Discussion and Analysis of Financial Condition and Results of Operations*" and, with respect to the annual information only, a report on the annual financial statements by the Issuer's certified independent accountants; and

(2) all current reports that would be required to be filed with the Commission on Form 8-K if the Issuer were required to file such reports.

The availability of the foregoing materials on the Commission's website shall be deemed to satisfy the foregoing delivery obligations.

Whether or not required by the Commission, the Issuer shall file a copy of all of the information and reports referred to in clauses (1) and (2) above with the Commission for public availability within the time periods specified in the Commission's rules and regulations (unless the Commission will not accept such a filing) and make such information available to securities analysts and prospective investors upon request.

The quarterly and annual financial information required by the preceding paragraphs will include a reasonably detailed presentation, either on the face of the financial statements or in the footnotes thereto, and in Management's Discussion and Analysis of Financial Condition and Results of Operations, of the financial condition and results of operations of the Issuer, as applicable, and its Restricted Subsidiaries separate from the financial condition and results of operations of the Unrestricted Subsidiaries of the Issuer.

Section 4.04 Compliance Certificate.

(a) The Issuer and any Guarantor shall deliver to the Trustee, within 120 days after the end of each fiscal year, an Officers' Certificate stating that a review of the activities of the Issuer and its Restricted Subsidiaries during the preceding fiscal year has been made under the supervision of the signing Officers with a view to determining whether the Issuer has kept, observed, performed and fulfilled its obligations under this Indenture, and further stating, as to each such Officer signing such certificate, that to the best of his or her knowledge the Issuer has kept, observed, performed and fulfilled each and every covenant contained in this Indenture and is not in default in the performance or observance of any of the terms, provisions and conditions of this Indenture (or, if a Default or Event of Default has occurred, describing all such Defaults or Events of Default of which he or she may have knowledge and what action the Issuer is taking or proposes to take with respect thereto) and that to the best of his or her knowledge no event has occurred and remains in existence by reason of which payments on account of the principal of or interest, if any, on the Notes is prohibited or if such event has occurred, a description of the event and what action the Issuer is taking or proposes to take with respect thereto. For purposes of this Section 4.04, such compliance shall be determined without regard to any period of grace or requirement of notice under this Indenture.

(b) So long as any of the Notes are outstanding, the Issuer will deliver to the Trustee, forthwith upon any Officer becoming aware of any Default or Event of Default, an Officers' Certificate specifying such Default or Event of Default and what action the Issuer is taking or proposes to take with respect thereto.

Section 4.05 Existence.

Except as permitted by Article 5 and Section 10.04, the Issuer and its Restricted Subsidiaries shall do all things necessary to preserve and keep their existence, rights and franchises; *provided, however*, that the existence of a Restricted Subsidiary may be terminated if the Board of Directors of the Issuer determines that it is in the best interests of the Issuer to do so and the Issuer and its Restricted Subsidiaries will not be required to preserve any right or franchise if it determines that the preservation of that right or franchise is no longer desirable in the conduct of its business and that its loss is not disadvantageous in any material respect to the Holders of Notes.

Section 4.06 Limitations on Incurrence of Debt.

(a) The Issuer shall not, and shall not permit any Restricted Subsidiary to, incur any additional Debt if, immediately after giving effect to the incurrence of such additional Debt and the application of the proceeds thereof, the aggregate principal amount of all of the Issuer's and its Restricted Subsidiaries'

outstanding Debt on a consolidated basis determined in accordance with GAAP would be greater than 60% of the sum of (without duplication):

(1) the Total Assets of the Issuer and its Restricted Subsidiaries as of the end of the calendar year or quarter covered by the Issuer's Annual Report on Form 10-K or Quarterly Report on Form 10-Q, as the case may be, most recently filed with the Commission (or, if such filing is not permitted under the Exchange Act, as of the end of the calendar quarter covered by the Issuer's most recent report filed with the Trustee) prior to the incurrence of such additional Debt (the "*Measurement Date*"); and

(2) the purchase price of any Real Estate Assets or mortgages receivable acquired, and the amount of any securities offering proceeds received (to the extent that such proceeds were not used to acquire Real Estate Assets or mortgages receivable or used to reduce Debt), by the Issuer or any of its Restricted Subsidiaries on a consolidated basis since the Measurement Date (such sum of clauses (1) and (2) being collectively referred to as "*Adjusted Total Assets*").

(b) In addition to the limitations in Section 4.06(a), the Issuer shall not, and shall not permit any Restricted Subsidiary to, incur any Secured Debt if, immediately after giving effect to the incurrence of such additional Secured Debt and the application of the proceeds thereof, the aggregate principal amount of all of the Issuer's and its Restricted Subsidiaries' outstanding Secured Debt on a consolidated basis in accordance with GAAP is greater than 40% of Adjusted Total Assets.

(c) In addition to the limitations in Sections 4.06(a) and (b), the Issuer shall not, and shall not permit any Restricted Subsidiary to, incur any Debt if the ratio of Consolidated Income Available for Debt Service to the Annual Debt Service for the four consecutive fiscal quarters ended on the Measurement Date shall have been less than 1.5x, on a pro forma basis after giving effect to the incurrence of such Debt and to the application of the proceeds therefrom, and calculated on the assumption that:

(1) such Debt and any other Debt incurred by the Issuer and any of its Restricted Subsidiaries on a consolidated basis since the first day of such four-quarter period and the application of the proceeds therefrom, including to refinance other Debt, had been incurred at the beginning of such period;

(2) the repayment or retirement of any other Debt by the Issuer and any of its Restricted Subsidiaries on a consolidated basis since the first day of such four-quarter period had been repaid or retired at the beginning of such period (except that, in making such computation, the amount of Debt under any revolving credit facility shall be computed based upon the average daily balance of such Debt during such period);

(3) in the case of Acquired Debt or Debt incurred in connection with any acquisition since the first day of such four-quarter period, the related acquisition had occurred as of the first day of such period with appropriate pro forma adjustments to, among other things, Consolidated Income Available for Debt Service, with respect to such acquisition being included in such pro forma calculation; and

(4) in the case of any acquisition or disposition by the Issuer or any of its Restricted Subsidiaries on a consolidated basis of any asset or group of assets since the first day of such four-quarter period, whether by merger, stock purchase or sale, or asset purchase or sale, such acquisition or disposition or any related repayment of Debt had occurred as of the first day of such period with the appropriate pro forma adjustments with respect to such acquisition or disposition being included in such pro forma calculation.

If the Debt giving rise to the need to make the foregoing calculation or any other Debt incurred after the first day of the relevant four-quarter period bears interest at a floating rate then, for purposes of calculating the Annual Debt Service, the interest rate on such Debt will be computed on a pro forma basis as if the average interest rate in effect during the entire such four-quarter period had been the applicable rate for the entire such period; *provided, however*, that for purposes of calculating Annual Debt Service for Debt for which there is a corresponding Hedging Obligation, Annual Debt Service shall be calculated after giving effect to the Hedging Obligation.

Section 4.07 Maintenance of Total Unencumbered Assets.

The Issuer and its Restricted Subsidiaries shall maintain Total Unencumbered Assets as of the end of each fiscal quarter of not less than 150% of the aggregate outstanding principal amount of the Issuer's and its Restricted Subsidiaries' Unsecured Debt as of the end of each fiscal quarter, all calculated on a consolidated basis in accordance with GAAP.

Section 4.08 Guarantees.

The Issuer shall and shall cause each Domestic Subsidiary that is a guarantor of or borrower under any Specified Indebtedness to become a Guarantor and execute a supplemental indenture and deliver a customary Opinion of Counsel satisfactory to the Trustee within ten Business Days of the date on which it incurred such Debt (or, if the Domestic Subsidiary has outstanding or guarantees Specified Indebtedness at the time of its creation or acquisition, at the time of such creation or acquisition). The form of supplemental indenture is attached as Exhibit B to this Indenture.

Section 4.09 Maintenance of Properties.

The Issuer will, or will cause its Subsidiaries and their respective tenants to, maintain, keep in good condition and make all necessary repairs, renewals, replacements, betterments and improvements of the Issuer's and its Subsidiaries' properties that Issuer deems necessary so that the business carried on in connection with those properties may be properly and advantageously conducted at all times. The Issuer or its Subsidiaries may, however, sell or otherwise dispose for value the Issuer's or any of its Subsidiary's properties in the ordinary course of business.

Section 4.10 Insurance.

The Issuer will, and will cause each of its Subsidiaries, and Issuer will cause the Issuer's and its Subsidiaries' tenants to maintain, in accordance with their respective leases, customary policies of insurance with responsible companies, taking into consideration prevailing market conditions and availability, for all of the Issuer's and its Subsidiaries' properties and operations; provided however, the requirements in this Section 4.10 shall not require the purchase or maintenance of insurance by a tenant in excess of the requirements set forth in the applicable lease.

ARTICLE 5
SUCCESSORS

Section 5.01 Merger, Consolidation, or Sale of Assets.

The Issuer may not, directly or indirectly, (1) consolidate or merge with or into another Person (whether or not the Issuer is the surviving corporation); or (2) sell, assign, transfer, convey, lease (other than to an unaffiliated operator in the ordinary course of business) or otherwise dispose of all or substantially all of the properties or assets of the Issuer and its Restricted Subsidiaries taken as a whole, in one or more related transactions, to another Person; unless:

(1) either:

(i) the Issuer is the surviving corporation or trust; or

(ii) the Person formed by or surviving any such consolidation or merger (if other than the Issuer) or to which such sale, assignment, transfer, conveyance or other disposition has been made is a corporation or trust organized or existing under the laws of the United States, any state of the United States or the District of Columbia;

(2) the Person formed by or surviving any such consolidation or merger (if other than the Issuer) or the Person to which such sale, assignment, transfer, conveyance or other disposition has been made assumes all the obligations of the Issuer under the Notes and this Indenture pursuant to agreements reasonably satisfactory to the Trustee; and

(3) immediately after such transaction, on a pro forma basis giving effect to such transaction or series of transactions (and treating any obligation of the Issuer or any Restricted Subsidiary incurred in connection with or as a result of such transaction or series of transactions as having been incurred at the time of such transaction), no Default or Event of Default exists under this Indenture.

This Section 5.01 will not apply to a sale, assignment, transfer, conveyance or other disposition of assets between or among the Issuer and its Restricted Subsidiaries.

Section 5.02 Successor Substituted.

Upon any consolidation or merger, or any sale, assignment, transfer, conveyance, transfer or other disposition of all or substantially all of the properties or assets of the Issuer in accordance with Section 5.01, the successor Person formed by such consolidation or into which the Issuer is merged or to which such sale, assignment, transfer, conveyance or other disposition is made, shall succeed to, and be substituted for, and may exercise every right and power of, the Issuer under this Indenture with the same effect as if such successor initially had been named as the Issuer herein. Such successor thereupon may cause to be signed, and may issue either in its own name or in the name of the Issuer, any or all of the Notes issuable hereunder which theretofore shall not have been signed by the Issuer and delivered to the Trustee; and, upon the order of such successor, instead of the Issuer, and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall deliver any Notes which previously shall have been signed and delivered by the Officers of the Issuer to the Trustee for authentication, and any Notes which such successor thereafter shall cause to be signed and delivered to the Trustee for that purpose. All the Notes so issued shall in all respects have the same legal rank and benefit under this Indenture as the Notes theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Notes had been issued at the date of the execution hereof.

In case of any such consolidation, merger, sale, lease or conveyance, such changes in phraseology and form (but not in substance) may be made in the Notes thereafter to be issued as may be appropriate.

When a successor assumes all the obligations of its predecessor under this Indenture and the Notes following a consolidation or merger, or any sale, assignment, transfer, conveyance or other disposition of 90% or more of the assets of the predecessor in accordance with the foregoing provisions, the predecessor shall be released from those obligations.

ARTICLE 6

DEFAULTS AND REMEDIES

Section 6.01 Events of Default.

Each of the following is an “*Event of Default*” wherever used herein with respect to the Notes:

(1) the Issuer or its Restricted Subsidiaries do not pay the principal or any premium on the Notes when due and payable;

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- (2) the Issuer or its Restricted Subsidiaries do not pay interest on the Notes within 30 days after the applicable due date;
- (3) the Issuer or its Restricted Subsidiaries do not comply with their obligations under Section 5.01;
- (4) the Issuer or its Restricted Subsidiaries remain in breach of any other term of this Indenture for 60 days after they receive a notice of Default stating they are in breach. Either the Trustee or the Holders of more than 25% in principal amount of the then outstanding Notes may send the notice;
- (5) final judgments aggregating in excess of \$50.0 million (exclusive of amounts covered by insurance) are entered against the Issuer and its Restricted Subsidiaries and are not paid, discharged or stayed for a period of 60 days;
- (6) the Issuer or its Restricted Subsidiaries default under any of their indebtedness in an aggregate principal amount exceeding \$50.0 million after the expiration of any applicable grace period, which default results in the acceleration of the maturity of such indebtedness. Such default is not an Event of Default if the other indebtedness is discharged, or the acceleration is rescinded or annulled, within a period of 30 days after the Issuer or its Restricted Subsidiaries receive notice specifying the default and requiring that they discharge the other indebtedness or cause the acceleration to be rescinded or annulled. Either the Trustee or the Holders of more than 25% in principal amount of the then Outstanding Notes may send the notice;
- (7) the Issuer or any of its Significant Subsidiaries, or any group of Subsidiaries that, taken as a whole, would constitute a Significant Subsidiary:
- (i) commences a voluntary case under Bankruptcy Law;
 - (ii) consents to the entry of an order for relief against it in an involuntary case under Bankruptcy Law;
 - (iii) consents to the appointment of a custodian of it or for all or substantially all of its property;
 - (iv) makes a general assignment for the benefit of its creditors; or
 - (v) an admission in writing by the Issuer of its inability to pay its debts as they become due;
- (8) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:
- (i) is for relief against the Issuer or any of its Significant Subsidiaries, or any group of Subsidiaries that, taken as a whole, would constitute a Significant Subsidiary, in an involuntary case;
 - (ii) appoints a custodian of the Issuer or any of its Significant Subsidiaries, or any group of Subsidiaries that, taken as a whole, would constitute a Significant Subsidiary, or for all or substantially all of the property of the Issuer or any of its Significant Subsidiaries, or any group of Subsidiaries that, taken as a whole, would constitute a Significant Subsidiary; or
 - (iii) orders the liquidation of the Issuer or any of its Significant Subsidiaries, or any group of Subsidiaries that, taken as a whole, would constitute a Significant Subsidiary;

(iv) and the order or decree remains unstayed and in effect for 60 consecutive days; or

(9) any Note Guarantee of a Significant Subsidiary of the Issuer ceases to be in full force and effect or is declared null and void or any Guarantor denies or disaffirms its obligations under this Indenture or any Note Guarantee other than by reason of the release of any such Note Guarantee in accordance with this Indenture.

Section 6.02 Acceleration.

In the case of an Event of Default specified in clause (7) or (8) of Section 6.01, all Outstanding Notes will become due and payable immediately without further action or notice. If any other Event of Default with respect to the Notes at the time Outstanding occurs and has not been cured, the Trustee or the Holders of at least 25% in aggregate principal amount of the then Outstanding Notes may declare the entire principal amount of the Notes to be due and immediately payable by written notice to the Issuer and the Trustee. Upon any such declaration, such principal amount (or specified amount) of the Notes shall become due and payable immediately. The Holders of a majority in aggregate principal amount of the then Outstanding Notes by written notice to the Trustee may on behalf of all of the Holders rescind and annul an acceleration and its consequences if the rescission or annulment would not conflict with any judgment or decree and if all existing Events of Default (except nonpayment of principal, interest or premium that has become due solely because of the acceleration) have been cured or waived.

Section 6.03 Other Remedies.

If an Event of Default occurs and is continuing with respect to the Notes at the time Outstanding, the Trustee may pursue any available remedy to collect the payment of principal, premium and interest on the Notes or to enforce the performance of any provision of the Notes or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder of a Note in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. All remedies are cumulative to the extent permitted by law.

Section 6.04 Waiver of Past Defaults.

Holders of not less than a majority in aggregate principal amount of the then Outstanding Notes by written notice to the Trustee may on behalf of the Holders of all of the Notes waive an existing Default or Event of Default and its consequences hereunder, except a continuing Default or Event of Default in the payment of the principal of, premium or interest on, the Notes (excluding in connection with an offer to purchase) or in respect of a covenant or provision of this Indenture which under Article 9 may not be modified or amended without the consent of the Holder of each Outstanding Note; *provided, however*, that the Holders of a majority in aggregate principal amount of the then Outstanding Notes may rescind an acceleration and its consequences, including any related payment default that resulted from such acceleration as provided in Section 6.02. Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

Section 6.05 Control by Majority.

Holders of a majority in aggregate principal amount of the then Outstanding Notes may direct the time, method and place of conducting any proceeding for exercising any remedy available to the Trustee or exercising any trust or power conferred on it with respect to the Notes. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture that the Trustee determines may be unduly prejudicial to the rights of other Holders of Notes, that may involve the Trustee in personal liability, or that the Trustee determines in good faith may be unduly prejudicial to the rights of Holders of the Notes not joining in the giving of such direction and may take any other action it deems proper that is not inconsistent with any such direction received from Holders of Notes.

Section 6.06 Limitation on Suits.

A Holder of a Note may pursue a remedy with respect to this Indenture or the Notes only if:

- (1) such Holder has given the Trustee written notice that an Event of Default with respect to the Notes has occurred and remains uncured;
- (2) the Holders of at least a majority in aggregate principal amount of all Outstanding Notes have made a written request that the Trustee take action because of the Event of Default, and offered indemnity satisfactory to the Trustee against the cost and other liabilities of taking that action;
- (3) the Trustee has not taken action for 60 days after receipt of the notice and offer of indemnity; and
- (4) the Holders of at least a majority in principal amount of all Outstanding Notes have not given the Trustee a direction inconsistent with such request within such 60-day period.

A Holder of any Notes may not use this Indenture to prejudice the rights of another Holder of a Note or to obtain a preference or priority over another Holder of a Note.

Section 6.07 Rights of Holders of Notes to Receive Payment.

Notwithstanding any other provision of this Indenture, the right of any Holder of any Note to receive payment of principal, premium and interest on such Note, on or after the respective due dates expressed in such Note (excluding in connection with an offer to purchase), or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

Section 6.08 Collection Suit by Trustee.

If an Event of Default specified in Section 6.01(1) or (2) occurs and is continuing with respect to the Notes, the Trustee is authorized to recover judgment in its own name and as trustee of an express trust against the Issuer for the whole amount of principal, premium and interest remaining unpaid on the Notes and interest on overdue principal and, to the extent lawful, interest and such further amount as shall be sufficient to cover the costs and expenses of collection, including the compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

Section 6.09 Trustee May File Proofs of Claim.

The Trustee is authorized to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and the Holders of the Notes allowed in any judicial proceedings relative to the Issuer or any other obligor upon the Notes, their creditors or their property and shall be entitled and empowered to collect, receive and distribute any money or other property payable or deliverable on any such claims and any custodian in any such judicial proceeding is hereby authorized by each Holder of Notes 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 of Notes, to pay to the Trustee any amount due to it for the compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.07 hereof. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.07 hereof out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Holders of Notes may be entitled to receive in such proceeding whether in liquidation or under any plan of

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

Section 6.10 Priorities.

If the Trustee collects any money pursuant to this Article 6, it shall pay out the money in the following order:

First: to the Trustee, its agents and attorneys for amounts due under Section 7.07 hereof, including payment of all compensation, expense and liabilities incurred, and all advances made, by the Trustee and the costs and expenses of collection;

Second: to Holders of Notes in respect of which or for the benefit of which such money has been collected for amounts due and unpaid on such Notes for principal, premium and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on such Notes for principal, premium and interest, respectively; and

Third: to the Issuer or to such party as a court of competent jurisdiction shall direct.

The Trustee may fix a record date and payment date for any payment to Holders of Notes pursuant to this Section 6.10.

Section 6.11 Undertaking for Costs.

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 a Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.11 does not apply to a suit by the Trustee, a suit by a Holder of a Note pursuant to Section 6.06 hereof, or a suit by Holders of more than 10% in principal amount of the then Outstanding Notes.

ARTICLE 7

TRUSTEE

Section 7.01 Duties of Trustee.

(a) If an Event of Default with respect to the Notes has occurred and is continuing, the Trustee will 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.

(b) Except during the continuance of an Event of Default:

(1) the duties of the Trustee will be determined solely by the express provisions of this Indenture and the Trustee need perform only those duties that are specifically set forth in this Indenture and no others, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(2) 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. However, the Trustee will examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture but the Trustee shall have no obligation to verify any mathematical calculations contained therein.

(c) The Trustee may not be relieved from liabilities for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(1) this paragraph does not limit the effect of paragraph (b) of this Section 7.01;

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

(3) the Trustee will not be liable with respect to any action it takes or omits to take in good faith in accordance with any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under this Indenture or with a direction received by it pursuant to Section 6.05.

(d) Whether or not therein expressly so provided, every provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (a), (b), and (c) of this Section 7.01.

(e) No provision of this Indenture will require the Trustee to expend or risk its own funds or incur any liability. The Trustee will be under no obligation to exercise any of its rights and powers under this Indenture at the request of any Holder, unless such Holder has offered to the Trustee security and indemnity satisfactory to it against any loss, liability or expense.

(f) The Trustee will not be liable for interest on any money received by it except as the Trustee may agree in writing with the Issuer. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

(g) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 7.01.

Section 7.02 Rights of Trustee.

(a) The Trustee may conclusively rely upon any document (whether original or facsimile) believed by it to be genuine and to have been signed or presented by the proper Person. The Trustee need not investigate any fact or matter stated in the document.

(b) Before the Trustee acts or refrains from acting, it may require an Officers' Certificate or an Opinion of Counsel or both. The Trustee will not be liable for any action it takes or omits to take in good faith in reliance on such Officers' Certificate or Opinion of Counsel. The Trustee may consult with counsel and the advice of such counsel or any Opinion of Counsel will be full and complete authorization and protection from liability in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

(c) The Trustee may act through its attorneys and agents and will not be responsible for the misconduct or negligence of any agent appointed with due care.

(d) The Trustee will not be liable for any action it takes or omits to take in good faith that it believes to be authorized or within the rights or powers conferred upon it by this Indenture.

(e) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from the Issuer will be sufficient if signed by an Officer of the Issuer.

(f) The Trustee will 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 unless such Holders have offered to the Trustee security or indemnity satisfactory to it against the costs, expenses and liabilities that might be incurred by it in compliance with such request or direction.

(g) Except with respect to the receipt of payments of principal and interest on the Notes payable by the Issuer pursuant to Section 4.01 hereof and any Default or Event of Default information contained in the Officers' Certificate delivered to it pursuant to Section 4.04 hereof, the Trustee shall have no duty to monitor the Issuer's compliance with or the breach of any representation, warranty or covenant made in this Indenture.

(h) Delivery of reports, information and documents to the Trustee described in Section 4.03 hereof is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Issuer's or the Guarantors' compliance with any of their covenants hereunder (as to which the Trustee is entitled to rely conclusively on Officers' Certificates). The Trustee is under no duty to examine such reports, information or documents to ensure compliance with the provisions of the Indenture or to ascertain the correctness or otherwise of the information or the statements contained therein.

(i) In no event will the Trustee be responsible or liable for special, indirect, or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(j) The Trustee shall not be deemed to have notice of any Default or Event of Default (other than payment-related Defaults) unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of such Default or Event of Default is received by a Responsible Officer of the Trustee at the Corporate Trust Office of the Trustee from the Issuer or the Holders of at least 25% in the aggregate principal amount of all Notes then outstanding, and such notice references the Notes and this Indenture.

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

Section 7.03 Individual Rights of Trustee.

The Trustee in its individual or any other capacity may become the owner or pledgee of Notes and may otherwise deal with the Issuer or any Affiliate of the Issuer with the same rights it would have if it were not Trustee. However, in the event that a Responsible Officer of the Trustee acquires any conflicting interest, it must eliminate such conflict within 90 days, apply to the Commission for permission to continue as trustee or resign. Any Agent may do the same with like rights and duties. The Trustee is also subject to Sections 7.10 and 7.11 hereof.

Section 7.04 Trustee's Disclaimer.

The Trustee will not be responsible for and makes no representation as to the validity or adequacy of this Indenture or the Notes, it shall not be accountable for the Issuer's use of the proceeds from the Notes or any money paid to the Issuer or upon the Issuer's direction under any provision of this Indenture, it will not be responsible for the use or application of any money received by any Paying Agent other than the Trustee, and it will not be responsible for any statement or recital herein or any statement in the Notes or any other document in connection with the sale of the Notes or pursuant to this Indenture other than its certificate of authentication.

Section 7.05 Notice of Defaults.

If a Default or Event of Default occurs and is continuing with respect to the Notes and if the Trustee has knowledge or is deemed to have knowledge of such Default or Event of Default pursuant to Section 7.02(j), the Trustee will mail to Holders of Notes a notice of the Default or Event of Default within 90 days after it occurs, unless such default shall have been cured or waived. Except in the case of a Default or Event of Default in payment of principal of, premium or interest on any Note, the Trustee may withhold the notice if and so long as a committee of its Responsible Officers in good faith determines that withholding the notice is in the interests of the Holders of the Notes.

Section 7.06 Reports by Trustee to Holders of the Notes.

(a) Within 120 days after the end of each fiscal year beginning with the end of the fiscal year following the date of this Indenture, and for so long as Notes remain Outstanding, the Trustee will mail to all Holders of the Notes a brief report dated as of such reporting date that complies with TIA § 313(a) (but if no event described in TIA § 313(a) has occurred within the twelve months preceding the reporting date, no report need be transmitted). The Trustee also will comply with TIA § 313(b)(2). The Trustee will also transmit by mail all reports as required by TIA § 313(c).

(b) A copy of each report at the time of its mailing to the Holders of Notes will be mailed by the Trustee to the Issuer and filed by the Trustee with the Commission and each stock exchange on which such Notes are listed in accordance with TIA § 313(d). The Issuer will promptly notify the Trustee when the Notes are listed on any stock exchange.

Section 7.07 Compensation and Indemnity.

(a) The Issuer will pay to the Trustee from time to time compensation for its acceptance of this Indenture and ordinary services hereunder in accordance with a written schedule provided by the Trustee to the Issuer. The Trustee's compensation will not be limited by any law on compensation of a trustee of an express trust. The Issuer will reimburse the Trustee promptly upon written request for all disbursements, advances and expenses incurred or made by it in addition to the compensation for its services (including the compensation, disbursements and expenses of the Trustee's agents and counsel), except any such disbursement, advances and expenses as shall be determined to have been caused by the Trustee's own negligence, bad faith or willful misconduct. Additionally, if it should become necessary that the Trustee perform extraordinary services, it shall be entitled to reasonable extra compensation and to reimbursement for reasonable extraordinary expenses in connection therewith; provided that if such extraordinary services or expense are occasioned by the negligence, bad faith, or willful conduct of the Trustee, it shall not be entitled to such compensation or reimbursement.

(b) The Issuer and each Guarantor will indemnify the Trustee against any and all losses, liabilities, claims or expenses incurred by it arising out of or in connection with the acceptance or administration of its duties under this Indenture, including the costs and expenses of enforcing this Indenture against the Issuer and any Guarantors (including this Section 7.07) and defending itself against any claim (whether asserted by the Issuer, any Guarantors or any Holder or any other Person) or liability in connection with the exercise or performance of any of its powers or duties hereunder, except to the extent any such loss, liability or expense may be attributable to its negligence, bad faith, or willful misconduct. The Trustee will notify the Issuer in writing promptly of any claim of which a Responsible Officer has received written notice for which it may seek indemnity. Failure by the Trustee to so notify the Issuer will not relieve the Issuer or any of the Guarantors of their obligations hereunder. The Issuer or such Guarantor will defend the claim and the Trustee will cooperate in the defense. The Trustee may have separate counsel and the Issuer will pay the fees and expenses of such counsel. Neither the Issuer nor any Guarantor need pay for any settlement made without its consent, which consent will not be unreasonably withheld.

(c) The obligations of the Issuer and any Guarantors under this Section 7.07 will survive the satisfaction and discharge of this Indenture.

(d) To secure the Issuer's payment obligations in this Section 7.07, the Trustee will have a Lien prior to the Notes on all money or property held or collected by the Trustee, except that held in trust to pay principal and interest on particular Notes. Such Lien will survive the satisfaction and discharge of this Indenture.

(e) When the Trustee incurs expenses or renders services after an Event of Default specified in Section 6.01(8) or (9) hereof occurs, the expenses and the compensation for the services (including the fees and expenses of its agents and counsel) are intended to constitute expenses of administration under any Bankruptcy Law.

(f) The Trustee will comply with the provisions of TIA § 313(b)(2) to the extent applicable.

Section 7.08 Replacement of Trustee.

(a) A resignation or removal of the Trustee and appointment of a successor Trustee will become effective only upon the successor Trustee's acceptance of appointment as provided in this Section 7.08.

(b) The Trustee may resign with respect to the Notes in writing at any time and be discharged from the trust hereby created by so notifying the Issuer. The Holders of a majority in aggregate principal amount of the then Outstanding Notes may remove the Trustee with respect to the Notes by so notifying the Trustee and the Issuer in writing. The Issuer may remove the Trustee if:

(1) the Trustee fails to comply with Section 7.10 hereof;

(2) the Trustee is adjudged a bankrupt or an insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law;

(3) a custodian or public officer takes charge of the Trustee or its property; or

(4) the Trustee becomes incapable of acting.

(c) If the Trustee resigns, is removed, is incapable of acting or if a vacancy exists in the office of Trustee for any reason, the Issuer, by Board Resolution, will promptly appoint a successor Trustee. Within one year after the successor Trustee takes office, the Holders of a majority in aggregate principal amount of the then Outstanding Notes may appoint a successor Trustee to replace the successor Trustee appointed by the Issuer.

(d) If a successor Trustee does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee, the Issuer, or the Holders of at least 10% in aggregate principal amount of the then Outstanding Notes, may petition any court of competent jurisdiction for the appointment of a successor Trustee.

(e) If the Trustee, after written request by any Holder of Notes who has been a Holder of Notes for at least six months, fails to comply with Section 7.10, such Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(f) The successor Trustee will deliver a written acceptance of its appointment to the retiring Trustee and to the Issuer. Thereupon, the resignation or removal of the retiring Trustee will become effective, and the successor Trustee will have all the rights, powers and duties of the Trustee under this Indenture without any further act, deed or conveyance. The successor Trustee will mail a notice of its succession to the Holders. The retiring Trustee will promptly transfer all property held by it as Trustee to the successor Trustee, *provided* all sums owing to the Trustee hereunder have been paid and subject to the Lien provided for in Section 7.07 hereof. Notwithstanding replacement of the Trustee pursuant to this Section 7.08, the Issuer's obligations under Section 7.07 hereof will continue for the benefit of the retiring Trustee.

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

(h) No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be qualified and eligible under this Article.

Section 7.09 Successor Trustee by Merger, etc.

If the Trustee consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation, the successor corporation without any further act will be the successor Trustee, *provided* such corporation shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of the parties hereto.

Section 7.10 Eligibility; Disqualification.

There will at all times be a Trustee hereunder that is a corporation organized and doing business under the laws of the United States of America or of any state thereof that is authorized under such laws to exercise corporate trustee power, that is subject to supervision or examination by federal or state authorities and that has a combined capital and surplus of at least \$100 million as set forth in its most recent published annual report of condition.

This Indenture will always have a Trustee who satisfies the requirements of TIA § 310(a)(1), (2) and (5). The Trustee is subject to TIA § 310(b).

Section 7.11 Preferential Collection of Claims Against Issuer.

The Trustee is subject to TIA § 311(a), excluding any creditor relationship listed in TIA § 311(b). A Trustee who has resigned or been removed shall be subject to TIA § 311(a) to the extent indicated therein.

ARTICLE 8

LEGAL DEFEASANCE AND COVENANT DEFEASANCE

Section 8.01 Option to Effect Legal Defeasance or Covenant Defeasance.

The Issuer may, at its option, at any time, elect to have Section 8.02 (if applicable) or Section 8.03 (if applicable) be applied to the Outstanding Notes that either have become due and payable or will become due and payable within one year, or scheduled for redemption within one year, upon compliance with the conditions set forth below in this Article.

Section 8.02 Legal Defeasance and Discharge.

Upon the Issuer's exercise under Section 8.01 hereof of the option applicable to this Section 8.02 with respect to any Outstanding Notes, the Issuer and each of the Guarantors will, subject to the satisfaction of the conditions set forth in Section 8.04, be deemed to have been discharged from their obligations with respect to all such Outstanding Notes (including any related Notes Guarantees) on the date the conditions set forth below are satisfied (hereinafter, "*Legal Defeasance*"). For this purpose, Legal Defeasance means that the Issuer and any Guarantors will be deemed to have paid and discharged the entire Debt represented by such Outstanding Notes (including any related Notes Guarantees), which will thereafter be deemed to be "*Outstanding*" only for the purposes of Section 8.05 hereof and the other Sections of this Indenture referred to in clauses (1) and (2) below, and to have satisfied all their other obligations under such Notes, such Notes Guarantees and this Indenture (and the Trustee, on demand of and at the expense of the Issuer, shall execute proper instruments acknowledging the same), except for the following provisions which will survive until otherwise terminated or discharged hereunder:

- (1) the rights of Holders of such Outstanding Notes to receive payments in respect of the principal of, or interest or premium on such Notes when such payments are due from the trust referred to in Section 8.04 hereof;
- (2) the Issuer's obligations with respect to such Notes under Article 2 and Section 4.02 hereof;
- (3) the rights, powers, trusts, duties and immunities of the Trustee hereunder and the Issuer's and any Guarantor's obligations in connection therewith; and
- (4) this Article 8.

Subject to compliance with this Article 8, the Issuer may exercise its option under this Section 8.02 notwithstanding the prior exercise of their option under Section 8.03 hereof.

Section 8.03 Covenant Defeasance.

Upon the Issuer's exercise under Section 8.01 hereof of the option applicable to this Section 8.03 with respect to any Outstanding Notes, the Issuer and any Guarantors will, subject to the satisfaction of the conditions set forth in Section 8.04, be released from each of their obligations under the covenants contained in Sections 4.02, 4.03, 4.04, 4.05, 4.06, 4.07, 4.08, 4.09, 4.10, 5.01 and 10.04 with respect to such Outstanding Notes on and after the date the conditions set forth in Section 8.04 hereof are satisfied (hereinafter, "*Covenant Defeasance*"), and such Notes will thereafter be deemed not "Outstanding" for the purposes of any direction, waiver, consent or declaration or act of Holders (and the consequences of any thereof) in connection with such covenants, but will continue to be deemed "Outstanding" for all other purposes hereunder. For this purpose, *Covenant Defeasance* means that, with respect to the Outstanding Notes and any related Notes Guarantees, the Issuer and any Guarantors may omit to comply with and will have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document and such omission to comply will not constitute a Default or an Event of Default under Section 6.01 hereof, but, except as specified above, the remainder of this Indenture and such Notes and any related Notes Guarantees will be unaffected thereby. In addition, upon the Issuer's exercise under Section 8.01 hereof of the option applicable to this Section 8.03 with respect to any Outstanding Notes, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, Sections 6.01(4) through 6.01(7) hereof will not constitute Events of Default.

Section 8.04 Conditions to Legal or Covenant Defeasance.

In order to exercise either Legal Defeasance or Covenant Defeasance under either Section 8.02 or 8.03 hereof with respect to any Outstanding Notes:

(1) the Issuer irrevocably deposits with the Trustee for the Notes, in trust, for the benefit of the Holders, money in such currency or currencies, or currency unit or currency units, in which such Note is then specified as payable at maturity, non-callable Government Obligations applicable to such Notes (determined on the basis of the currency or currencies, or currency unit or currency units, in which such Notes are then specified as payable at maturity), or any combination thereof, in such amounts as will be sufficient, in the opinion of a nationally recognized firm of independent public accountants, to pay the principal of, premium and interest on such Outstanding Notes on the stated date for payment thereof or on the applicable redemption date, as the case may be;

(2) in the case of an election under Section 8.02 hereof, the Issuer has delivered to the Trustee an Opinion of Counsel in the United States reasonably acceptable to such Trustee confirming that:

- (i) the Issuer has received from, or there has been published by, the IRS a ruling; or
- (ii) since the date of this Indenture, there has been a change in the applicable federal income tax law,

in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, the Holders will not recognize income, gain or loss for federal income tax purposes as a result of such Legal Defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred;

(3) in the case of an election under Section 8.03 hereof, the Issuer must deliver to the Trustee an Opinion of Counsel in the United States reasonably acceptable to the Trustee confirming that the beneficial owners of the Notes will not recognize income, gain or loss for federal income tax purposes as a result of such Covenant Defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;

(4) no Default or Event of Default shall have occurred in respect of the Notes and be continuing on the date of such deposit (other than a Default or Event of Default resulting from the borrowing of funds to be applied to such deposit);

(5) the Issuer must deliver to the Trustee an Officers' Certificate stating such Legal Defeasance or Covenant Defeasance will not result in a breach or violation of, or constitute a default under, any material agreement or instrument (other than this Indenture) to which the Issuer or any of its Restricted Subsidiaries is a party or by which the Issuer or any of its Restricted Subsidiaries is bound;

(6) the Issuer must deliver to the Trustee an Officers' Certificate stating that the deposit was not made by Issuer with the intent of preferring the Holders over the other creditors of Issuer with the intent of defeating, hindering, delaying or defrauding any other creditors of the Issuer or others; and

(7) the Issuer must deliver to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent provided for or relating to the Legal Defeasance or the Covenant Defeasance have been complied with.

Section 8.05 Deposited Money and Government Securities to Be Held in Trust; Other Miscellaneous Provisions.

Subject to Section 8.06 hereof, all money or Government Obligations (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee, collectively for purposes of this Section 8.05, the "Trustee") pursuant to Section 8.04 in respect of any Outstanding Notes will be held in trust and applied by such Trustee, in accordance with the provisions of the Notes and this Indenture, to the payment, either directly or through any Paying Agent (including the Issuer acting as Paying Agent) as such Trustee may determine, to the Holders of the Notes of all sums due and to become due thereon in respect of principal, premium and interest, but such money need not be segregated from other funds except to the extent required by law.

The Issuer will pay and indemnify such Trustee against any tax, fee or other charge imposed on or assessed against the money or non-callable Government Obligations deposited pursuant to Section 8.04 or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders.

Notwithstanding anything in this Article 8 to the contrary, such Trustee will deliver or pay to the Issuer from time to time upon the request of the Issuer any money or non-callable Government Obligations held by it as provided in Section 8.04 hereof which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to such Trustee (which may be the opinion delivered under Section 8.04(1)), are in excess of the amount thereof that would then be required to be deposited to effect an equivalent Legal Defeasance or Covenant Defeasance.

Section 8.06 Repayment to Issuer.

Any money deposited with the Trustee or any Paying Agent, or then held by the Issuer, in trust for the payment of the principal of, premium or interest on any Note and remaining unclaimed for two years after such principal, premium or interest has become due and payable shall be paid to the Issuer on its request or (if then held by the Issuer) will be discharged from such trust; and the Holder of such Note will thereafter be permitted to look only to the Issuer for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Issuer as trustee thereof, will thereupon cease; *provided, however*, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Issuer cause to be published once, in an Authorized Newspaper, notice that such money remains unclaimed and that, after a date specified therein, which will not be less than 30 days from the date of such notification or publication, any unclaimed balance of such money then remaining will be repaid to the Issuer.

Section 8.07 Reinstatement.

(a) If the Trustee or Paying Agent is unable to apply any money or non-callable Government Obligations deposited in respect of the Notes in accordance with Section 8.02 or 8.03, as the case may be, by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Issuer's and any Guarantor's obligations under this Indenture and the Notes and any related Notes Guarantees will be revived and reinstated as though no deposit had occurred pursuant to Section 8.02 or 8.03 hereof until such time as the Trustee or Paying Agent is permitted to apply all such money in accordance with Section 8.02 or 8.03 hereof, as the case may be; *provided, however*, that the principles set forth in paragraphs (b) and (c) of this Section 8.07 shall apply following such reinstatement; *provided further, however*, that if the Issuer makes any payment of principal of, premium or interest on any Note following the reinstatement of its obligations, the Issuer will be subrogated to the rights of the Holders of such Notes to receive such payment from the money held by the Trustee or Paying Agent.

(b) If reinstatement of the Issuer's and any Guarantor's obligations under this Indenture, the Notes and any related Notes Guarantees shall occur as provided in Section 8.07(a), such reinstatement shall be deemed to have occurred as of the date of such deposit except that no Default will be deemed to have occurred solely by reason of a breach while any such obligation was suspended.

(c) Neither (1) the continued existence following the reinstatement of the foregoing obligations of facts and circumstances or obligations that were incurred or otherwise came into existence while the foregoing obligations were suspended nor (2) the performance of any such obligations, including the consummation of any transaction pursuant to, and on materially the same terms as, a contractual agreement in existence prior to the reinstatement of the foregoing obligations, shall constitute a breach of any such obligations or cause a Default or Event of Default in respect thereof; *provided, however*, that (A) the Issuer and its Restricted Subsidiaries did not incur or otherwise cause such facts and circumstances or obligations to exist in anticipation of the reinstatement of the foregoing obligations and (B) the Issuer and its Restricted Subsidiaries did not reasonably believe that such incurrence or actions would result in such reinstatement. For purposes of clause (2) above, any increase in the consideration to be paid prior to such amendment or modification to the terms of an existing obligation following the reinstatement of the foregoing obligations that does not exceed 10% of the consideration that was to be paid prior to such amendment or modification shall not be deemed a "material" amendment or modification. For purposes of clauses (A) and (B) above, anticipation and reasonable belief may be determined by the Issuer and shall be conclusively evidenced by a board resolution to such effect adopted by the Board of Directors of the Issuer.

ARTICLE 9

AMENDMENT, SUPPLEMENT AND WAIVER

Section 9.01 Without Consent of Holders of Notes.

Notwithstanding Section 9.02 of this Indenture, the Issuer, any Guarantors and the Trustee may amend or supplement this Indenture, any Notes Guarantees or the Notes without the consent of any Holder of a Note:

- (1) to cure any ambiguity, defect or inconsistency;
- (2) to provide for uncertificated Notes in addition to or in place of certificated Notes;
- (3) to provide for the assumption of the Issuer's obligations to Holders of Notes in the case of a merger or consolidation or sale of all or substantially all of the Issuer's assets;
- (4) to add Guarantees with respect to the Notes;
- (5) to secure the Notes;

(6) to make any other change as may be provided in an opinion of counsel that would provide any additional rights or benefits to the Holders of Notes or that does not adversely affect the legal rights under this Indenture of any such Holder; or

(7) to comply with requirements of the Commission in order to effect or maintain the qualification of this Indenture under the TIA.

Section 9.02 With Consent of Holders of Notes.

Except as provided above in Section 9.01 and in this Section 9.02, the Issuer, any Guarantors and the Trustee may amend or supplement this Indenture, any Notes Guarantees and the Notes with the consent of the Holders of at least a majority in principal amount of the then Outstanding Notes affected by such amendment or supplemental indenture voting as a single class (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, such Notes), and, subject to Sections 6.04 and 6.07 hereof, any existing Default or Event of Default (other than a Default or Event of Default in the payment of the principal or premium, if any, or interest on the Notes, except a payment default resulting from an acceleration that has been rescinded) or compliance with any provision of this Indenture, any Notes Guarantees or the Notes may be waived with the consent of the Holders of a majority in principal amount of the then Outstanding Notes affected thereby voting as a single class (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, the Notes).

Without the consent of each Holder affected, an amendment or waiver may not (with respect to any Notes held by a non-consenting Holder):

(1) reduce the principal amount of Notes whose Holders must consent to an amendment, supplement or waiver;

(2) reduce the principal of or change the fixed maturity of any Note or alter the provisions with respect to the redemption of the Notes;

(3) reduce the rate of or change the time for payment of interest on any Note;

(4) waive a Default or Event of Default in the payment of principal of, or interest or premium on the Notes (except a rescission of acceleration of the Notes by the Holders of at least a majority in aggregate principal amount of the then Outstanding Notes and a waiver of the payment Default that resulted from such acceleration);

(5) make any Note payable in money other than that stated in the Notes;

(6) make any change in Section 6.04 or 6.07 hereof relating to waivers of past Defaults or the rights of Holders of Notes to receive payments of principal of or interest or premium on the Notes;

(7) waive a redemption payment with respect to any Note;

(8) release any Guarantor from any of its obligations under its Notes Guarantee or this Indenture, except in accordance with the terms of this Indenture;

(9) modify or change any provisions of this Indenture affecting the ranking of the Notes or any Notes Guarantees in any manner adverse to the Holders of the Notes; and

(10) make any change in the amendment and waiver provisions set forth in clauses (1) through (9) of this Section 9.02.

Section 2.08 hereof shall determine which Notes are considered to be "Outstanding" for purposes of this Section 9.02.

It is not necessary for the consent of the Holders of Notes under this Section 9.02 to approve the particular form of any proposed amendment or waiver, but it is sufficient if such consent approves the substance thereof.

After an amendment, supplement or waiver under this Section 9.02 becomes effective, the Issuer will mail to the Holders of Notes affected thereby a notice briefly describing the amendment, supplement or waiver. Any failure of the Issuer to mail such notice, or any defect therein, will not, however, in any way impair or affect the validity of any such amended or supplemental indenture or waiver.

Section 9.03 Compliance with Trust Indenture Act.

Every amendment or supplement to this Indenture or the Notes will be set forth in an amended or supplemental indenture that complies with the TIA as then in effect.

Section 9.04 Revocation and Effect of Consents.

Until an amendment, supplement or waiver becomes effective, a consent to it by a Holder of a Note is a continuing consent by the Holder of a Note and every subsequent Holder of a Note or portion of a Note that evidences the same debt as the consenting Holder's Note, even if notation of the consent is not made on any Note. However, any such Holder of a Note or subsequent Holder of a Note may revoke the consent as to its Note if a Responsible Officer of the Trustee receives written notice of revocation before the date the waiver, supplement or amendment becomes effective. An amendment, supplement or waiver becomes effective in accordance with its terms and thereafter binds every Holder.

Section 9.05 Notation on or Exchange of Notes.

The Trustee may place an appropriate notation about an amendment, supplement or waiver on any Outstanding Note thereafter authenticated. The Issuer in exchange for all Outstanding Notes may issue and the Trustee shall, upon receipt of an authentication order in accordance with Section 2.02, authenticate new Notes that reflect the amendment, supplement or waiver.

Failure to make the appropriate notation or issue a new Note will not affect the validity and effect of such amendment, supplement or waiver.

Section 9.06 Trustee to Sign Amendments, etc.

Upon the request of the Issuer accompanied by Board Resolutions authorizing the execution of any amended or supplemental indenture, and upon the filing with the Trustee of evidence satisfactory to the Trustee of the consent of the Holders of Notes as aforesaid, and upon receipt by the Trustee of the documents described in Section 7.02 hereof, the Trustee will join with the Issuer in the execution of an amended or supplemental indenture unless such amended or supplemental indenture directly affects the Trustee's own rights, duties, liabilities or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but will not be obligated to, enter into such amended or supplemental indenture. In executing any amended or supplemental indenture, the Trustee will be entitled to receive and (subject to Section 7.01 hereof) will be fully protected in relying upon, in addition to the documents required by Section 12.04 hereof, an Officers' Certificate and an Opinion of Counsel stating that the execution of such amended or supplemental indenture is authorized or permitted by this Indenture and complies with the terms of this Indenture.

ARTICLE 10
NOTES GUARANTEES

Section 10.01 [Intentionally Omitted].

Section 10.02 Limitation on Guarantor Liability.

By its acceptance of Notes issued with the benefit of any Notes Guarantees, each Holder hereby confirms that it is the intention of all parties that the Notes Guarantee of any Guarantor not constitute a fraudulent transfer or conveyance for purposes of Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state law to the extent applicable to any Notes Guarantee. To effectuate the foregoing intention, the Holders hereby irrevocably agree that the obligations of each such Guarantor will, after giving effect to any maximum amount and all other contingent and fixed liabilities of such Guarantor that are relevant under such laws, and after giving effect to any collections from, rights to receive contribution from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under this Article 10, result in the obligations of such Guarantor under its Notes Guarantee not constituting a fraudulent transfer or conveyance.

Section 10.03 [Intentionally Omitted].

Section 10.04 Guarantors May Consolidate, etc., on Certain Terms.

No Guarantor may sell or otherwise dispose of all or substantially all of its assets to, or consolidate with or merge with or into (whether or not such Guarantor is the surviving Person), another Person, other than the Issuer or another Guarantor, unless:

- (1) immediately after giving effect to that transaction, no Default or Event of Default exists under this Indenture; and
- (2) subject to Section 10.05, the Person acquiring the property in any such sale or disposition or the Person formed by or surviving any such consolidation or merger assumes all the obligations of that Guarantor under this Indenture and its Notes Guarantee pursuant to a supplemental indenture satisfactory to the Trustee.

In case of any such consolidation, merger, sale or conveyance and upon the assumption by the successor Person, by supplemental indenture, of the Notes Guarantee endorsed upon the Notes and the due and punctual performance of all of the covenants and conditions of this Indenture to be performed by the Guarantor, such successor Person will succeed to and be substituted for the Guarantor with the same effect as if it had been named as a Guarantor. Such successor Person thereupon may cause to be signed any or all of the Notes Guarantees to be endorsed upon all of the Notes issuable hereunder which theretofore shall not have been signed by the Issuer and delivered to the Trustee. All the Notes Guarantees so issued will in all respects have the same legal rank and benefit under this Indenture as the Notes Guarantees theretofore and thereafter issued in accordance with the terms of this Indenture as though all of such Notes Guarantees had been issued at the date of the execution hereof.

Except as set forth in Article 5, and notwithstanding this Section 10.04, nothing contained in this Indenture or in any of the Notes will prevent any consolidation or merger of a Guarantor with or into the Issuer or another Guarantor, or will prevent any sale or conveyance of the property of a Guarantor as an entirety or substantially as an entirety to the Issuer or another Guarantor.

Section 10.05 Releases Following Sale of Assets.

The Notes Guarantee of any Guarantor will be released, and any Person acquiring assets or surviving any merger or consolidation with a Guarantor (including by way of consolidation, merger, sale or conveyance under Section 10.04) or Capital Stock of a Guarantor in accordance with the provisions of clauses (1) or (2) below shall not be required to assume the obligations of any such Guarantor:

- (1) in connection with any sale or other disposition of all or substantially all of the assets of that Guarantor (including by way of consolidation, merger, sale or conveyance under Section 10.04) to a Person that is not (either before or after giving effect to such transaction) the Issuer or a Guarantor;
- (2) in connection with any sale of all of the Capital Stock of a Guarantor to a Person that is not (either before or after giving effect to such transaction) the Issuer or a Guarantor;
- (3) in connection with a Guarantor becoming an Unrestricted Subsidiary in accordance with the applicable provisions of this Indenture;
- (4) in connection with any sale or other disposition of all or substantially all of the assets of that Guarantor and the dissolution of that Guarantor, in each case in accordance with the applicable provisions of this Indenture;
- (5) in the event that the Issuer exercises its discharge or full defeasance options under Article 8; or
- (6) in the event that the obligation as a borrower or guarantor by such Guarantor of any Specified Indebtedness is released or discharged (other than as a result of payment under such obligation) and such Guarantor is not otherwise required to provide a Notes Guarantee in accordance with Section 4.08.

Upon delivery by the Issuer to the Trustee of an Officers' Certificate and an Opinion of Counsel to the effect that one of the foregoing requirements has been satisfied and the conditions to the release of a Note Guarantee under this Section 10.05 have been met, the Trustee will execute any documents reasonably required in order to evidence the release of a Guarantor from its obligations under such Note Guarantee.

Any Guarantor not released from its obligations under any Notes Guarantee will remain liable for the full amount of principal of and interest on the Notes and for the other obligations of any Guarantor under the Indenture as provided in this Article 10.

ARTICLE 11

SATISFACTION AND DISCHARGE

Section 11.01 Satisfaction and Discharge.

This Indenture will be discharged and will cease to be of further effect (except as to any surviving rights of registration of transfer or exchange of Notes expressly provided for herein), when:

(1) either:

(A) all Notes that have been authenticated (except lost, stolen or destroyed Notes that have been replaced or paid and Notes for whose payment money has theretofore been deposited in trust and thereafter repaid to the Issuer) have been delivered to the Trustee for cancellation; or

(B) all Notes that have not been delivered to the Trustee for cancellation have become due and payable by reason of the making of a notice of redemption or otherwise or will become due and payable within one year and the Issuer or any Guarantor has irrevocably deposited or caused to be deposited with the Trustee for Notes as trust funds in trust solely for the benefit of the Holders, money in such currency or currencies, or currency unit or currency units, in which such Notes are then specified as payable at maturity, non-callable Government Obligations applicable to such Notes

(determined on the basis of the currency or currencies, or currency unit or currency units, in which such Notes are then specified as payable at maturity), or a combination thereof, in such amounts as will be sufficient without consideration of any reinvestment of interest, to pay and discharge the entire indebtedness on such Notes not delivered to the Trustee for cancellation for principal, premium and accrued interest to the date of maturity or redemption;

(2) no Default or Event of Default with respect to the Notes has occurred and is continuing on the date of such deposit or will occur as a result of such deposit and such deposit will not result in a breach or violation of, or constitute a default under, any other instrument to which the Issuer or any Guarantor are a party or by which the Issuer or any Guarantor are bound;

(3) the Issuer or any Guarantor have paid or caused to be paid all sums payable by them under this Indenture with respect to the Notes; and

(4) the Issuer has delivered irrevocable instructions to the Trustee to apply the money on deposit in the trust referred to in subclause (B) of clause (1) above toward the payment of such Notes at maturity or on the redemption date, as the case may be.

In addition, the Issuer must deliver an Officers' Certificate and an Opinion of Counsel to the Trustee for Notes stating that all conditions precedent to satisfaction and discharge have been satisfied.

Notwithstanding the satisfaction and discharge of this Indenture, if money has been deposited with the Trustee pursuant to subclause (B) of clause (1) of this Section, the provisions of Section 11.02 and Section 8.06 will survive. In addition, nothing in this Section 11.01 will be deemed to discharge those provisions of Section 7.07 that, by their terms, survive the satisfaction and discharge of this Indenture.

Section 11.02 Application of Trust Money.

Subject to the provisions of Section 8.06, all money deposited with the Trustee in respect of any Notes pursuant to Section 11.01 shall be held in trust and applied by it, in accordance with the provisions of such Notes and this Indenture, to the payment, either directly or through any Paying Agent (including the Issuer acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal (and premium, if any) and interest for whose payment such money has been deposited with the Trustee; but such money need not be segregated from other funds except to the extent required by law and Section 2.04.

If the Trustee or Paying Agent is unable to apply any money or Government Obligations in accordance with Section 11.01 in respect of any Notes by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Issuer's and any Guarantor's obligations under this Indenture and such Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 11.01 and the provisions of Section 8.07 shall apply to the extent provided therein.

ARTICLE 12

MISCELLANEOUS

Section 12.01 Trust Indenture Act Controls.

If any provision of this Indenture limits, qualifies or conflicts with the duties imposed by TIA § 318(c), the imposed duties will control.

Section 12.02 Notices.

Any notice or communication by the Issuer, any Guarantor or the Trustee to the others is duly given if in writing in the English language and delivered in Person or mailed by first class mail (registered or certified, return receipt requested), telex, telecopier or overnight air courier guaranteeing next day delivery, to the others' address:

If to the Issuer and/or any Guarantor:

EPR Properties
909 Walnut Street, Suite 200
Kansas City, MO 64106
Telecopier No.: (816) 472-5794
Attention: Chief Executive Officer

With a copy to:

Stinson Leonard Street LLP
1201 Walnut, Suite 2900
Kansas City, MO 64106-2150
Telecopier No.: (816) 412-1156
Attention: Scott Gootee, Esq.

If to the Trustee:

UMB Bank, n.a.
Corporate Trust Division
1010 Grand Boulevard., 4th Floor
Kansas City, MO 64106
Attention: Anthony Hawkins
Facsimile: (816) 860-3014

The Issuer, any Guarantor or the Trustee, by notice to the others may designate additional or different addresses for subsequent notices or communications.

All notices and communications (other than those sent to Holders) will be deemed to have been duly given: at the time delivered by hand, if personally delivered; five Business Days after being deposited in the mail, postage prepaid, if mailed; when receipt acknowledged, if telecopied; and the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery.

Any notice or communication to a Holder will be mailed by first class mail, certified or registered, return receipt requested, or by overnight air courier guaranteeing next day delivery to its address shown on the register kept by the Registrar. Any notice or communication will also be so mailed to any Person described in TIA § 313(c), to the extent required by the TIA. Failure to mail a notice or communication to a Holder or any defect in it will not affect its sufficiency with respect to other Holders.

If a notice or communication is mailed in the manner provided above within the time prescribed, it is duly given, whether or not the addressee receives it.

If the Issuer mails a notice or communication to Holders, it will mail a copy to the Trustee and each Agent at the same time.

Section 12.03 Communication by Holders of Notes with Other Holders of Notes.

Holders may communicate pursuant to TIA § 312(b) with other Holders with respect to their rights under this Indenture or the Notes. The Issuer, the Trustee, the Registrar and anyone else shall have the protection of TIA § 312(c).

Section 12.04 Certificate and Opinion as to Conditions Precedent.

Upon any request or application by the Issuer to the Trustee to take any action under this Indenture, the Issuer shall furnish to the Trustee:

(1) an Officers' Certificate in form and substance reasonably satisfactory to the Trustee (which must include the statements set forth in Section 12.05 hereof) stating that, in the opinion of the signers, all conditions precedent and covenants, if any, provided for in this Indenture relating to the proposed action have been satisfied; and

(2) an Opinion of Counsel in form and substance reasonably satisfactory to the Trustee (which must include the statements set forth in Section 12.05 hereof) stating that, in the opinion of such counsel, all such conditions precedent and covenants have been satisfied.

Notwithstanding the foregoing, in the case of any such request or application as to which the furnishing of such documents is specifically required by any provision of this Indenture relating to such particular request or application, no additional certificate or opinion need be furnished unless specifically required.

Section 12.05 Statements Required in Certificate or Opinion.

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than a certificate provided pursuant to TIA § 314(a)(4)) must comply with the provisions of TIA § 314(e) and must include:

(1) a statement that the Person making such certificate or opinion has read such covenant or condition;

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

(3) a statement that, in the opinion of such Person, 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 satisfied; and

(4) a statement as to whether or not, in the opinion of such Person, such condition or covenant has been satisfied.

Section 12.06 Rules by Trustee and Agents.

The Trustee may make reasonable rules for action by or at a meeting of Holders. The Registrar or Paying Agent may make reasonable rules and set reasonable requirements for its functions.

Section 12.07 No Personal Liability of Trustees, Directors, Officers, Employees and Stockholders.

No past, present or future trustee, director, officer, employee or stockholder of the Issuer or any of its Subsidiaries or any successor thereof, as such, will have any liability for any obligations of the Issuer or any of its Subsidiaries under the Notes or this Indenture based on, in respect of, or by reason of such obligations or their creation. Each holder by accepting a Note waives and releases all such liability. The foregoing waiver and release are an integral part of the consideration for the issuance of the Notes. Such waiver may not be effective to waive liabilities under federal securities laws.

Section 12.08 Governing Law.

THE INTERNAL LAW OF THE STATE OF NEW YORK WILL GOVERN AND BE USED TO CONSTRUE THIS INDENTURE, THE NOTES AND ANY NOTES GUARANTEES WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.

Section 12.09 No Adverse Interpretation of Other Agreements.

This Indenture may not be used to interpret any other indenture, loan or debt agreement of the Issuer or its Subsidiaries or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

Section 12.10 Successors.

All agreements of the Issuer in this Indenture and the Notes will bind its successors. All agreements of the Trustee in this Indenture will bind its successors. All agreements of any Guarantor in this Indenture will bind its successors, except as otherwise provided in Article 10 and any applicable indentures supplemental hereto.

Section 12.11 Severability.

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

Section 12.12 Counterpart Originals.

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

Section 12.13 Table of Contents, Headings, etc.

The Table of Contents, Cross-Reference Table and Headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part of this Indenture and will in no way modify or restrict any of the terms or provisions hereof.

Section 12.14 Benefits of Indenture.

Nothing in this Indenture, the Notes or any Notes Guarantees, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder and the Holders, any benefit or an legal or equitable right, remedy or claim under this Indenture.

Section 12.15 Legal Holidays.

In any case where any Interest Payment Date, redemption date, purchase date or stated maturity of any Note shall not be a Business Day at any Place of Payment, then (notwithstanding any other provision of this Indenture or of such Note (other than a provision of such Note which specifically states that such provision shall apply in lieu of this Section)) payment of interest or principal (and premium, if any) need not be made at such Place of Payment on such date, but may be made on the next succeeding Business Day at such Place of Payment with the same force and effect as if made on the Interest Payment Date, redemption date or purchase date, or at the stated maturity.

Section 12.16 Acts of Holders.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders of the Outstanding Notes may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by agents duly appointed in writing. Except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and, where it is hereby expressly required, to the Issuer. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the “*act*” of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent, or of the holding by any Person of a Note, shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee and the Issuer and any agent of the Trustee or the Issuer, if made in the manner provided in this Section.

(b) The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may be proved in any reasonable manner which the Trustee deems sufficient.

(c) The ownership of Notes shall be proved by the register maintained by the Registrar.

(d) If the Issuer shall solicit from the Holders of Notes any request, demand, authorization, direction, notice, consent, waiver or other act, the Issuer may, at its option, in or pursuant to a Board Resolution, fix in advance a record date for the determination of Holders entitled to give such request, demand, authorization, direction, notice, consent, waiver or other act, but the Issuer shall have no obligation to do so. Notwithstanding TIA Section 316(c), such record date shall be the record date specified in or pursuant to such Board Resolution, which shall be a date not earlier than the date 30 days prior to the first solicitation of Holders generally in connection therewith and not later than the date such solicitation is completed. If such a record date is fixed, such request, demand, authorization, direction, notice, consent, waiver or other act may be given before or after such record date, but only the Holders of record at the close of business on such record date shall be deemed to be Holders for the purpose of determining whether Holders of the requisite proportion of Outstanding Notes have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, waiver or other act, and for that purpose the Outstanding Notes shall be computed as of such record date; *provided* that no such authorization, agreement or consent by the Holders on such record date shall be deemed effective unless it shall become effective pursuant to the provisions of this Indenture not later than eleven months after the record date.

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

[Signatures on following page]

SIGNATURES

ISSUER:

EPR PROPERTIES

By: /s/ Mark A. Peterson _____

Name: Mark A. Peterson

Title: Executive Vice President, Chief Financial
Officer and Treasurer

[Signature Page to the Indenture]

TRUSTEE:

UMB BANK, N.A.

By: /s/ Anthony P. Hawkins

Name: Anthony P. Hawkins

Title: Vice President

[Signature Page to the Indenture]

[FORM OF NOTE]

[Face of Note]

Global Notes Legend, if applicable

CUSIP# 26884U AE9

4.950% Senior Note due 2028

No. 1

\$ 400,000,000

EPR PROPERTIES

EPR Properties, a Maryland real estate investment trust, promises to pay to CEDE & CO. or registered assigns, the principal sum of 400,000,000 Dollars [, as revised by the Schedule of Increases or Decreases in the Global Note attached hereto,]¹ on April 15, 2028.

Interest Payment Dates: April 15 and October 15

Record Dates: April 1 and October 1

Dated: April 16, 2018

EPR PROPERTIES

By: _____
Name:
Title:

By: _____
Name:
Title:

¹ To be included only if Note is issued in global form.

[Signature Page to the Indenture]

This is one of the Notes referred to in the within-mentioned Indenture:

UMB BANK, N.A., as Trustee

By: _____
Authorized Signatory

[Form of Back of Note]

4.950% Senior Notes due 2028

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

(1) *Interest.* EPR Properties (the “Issuer”) promises to pay interest on the principal amount of this Note at 4.950% per annum from April 16, 2018 until maturity. The Issuer will pay interest semi-annually in arrears on April 15 and October 15 of each year, or if any such day is not a Business Day, on the next succeeding Business Day (each, a “Interest Payment Date”). Interest on the Notes will accrue from the most recent date to which interest has been paid or, if no interest has been paid, from April 16, 2018; *provided*, that if there is no existing Default in the payment of interest, and if this Note is authenticated between a record date referred to on the face hereof and the next succeeding Interest Payment Date, interest shall accrue from such next succeeding Interest Payment Date; *provided, further*, that the first Interest Payment Date shall be October 15, 2018. The Issuer will pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal and premium, if any, from time to time on demand at a rate that is 1% per annum in excess of the rate then in effect; the Issuer will pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest (without regard to any applicable grace periods) from time to time on demand at the same rate to the extent lawful. Interest will be computed on the basis of a 360-day year of twelve 30-day months.

(2) *Method of Payment.* The Issuer will pay interest on the Notes (except defaulted interest) to the Persons who are registered Holders of Notes at the close of business on the April 1 or October 1 (each, a “Record Date”) next preceding the Interest Payment Date, even if such Notes are canceled after such record date and on or before such Interest Payment Date, except as provided in Section 2.12 of the Indenture with respect to defaulted interest. The Notes will be payable as to principal, premium, if any, and interest at the office or agency of the Issuer maintained for such purpose within or without the City and State of New York, or, at the option of the Issuer, payment of interest may be made by check mailed to the Holders at their addresses set forth in the register of Holders; *provided* that payment by wire transfer of immediately available funds will be required with respect to principal of and interest and premium, if any, on all Global Notes and all other Notes the Holders of which will have provided wire transfer instructions to the Issuer or the Paying Agent. Such payment will be 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.

(3) *Paying Agent and Registrar.* Initially, UMB Bank, n.a., the Trustee under the Indenture, will act as Paying Agent and Registrar. The Issuer may change any Paying Agent or Registrar without notice to any Holder. The Issuer or any of its Subsidiaries may act in any such capacity.

(4) *Indenture.* The Issuer issued the Notes under an indenture, dated as of April 16, 2018 (the “Indenture”), between the Issuer and the Trustee. The terms of the Notes and any related Notes Guarantees include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939, as amended (15 U.S. Code §§ 77aaa-77bbb). The Notes are subject to all such terms, and Holders are referred to the Indenture and such Act for a statement of such terms. To the extent any provision of this Note conflicts with the express provisions of the Indenture, the provisions of the Indenture shall govern and be controlling. The Notes are unsecured obligations of the Issuer.

(5) *Optional Redemption.* The Issuer will not be entitled to redeem all or any portion of the Notes at its option except as provided in this section. The Issuer will be entitled at its option to redeem all or any portion of the Notes at a redemption price equal to 100% of the principal amount of such Notes plus the Applicable Premium as of, and any accrued and unpaid interest to, but not including, the redemption date (subject to the right of the Holders of Notes on the relevant record date to receive interest due on the relevant interest payment date); *provided* that if the Notes are redeemed on or after January 15, 2028 (three months prior to the maturity date, the “Par Call Date”), the redemption price shall equal 100% of the

principal amount of the Notes being redeemed plus accrued and unpaid interest to, but not including, the redemption date. Notice of such redemption must be mailed by first-class mail to each Holder's registered address, not less than 30 nor more than 60 days prior to the redemption date.

After notice of optional redemption has been given as provided in the Indenture, if funds for the redemption of any Notes called for redemption have been made available on the redemption date, such Notes called for redemption will cease to bear interest on the date fixed for the redemption specified in the redemption notice and the only right of the Holders of such Notes will be to receive payment of the redemption price.

Any redemption pursuant to Section 3.08 of the Indenture shall be made pursuant to the provisions of Sections 3.01 through 3.06 of the Indenture.

(6) *Mandatory Redemption.* The Issuer will not be required to make mandatory redemption payments with respect to the Notes.

(7) *Notice of Redemption.* Notice of redemption will be mailed at least 30 days but not more than 60 days before the redemption date to each Holder whose Notes are to be redeemed at its registered address. Notes in denominations larger than \$2,000 may be redeemed in part but only in whole multiples of \$1,000, unless all of the Notes held by a Holder are to be redeemed.

(8) *Denominations, Transfer, Exchange.* The Notes are in registered form without coupons in denominations of \$2,000 and integral multiples of \$1,000 in excess thereof. The transfer of Notes may be registered and Notes may be exchanged as provided in the Indenture. The Registrar and the Trustee may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and the Issuer may require a Holder to pay any taxes and fees required by law or permitted by the Indenture. The Issuer need not exchange or register the transfer of any Note or portion of a Note selected for redemption, except for the unredeemed portion of any Note being redeemed in part. Also, the Issuer need not exchange or register the transfer of any Notes for a period of 15 days before a selection of Notes to be redeemed or during the period between a Record Date and the corresponding Interest Payment Date.

(9) *Persons Deemed Owners.* The registered Holder of a Note may be treated as its owner for all purposes.

(10) *Amendment, Supplement and Waiver.* Subject to certain exceptions, the Indenture, any Notes Guarantees or the Notes may be amended or supplemented with the consent of the Holders of at least a majority in principal amount of the then Outstanding Notes affected by such amendment or supplemental indenture voting as a single class, and any existing Default or Event of Default or compliance with any provision of the Indenture, any Notes Guarantees or the Notes may be waived with the consent of the Holders of a majority in principal amount of the then Outstanding Notes affected thereby voting as a single class. Without the consent of any Holder of a Note, the Indenture, any Notes Guarantees or the Notes may be amended or supplemented to, among other things, cure any ambiguity, defect or inconsistency; to provide for uncertificated Notes in addition to or in place of certificated Notes; to provide for the assumption of the Issuer's obligations to Holders of Notes in the case of a merger or consolidation or sale of all or substantially all of the Issuer's assets; to add additional Guarantees with respect to the Notes; to secure the Notes; to make any other change that would provide any additional rights or benefits to the Holders of Notes or that does not adversely affect the legal rights under the Indenture of any such Holder; or to comply with requirements of the Commission in order to effect or maintain the qualification of the applicable Indenture under the Trust Indenture Act.

(11) *Defaults and Remedies.* Events of Default with respect to the Notes (as defined in the Indenture) include: (i) default in the payment of principal or any premium on the Notes when due and payable; (ii) default in the payment of interest on the Notes within 30 days after the applicable due date; (iii) failure to comply with Section 5.01 of the Indenture; (iv) breach of any other term of the Indenture for 60 days after receipt of a notice of Default stating the Issuer is in breach; (v) certain final judgments are

entered against the Issuer and its Restricted Subsidiaries and are not paid, discharged or stayed for a period of 60 days; (vi) default under any of certain Debt of the Issuer and its Restricted Subsidiaries, which default results in the acceleration of the maturity of such indebtedness, unless such other Debt is discharged, or the acceleration is rescinded or annulled, within 30 days after the Issuer or its Restricted Subsidiaries receives notice of the default; (vii) certain events in bankruptcy, insolvency or reorganization occur with respect to the Issuer or any of its Significant Subsidiaries or any group of Subsidiaries that, taken as a whole, would constitute a Significant Subsidiary; and (viii) any Notes Guarantee of a Significant Subsidiary of the Issuer ceases to be in full force and effect or is declared null and void or any Guarantor denies or disaffirms its obligations under the Indenture or any Notes Guarantee other than by reason of the release of any such Notes Guarantee in accordance with the Indenture. If any Event of Default occurs and is continuing, the Trustee or the Holders of at least 25% in principal amount of the then Outstanding Notes may declare the entire principal amount of the Notes to be due and payable. Notwithstanding the foregoing, in the case of an Event of Default arising from certain events of bankruptcy or insolvency, all Outstanding Notes will become due and payable without further action or notice. Holders may not enforce the Indenture or the Notes except as provided in the Indenture. Subject to certain limitations, the Holders of a majority in principal amount of the then Outstanding Notes may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Holders of the Notes notice of any continuing Default or Event of Default (except a Default or Event of Default in the payment of principal, premium, if any, or interest) if and so long as it determines that withholding notice is in the interest of the Holders of the Notes. Subject to certain exceptions, the Holders of a majority in aggregate principal amount of the then Outstanding Notes by notice to the Trustee may on behalf of the Holders of all of the Notes waive any existing Default or Event of Default and its consequences under the Indenture except a continuing Default or Event of Default in the payment of principal of, premium, if any, or interest on the Notes. The Issuer is required to deliver to the Trustee annually a statement regarding compliance with the Indenture, and the Issuer is required upon becoming aware of any Default or Event of Default to deliver to the Trustee a statement specifying such Default or Event of Default.

(12) *Trustee Dealings with Issuer.* The Trustee, in its individual or any other capacity, may make loans to, accept deposits from, and perform services for the Issuer or its Affiliates, and may otherwise deal with the Issuer or its Affiliates as if it were not the Trustee.

(13) *No Recourse Against Others.* No past, present or future trustee, director, officer, employee or stockholder of the Issuer or any of its Subsidiaries, as such, will have any liability for any obligations of the Issuer or any of its Subsidiaries under the Notes or the Indenture based on, in respect of, or by reason of such obligations or their creation. Each Holder by accepting a Note waives and releases all such liability. The foregoing waiver and release are an integral part of the consideration for the issuance of the Notes.

(14) *Authentication.* This Note will not be valid until authenticated by the manual signature of the Trustee or an authenticating agent.

(15) *Abbreviations.* Customary abbreviations may be used in the name of a Holder or an assignee, such as: TEN COM (= tenants in common), TEN ENT (= tenants by the entireties), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= Custodian), and U/G/M/A (= Uniform Gifts to Minors Act).

(16) *CUSIP Numbers.* Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Issuer has caused CUSIP numbers to be printed on the Notes and the Trustee may use CUSIP numbers in notices of redemption as a convenience to Holders. No representation is made as to the accuracy of such numbers either as printed on the Notes or as contained in any notice of redemption and reliance may be placed only on the other identification numbers placed thereon.

The Issuer will furnish to any Holder upon written request and without charge a copy of the Indenture. Requests may be made to:

EPR Properties
909 Walnut Street, Suite 200
Kansas City, MO 64106
Attention: Chief Executive Officer
Facsimile No.: (816) 472-5794

Assignment Form

To assign this Note, fill in the form below:

(I) or (we) assign and transfer this Note to:

(Insert assignee's legal name)

(Insert assignee's Soc. Sec. or Tax I.D. No.)

(Print or type assignee's name, address and zip code)

and irrevocably appoint _____
to transfer this Note on the books of the Issuer. The agent may substitute another to act for him.

Date: _____

Your Signature _____
(Sign exactly as your name appears on the face of this Note)

Signature Guarantee*: _____

* Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee).

SCHEDULE OF EXCHANGES OF INTERESTS IN THE GLOBAL NOTE²

The following exchanges of a part of this Global Note for an interest in another Global Note or for a Definitive Note, or exchanges of a part of another Global Note or Definitive Note for an interest in this Global Note, have been made:

<u>Date of Exchange</u>	<u>Amount of decrease in Principal Amount of this Global Note</u>	<u>Amount of increase in Principal Amount of this Global Note</u>	<u>Principal Amount of this Global Note following such decrease (or increase)</u>	<u>Signature of authorized officer of Trustee or Custodian</u>
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² *This schedule should be included only if the Note is issued in global form.*

[FORM OF SUPPLEMENTAL INDENTURE TO BE DELIVERED BY SUBSEQUENT GUARANTORS]

Supplemental Indenture (this "Supplemental Indenture"), dated as of _____, 20__, among _____ (the "Guaranteeing Subsidiary"), EPR Properties, a Maryland real estate investment trust (the "Issuer"), [if applicable, any other Guarantors (as defined in the Indenture referred to below)] and UMB Bank, n.a., as trustee under the Indenture referred to below (the "Trustee").

WITNESSETH

WHEREAS, the Issuer has heretofore executed and delivered to the Trustee an indenture, dated as of April 16, 2018 (the "Indenture"), providing for the issuance of 4.950% Senior Notes due 2028 (the "Notes");

WHEREAS, the Indenture provides that under certain circumstances the Guaranteeing Subsidiary shall execute and deliver to the Trustee a supplemental indenture pursuant to which the Guaranteeing Subsidiary shall unconditionally guarantee all of the Issuer's Obligations (as defined in the Indenture) under the Notes and the Indenture on the terms and conditions set forth herein (the "Notes Guarantee"); and

WHEREAS, pursuant to Section 9.01 of the Indenture, the Trustee is authorized to execute and deliver this Supplemental Indenture.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Guaranteeing Subsidiary and the Trustee mutually covenant and agree for the equal and ratable benefit of the Holders of the Notes as follows:

1. Capitalized Terms. Capitalized terms used herein without definition shall have the meanings assigned to them in the Indenture.

2. Agreement to Guarantee. The Guaranteeing Subsidiary hereby agrees as follows:

(a) Subject to Article 10 of the Indenture, the Guaranteeing Subsidiary hereby, jointly and severally with all other Guarantors, fully and unconditionally guarantees to each Holder of a Note authenticated and delivered by the Trustee and to the Trustee and its successors and assigns, irrespective of the validity and enforceability of the Indenture, the Notes or the obligations of the Issuer hereunder or thereunder, that:

(i) the principal of, and premium, if any, and interest on the Notes will be promptly paid in full when due, whether at maturity, by acceleration, redemption or otherwise, and interest on the overdue principal of and interest on the Notes, if any, if lawful, and all other obligations of the Issuer to the Holders or the Trustee hereunder or thereunder will be promptly paid in full or performed, all in accordance with the terms hereof and thereof; and

(ii) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, that same will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise.

Failing payment when due of any amount so guaranteed or any performance so guaranteed for whatever reason, the Guarantors shall be jointly and severally obligated to pay the same immediately. The Guaranteeing Subsidiary agrees that this is a guarantee of payment and not a guarantee of collection.

(b) The obligations hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the Notes or the Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder of the Notes with respect to any provisions hereof or thereof, the recovery of any judgment against the Issuer, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a Guarantor, other than payment in full of all Obligations under the Notes.

(c) The following is hereby waived: diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of the Issuer, any right to require a proceeding first against the Issuer, protest, notice and all demands whatsoever.

(d) This Notes Guarantee shall not be discharged except by complete performance of the obligations contained in the Notes and the Indenture, and the Guaranteeing Subsidiary accepts all obligations of a Guarantor under the Indenture.

(e) If any Holder or the Trustee is required by any court or otherwise to return to the Issuer, the Guarantors, or any custodian, trustee, liquidator or other similar official acting in relation to either the Issuer or the Guarantors, any amount paid by either to the Trustee or such Holder, this Notes Guarantee, to the extent theretofore discharged, shall be reinstated in full force and effect.

(f) The Guaranteeing Subsidiary shall not be entitled to any right of subrogation in relation to the Holders in respect of any obligations guaranteed hereby until payment in full of all obligations guaranteed hereby.

(g) As between the Guarantors, on the one hand, and the Holders and the Trustee, on the other hand, (x) the maturity of the obligations guaranteed hereby may be accelerated as provided in Article 6 of the Indenture for the purposes of this Notes Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (y) in the event of any declaration of acceleration of such obligations as provided in Article 6 of the Indenture, such obligations (whether or not due and payable) shall forthwith become due and payable by the Guarantors for the purpose of this Notes Guarantee.

(h) The Guarantors shall have the right to seek contribution from any nonpaying Guarantor so long as the exercise of such right does not impair the rights of the Holders under this Notes Guarantee.

(i) The Guaranteeing Subsidiary hereby agrees that its Notes Guarantee shall remain in full force and effect notwithstanding the absence of the endorsement of any notation of such Note Guarantee on the Notes.

(j) The Guaranteeing Subsidiary hereby confirms that it is the intention that the Notes Guarantee of such Guaranteeing Subsidiary not constitute a fraudulent transfer or conveyance for purposes of Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state law to the extent applicable to any Notes Guarantee. To effectuate the foregoing intention, the Guaranteeing Subsidiary hereby irrevocably agrees that the obligations of such Guaranteeing Subsidiary will, after giving effect to any maximum amount and all other contingent and fixed liabilities that are relevant under such laws, and after giving effect to any collections from, rights to receive contribution from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under Article 10 of the Indenture, this Notes Guarantee shall be limited to the maximum amount permissible such that the obligations of such Guarantor under this Notes Guarantee will not constitute a fraudulent transfer or conveyance.

3. Guaranteeing Subsidiary may Consolidate, etc., on Certain Terms.

(a) The Guaranteeing Subsidiary may not sell or otherwise dispose of all or substantially all of its assets to, or consolidate with or merge with or into (whether or not the Guaranteeing Subsidiary is the surviving Person) another Person, other than the Issuer or another Guarantor unless:

(i) immediately after giving effect to such transaction, no Default or Event of Default exists; and

(ii) subject to Section 10.05 of the Indenture, the Person acquiring the property in any such sale or disposition or the Person formed by or surviving any such consolidation or merger assumes all of the obligations of the Guaranteeing Subsidiary under the Indenture and this Notes Guarantee pursuant to a supplemental indenture in form and substance reasonably satisfactory to the Trustee.

(b) In case of any such consolidation, merger, sale or conveyance and upon the assumption by the successor Person, by supplemental indenture, executed and delivered to the Trustee and satisfactory in form to the Trustee, of this Notes Guarantee endorsed upon the Notes and the due and punctual performance of all of the covenants and conditions of the Indenture to be performed by the Guaranteeing Subsidiary, such successor Person shall succeed to and be substituted for the Guaranteeing Subsidiary with the same effect as if it had been named herein as a Guaranteeing Subsidiary. Such successor Person thereupon may cause to be signed any or all of the Notes Guarantees to be endorsed upon all of the Notes issuable under the Indenture which theretofore shall not have been signed by the Issuer and delivered to the Trustee. All the Notes Guarantees so issued shall in all respects have the same legal rank and benefit under the Indenture as the Notes Guarantees theretofore and thereafter issued in accordance with the terms of the Indenture as though all of such Notes Guarantees had been issued at the date of the execution hereof.

(c) Except as set forth in Articles 4 and 5 and Section 10.04 of the Indenture, and notwithstanding clauses (a) and (b) above, nothing contained in the Indenture or in any of the Notes shall prevent any consolidation or merger of the Guaranteeing Subsidiary with or into the Issuer or another Guarantor, or shall prevent any sale or conveyance of the property of the Guaranteeing Subsidiary as an entirety or substantially as an entirety to the Issuer or another Guarantor.

4. Releases.

(a) The Notes Guarantee of a Guaranteeing Subsidiary shall be released, and any Person acquiring assets (including by way of merger or consolidation) or Capital Stock of a Guaranteeing Subsidiary under those circumstances specified in Section 10.05 of the Indenture shall not be required to assume the obligations of such Guaranteeing Subsidiary. Upon delivery by the Issuer to the Trustee of an Officers' Certificate and an Opinion of Counsel stating that the provisions of Section 10.05 of the Indenture have been complied with, the Trustee shall execute any documents reasonably required in order to evidence the release of the Guaranteeing Subsidiary from its obligations under this Notes Guarantee.

(b) Any Guarantor not released from its obligations under its Notes Guarantee shall remain liable for the full amount of principal of and interest on the Notes and for the other obligations of any Guarantor under the Indenture as provided in Article 10 of the Indenture.

5. No Recourse Against Others. No past, present or future trustee, director, officer, employee, incorporator, stockholder, equity holder or agent of the Guaranteeing Subsidiary, as such, shall have any liability for any obligations of the Issuer or the Guaranteeing Subsidiary under the Notes, this Notes Guarantee, the Indenture or this Supplemental Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder of the Notes by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes. Such waiver may not be effective to waive liabilities under the federal securities laws and it is the view of the Commission that such a waiver is against public policy.

6. NEW YORK LAW TO GOVERN. THE INTERNAL LAW OF THE STATE OF NEW YORK SHALL GOVERN AND BE USED TO CONSTRUE THIS SUPPLEMENTAL INDENTURE BUT WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.

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

8. Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

9. The Trustee. The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made solely by the Guaranteeing Subsidiary and the Issuer.

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

Dated: _____, 20__

[GUARANTEEING SUBSIDIARY]

By: _____
Name:
Title:

EPR PROPERTIES

By: _____
Name:
Title:

[EXISTING GUARANTORS]

By: _____
Name:
Title:

UMB BANK, N.A., as Trustee

By: _____
Authorized Signatory

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Section 3: EX-5.1 (EX-5.1)

Exhibit 5.1



April 16, 2018

EPR Properties
909 Walnut Street, Suite 200
Kansas City, Missouri 64106

Re: Registration Statement on Form S-3 (File No. 333-211812)
4.950% Senior Notes due 2028

Ladies and Gentlemen:

We have acted as counsel to EPR Properties, a Maryland real estate investment trust (the "Company"), in connection with the issuance and sale by the Company of \$400,000,000 aggregate principal amount of its 4.950% Senior Notes due 2028 (the "Notes") in an underwritten public offering pursuant to an Underwriting Agreement dated as of April 9, 2018 (the "Underwriting Agreement"), among Citigroup Global Markets Inc., J.P. Morgan Securities LLC and Barclays Capital Inc., for themselves and as representatives of the several Underwriters named in the Underwriting Agreement (the "Underwriters"), and the Company. The Notes are to be issued under an indenture, dated April 16, 2018 (the "Indenture"), between the Company and UMB Bank, n.a., as trustee (the "Trustee"), and are to be offered and sold pursuant to a prospectus supplement, dated April 9, 2018 (the "Prospectus Supplement"), and the accompanying base prospectus, dated October 4, 2017 (the "Base Prospectus" and, together with the Prospectus Supplement, the "Prospectus"), that form part of the Company's effective registration statement on Form S-3 (File No. 333-211812) (as amended and supplemented to date, the "Registration Statement") filed by the Company with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Securities Act"). This opinion letter is being delivered in

accordance with the requirements of Item 601(b)(5) of Regulation S-K under the Securities Act.

We have examined originally executed counterparts or copies identified to our satisfaction of such corporate records and other documents as we have deemed necessary or appropriate for purposes of this opinion letter, including the following:

- (a) the Indenture;
- (b) the form of the Notes;
- (c) the Underwriting Agreement;
- (d) the Registration Statement;
- (e) the Prospectus;
- (f) (i) the Company's Amended and Restated Declaration of Trust, as amended to date, (ii) the Company's Amended and Restated Bylaws, as amended to date, and (iii) the authorizing resolutions of the Company's Board of Trustees, and of the committees thereof, with respect to the issuance and sale of the Notes; in each case as recently certified to us by an officer of the Company;

STINSON.COM



1201 WALNUT STREET • KANSAS CITY, MO 64106
816.842.8600 MAIN • 816.691.3495 FAX

- (g) certificates of good standing, certificates of existence and similar certificates of recent date given with respect to the Company by the secretary of state or similar public official of the state of incorporation, organization or other formation, as applicable, of the Company; and
- (h) such other agreements, certificates, documents, decrees, orders, records and papers, including certificates of public officials and certificates of officers or other representatives of the Company as we have deemed relevant or necessary to give the opinions and confirmations set forth below.

The Indenture, Notes and Underwriting Agreement are referred to herein collectively as the “Transaction Documents” and individually as a “Transaction Document.” The agreements, certificates, documents, decrees, orders, records and papers covered by, or reviewed or otherwise relied upon by us in connection with giving, a particular opinion or confirmation set forth in this opinion letter, including the Transaction Documents, are referred to herein collectively as the “Reviewed Documents” and individually as a “Reviewed Document.”

We have relied, with respect to certain factual matters relevant to this opinion letter, on the representations and warranties of the Company set forth in the Transaction Documents and the factual certificates or comparable documents of officers and other representatives of the Company as we have deemed relevant or necessary for purposes of the opinions and statements expressed herein, all of which representations, warranties, certificates and documents we have assumed, without independent investigation on our part, to be true, correct and complete as of the date hereof.

For purposes of the opinions and statements expressed herein, we have assumed, without independent investigation on our part, that (i) each Reviewed Document submitted to us as an original is authentic; (ii) each Reviewed Document submitted to us as a certified, conformed, telecopied, photostatic, electronic or execution copy conforms to the original of such document, and each such original is authentic; (iii) all signatures appearing on each Reviewed Document are genuine; (iv) each party to the Transaction Documents (other than the Company) is existing and in good standing in its jurisdiction of formation, is qualified as a foreign entity in each jurisdiction where such qualification is necessary to its enforcement of the Transaction Documents and has the requisite power and authority (corporate, limited liability company, partnership or other) to execute and deliver (or accept) and perform its obligations under the Transaction Documents; (v) the execution and delivery (or acceptance) and performance of each Transaction Document have been duly authorized by all requisite corporate, limited liability company, partnership or other action on the part of, and each Transaction Document has been duly executed and delivered (or accepted) by, each party thereto (other than the Company) in the form executed by the Company, and each of the Transaction Documents constitutes the legal, valid and binding obligation of each party thereto (other than the Company) enforceable against each such party in accordance with its terms; (vi) all natural persons who have signed or will sign any of the Reviewed Documents had, or will have, as the case may be, the competence and legal capacity to do so at the time of such signature; (vii) there is no agreement, understanding, course of

dealing or performance, usage of trade or writing defining, supplementing, amending, modifying, waiving or qualifying the terms of the Transaction Documents; (viii) there is no circumstance (such as, but not limited to, mutual mistake of fact or misunderstanding, fraud, duress, undue influence, waiver or estoppel) extrinsic to the Transaction Documents which might give rise to a defense against enforcement or effectiveness of any of the Transaction Documents; (ix) the conduct of all of the parties and their respective agents in connection with the Transaction Documents and the transactions contemplated thereby (the "Transactions") has complied with any requirement of good faith, fair dealing and conscionability; and (x) there is no requirement for any consent, approval or authorization by any governmental authority or other person to be obtained by any of the Underwriters or the Trustee with regard to their execution, delivery, acceptance or performance of any Transaction Document other than a consent, approval or authorization which has been obtained and remains in full force and effect.

Based upon the foregoing, and subject to the assumptions, qualifications and limitations set forth herein, we are of the opinion that as of this date:

1. When the Notes have been duly executed, authenticated, issued and delivered by or on behalf of the Company against payment therefor in accordance with the terms of the Underwriting Agreement and the Indenture as described in the Registration Statement and the Prospectus, the Notes will constitute valid and binding obligations of the Company enforceable against the Company in accordance with their terms.

Our opinions and statements expressed herein are subject to the following additional qualifications and limitations:

- A. Our opinions and statements expressed herein are restricted to matters governed by: (i) the federal laws of the United States of America and the laws of the States of Missouri and New York; and (ii) with respect to the opinion expressed in numbered paragraph 1 above as to the Company, Title 8 of the Corporations and Associations Article of the Annotated Code of Maryland; and we express no opinion as to any matter arising under the laws of any other jurisdiction, including the statutes, ordinances, rules and regulations of counties, towns, municipalities and special political subdivisions of any state.
- B. The enforceability of each Transaction Document is subject to the effect of applicable bankruptcy, insolvency, reorganization, receivership, arrangement, moratorium, assignment for the benefit of creditors and other similar laws affecting the rights and remedies of creditors. This qualification includes the avoidance, fraudulent transfer and preference provisions of the federal Bankruptcy Code of 1978 (11 U.S.C. §§ 101 et seq.), as amended, and the fraudulent transfer and conveyance laws of the State of Missouri and of the State of New York, and we express no opinion that any Transaction provided for in the Transaction Documents would not be subject to avoidance or otherwise adversely affected under such provisions or laws.
- C. The enforceability of each Transaction Document is subject to the effect of principles of equity (including those respecting the concepts of reasonableness, materiality, good faith and fair dealing and the availability of injunctive relief or specific performance), whether considered in a proceeding at law or in equity, and the limitations imposed by applicable procedural requirements of applicable state or federal law.

- D. The enforceability of each Transaction Document is subject to: (1) the effect of generally applicable rules of law that limit or deny the enforceability of provisions (i) purporting to waive defenses or rights or the obligations of good faith, fair dealing, diligence and reasonableness; (ii) purporting to authorize a party to take discretionary independent actions for the account of, or as agent or attorney-in-fact for, a party to the Indenture under a Transaction Document; or (iii) purporting to provide for the indemnification or exculpation of, or contribution to, a party with respect to such party's intentional acts or gross negligence, with respect to securities law violations or to the extent that such provisions violate public policy considerations; and (2) the effect of generally applicable rules of law that govern and afford judicial discretion regarding the determination of damages.
- E. We express no opinion as to the enforceability of: (i) any contractual provision which either directly or indirectly limits or tends to limit the time in which any suit or action may be instituted by a party; (ii) any contractual provision which requires a party to execute and deliver additional agreements or instruments other than agreements or instruments which are limited in effect to effectuating the express terms of a Transaction Document and do not expand or modify such terms; (iii) any contractual provision whereby a party or parties submit to the jurisdiction of a particular court or forum for the adjudication of disputes or waive any claim, defense or right of appeal based upon a lack of jurisdiction, inconvenient forum, venue or the like; (iv) any waiver by a party of personal service of process or any consent of a party to service of process upon it in a manner that does not satisfy the requirements of applicable law; (v) any waiver by a party of its right to a jury trial; (vi) any severability provision in any Transaction Document; (vii) any right of set-off in any Transaction Document; (viii) redemption premiums or debt prepayment or yield-maintenance fees; (ix) default, post-judgment or redemption period rates of interest; (x) the recovery of attorneys' or collection agency fees; (xi) appointment of a receiver as a matter of right or otherwise without prior judicial approval thereof; (xii) any contractual provision which would have the effect of giving the Trustee or a holder of any Notes cumulative or duplicative remedies, to the extent such accumulated or duplicate remedies purport to or would have the effect of compensating the Trustee or such holder in any amount in excess of the actual amount of loss suffered by the Trustee or such holder, as applicable; (xiii) any waiver of rights or remedies which, by applicable law, cannot be waived by agreement; and (xiv) any modification or waiver of evidentiary standards established by applicable law.
- F. Our opinions, insofar as they relate to provisions of the Transaction Documents concerning the choice of law or purporting to constitute a submission to the jurisdiction of one or more specified courts, are rendered solely in reliance upon New York General Obligations Law Section 5-1401 and 5-1402, and New York Civil Practice Law and Rules, Rule 327(b), and are expressly conditioned upon the assumption that the legality,

validity, binding effect and enforceability of such provisions will be determined by a court of the State of New York or a United States Federal court sitting in New York and applying New York choice of law rules, including such Sections 5-1401 and 5-1402.

- G. Certain waivers, procedures, remedies and other provisions of any Transaction Document may be rendered unenforceable or limited by the laws, regulations or judicial decisions of the State of Missouri or of the State of New York within the scope of this opinion letter, but such laws, regulations and judicial decisions would not render any of such Transaction Documents invalid as a whole under the laws of the State of Missouri or of the State of New York and would not make the remedies available under such Transaction Documents inadequate for the practical realization of the principal rights and benefits purporting to be afforded thereby, except for the economic consequences of any judicial, administrative or other delay or procedure which may be imposed by applicable law.
- H. Our opinions and statements expressed herein are based upon the facts in existence and the laws in effect on the date hereof, and we expressly disclaim any obligation to update or supplement such opinions or statements in response to changes in the law by legislative or regulatory action, judicial decision or otherwise becoming effective hereafter or future events or circumstances affecting the Transactions and becoming known to us after the date hereof.

This opinion letter is limited to the specific issues addressed herein, and no opinion may be inferred or implied beyond those expressly stated herein. This opinion letter shall not be construed as or deemed to be a guaranty or insuring agreement. This opinion letter is provided to you on the date hereof and we have no continuing obligation hereunder to inform you of changes of law, including judicial interpretations of law, or of facts of which we become aware after the date hereof.

We hereby consent to the filing of this opinion letter as Exhibit 5.1 to the Registration Statement and to the reference to this firm under the caption "Legal Matters" in the Prospectus Supplement comprising a part of the Registration Statement. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act, or the rules of the Commission promulgated thereunder.

Sincerely,

Stinson Leonard Street LLP

/s/ Stinson Leonard Street LLP

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Section 4: EX-8.1 (EX-8.1)

Exhibit 8.1



April 16, 2018

EPR Properties
909 Walnut Street, Suite 200
Kansas City, MO 64106

Re: Registration Statement on Form S-3 (File No. 333-211812)
4.950% Senior Notes due 2028

Ladies and Gentlemen:

We have acted as counsel to EPR Properties, a Maryland real estate investment trust (the "Company"), in connection with the public offering and sale by the Company of \$400,000,000 aggregate principal amount of its 4.950% Senior Notes due 2028 pursuant to a registration statement on Form S-3, under the Securities Act of 1933, as amended (the "Securities Act"), filed with the Securities and Exchange Commission (the "Commission") on June 3, 2016, File No. 333-211812 (as amended and supplemented from time to time, the "Registration Statement"), and the prospectus dated October 4, 2017 (the "Prospectus"), the preliminary prospectus supplement dated April 9, 2018 (the "Preliminary Prospectus

Supplement”), and the prospectus supplement dated April 9, 2018 (the “Final Prospectus Supplement”). The Company is a real estate investment trust organized under the laws of the State of Maryland primarily for the purpose of acquiring and leasing certain real estate.

You have requested our opinion as to (i) the qualification of the Company as a real estate investment trust for U.S. federal income tax purposes (a “REIT”) under the provisions of Sections 856 through 860 of the Internal Revenue Code of 1986, as amended (the “Code”); (ii) the federal income tax status of the Company’s Partnerships (as defined in the Officers’ Certificate (defined below)); (iii) the accuracy of the discussion of U.S. federal income tax consequences contained in the Prospectus under the caption “U.S. Federal Income Tax Considerations,” as amended and supplemented by the statements in the Preliminary Prospectus Supplement under the caption “Supplemental U.S. Federal Income Tax Considerations”; and (iv) the accuracy of the discussion of U.S. federal income tax consequences contained in the Prospectus under the caption “U.S. Federal Income Tax Considerations,” as amended and supplemented by the statements in the Final Prospectus Supplement under the caption “Supplemental U.S. Federal Income Tax Considerations.”

In connection with rendering this opinion, we have reviewed such documents and made such inquiries as we have deemed appropriate for purposes of rendering this opinion. The Company has delivered certain factual representations to us as set forth in an Officers’ Certificate of even date herewith (the “Officers’ Certificate”), and, with the Company’s permission, we have relied upon such representations in giving this opinion. In rendering this opinion, we have assumed, with your consent, that (i) the factual statements and representations set forth in the Officers’ Certificate are true and correct, and (ii) the Officers’ Certificate has been executed by appropriate and authorized officers of the Company. Although we have not independently investigated the representations to us set forth in the Officers’ Certificate, nothing has come to our attention that would lead us to question the accuracy of any representation contained in the Officers’ Certificate.

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Based on the foregoing and in reliance thereon and subject thereto and on an analysis of the Code, Treasury Regulations thereunder, judicial authority and current administrative rulings and such other laws and facts as we have deemed relevant and necessary, it is our opinion that (i) beginning with its taxable year ended December 31, 1997, the Company has been organized and operated in conformity with the requirements for qualification and taxation as a REIT for U.S. federal income tax purposes, and its current and proposed method of operation (as described in the Officers' Certificate, the Prospectus, the Preliminary Prospectus Supplement and the Final Prospectus Supplement) will enable the Company to continue to meet the requirements for qualification and taxation as a REIT for its current and subsequent taxable years; (ii) the Company's current method of operation (as described in the Officers' Certificate, the Prospectus, the Preliminary Prospectus Supplement and the Final Prospectus Supplement) will enable the Partnerships (as defined in the Officers' Certificate) to be treated for U.S. federal income tax purposes as partnerships (or disregarded entities) and not as associations taxable as corporations or as publicly-traded partnerships; (iii) the statements in the Prospectus under the caption "U.S. Federal Income Tax Considerations," as amended and supplemented by the statements in the Preliminary Prospectus Supplement under the caption "Supplemental U.S. Federal Income Tax Considerations," to the extent that they describe matters of law or legal conclusions, are correct in all material respects; and (iv) the statements in the Prospectus under the caption "U.S. Federal Income Tax Considerations," as amended and supplemented by the statements in the Final Prospectus Supplement under the caption "Supplemental U.S. Federal Income Tax Considerations," to the extent that they describe matters of law or legal conclusions, are correct in all material respects.

Any variation or difference in the facts from those set forth in the Officers' Certificate may affect the conclusions stated herein. Moreover, the Company's qualification and taxation as a REIT depend upon the Company's ability to meet, through actual annual operating results, distribution levels and diversity of share ownership and the various qualification tests imposed under the Code, the results of which have not been and will not be reviewed by us. Accordingly, no assurance can be given that the actual results of the Company's operations for any taxable year will satisfy such requirements.

We confirm the accuracy of the discussion under the captions "U.S. Federal Income Tax Considerations" and "Legal Matters" in the Registration Statement and Prospectus and the captions "Supplemental U.S. Federal Income Tax Considerations" and "Legal Matters" in the Preliminary Prospectus Supplement and the Final Prospectus Supplement.

This opinion represents our legal judgment, but it has no binding effect or official status of any kind, and no assurance can be given that contrary positions may not be taken by the Internal Revenue Service or a court shall not be construed as or deemed to be a guarantee or insuring agreement. We disclaim any obligation to update this opinion for developments which may occur subsequent to the date hereof.

We hereby consent to the filing of this letter as Exhibit 8.1 to the Registration Statement and to the reference to this firm in the Prospectus, the Preliminary Prospectus Supplement and the Final Prospectus Supplement forming a part of the Registration Statement. In giving this consent, we do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act, or the rules of the Commission promulgated thereunder.

Very truly yours,

Stinson Leonard Street LLP

/s/ Stinson Leonard Street LLP

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