

purposes of this determination, the value of equity interests held by a person (other than a Benefit Plan Investor) that has discretionary authority or control with respect to the assets of the entity or that provides investment advice for a fee (direct or indirect) with respect to such assets (or any "affiliate" of such person (as defined in the Plan Asset Regulation) is disregarded (any such person with respect to the Issuer, a "Controlling Person").

The Issuer intends to prohibit investment in the Class D Notes by Benefit Plan Investors. In order to effect this limitation, each purchaser of Class D Notes by its purchasing and holding thereof will be deemed to represent, warrant and covenant that, for so long as it holds a beneficial interest in such Class D Notes, it is not a Benefit Plan Investor and is not acting on behalf of, or with the assets of, a Benefit Plan Investor.

The Issuer intends to limit investment in the Income Notes by Benefit Plan Investors to less than 25% of the Income Notes (excluding Income Notes held by Controlling Persons). In order to effect this limitation, each prospective purchaser of the Income Notes in the initial offering thereof will, in the case of Certificated Income Notes, be required to represent to the Trustee in writing as to whether such purchaser is a Benefit Plan Investor or Controlling Person and in the case of an interest in a Regulation S Global Note, be deemed to represent that it is not a Benefit Plan Investor or Controlling Person. The Income Notes will not be sold to any person to the extent it is determined that such acquisition would result in persons that have represented in writing to the Trustee that they are, or are acting on behalf of, Benefit Plan Investors owning 25% or more of the Income Notes (excluding Income Notes held by Controlling Persons) immediately after such sale, assuming, for this purpose, that all the representations made by Holders of such Notes are true. In addition, as a condition to the transfer of Income Notes after the initial offering thereof, each prospective transferee will be required to represent in writing to the Trustee (in the case of Certificated Notes) as to whether such transferee is a Benefit Plan Investor or Controlling Person, or will be deemed to represent by its purchase and holding (in the case of an interest in Regulation S Global Notes) that it is not a Benefit Plan Investor or Controlling Person, and the Trustee will not register the transfer of such Income Notes to any person to the extent it is determined that such acquisition would result in persons that have represented in writing to the Trustee that they are, or are acting on behalf of, Benefit Plan Investors owning 25% or more of the Income Notes (excluding Income Notes owned by Controlling Persons) immediately after such transfer.

Benefit Plan Investors and Controlling Persons may not purchase Income Notes represented by Regulation S Global Notes and any purchaser of such an Income Note by its purchasing and holding thereof will be deemed to represent, warrant and covenant that, for so long as it holds a beneficial interest in such Income Notes, it is not a Benefit Plan Investor or Controlling Person.

There can be no assurances that there will not be circumstances in which transfers of the Class D Notes or Income Notes will be required to be restricted in order to comply with the aforementioned transfer limitations. Moreover, there can be no assurance that, despite the restrictions relating to purchases by or proposed transfers to Benefit Plan Investors and Controlling Persons, the ownership or holding of the Class D Notes and the Income Notes will always be below the 25% threshold and the assets of the Issuer would not be deemed to constitute assets of any Plans that purchase or hold the Class D Notes or the Income Notes.

Additionally, prohibited transactions within the meaning of Section 406 of ERISA or Section 4975 of the Code may arise if Securities are acquired by a Plan with respect to which the Issuer, Investment Manager, Trustee, Collateral Administrator, Placement Agent, or Initial Purchaser, or any of their respective Affiliates, is a party in interest or a disqualified person. Certain exemptions from the prohibited transaction provisions of Section 406 of ERISA and Section 4975 of the Code may be applicable, however, depending in part on the type of Plan fiduciary making the decision to acquire an interest in a Senior Note and the circumstances under which such decision is made. Included among these exemptions are Section 408(b)(17) of ERISA and Section 4975(d)(20) of the Code (relating to transactions with certain service providers), Prohibited Transaction Class Exemption ("PTCE") 96-23 (relating to transactions directed by an in-house professional asset manager); PTCE 95-60 (relating to transactions involving insurance company general accounts); PTCE 91-38 (relating to investments by bank collective investment funds); PTCE 84-14 (relating to transactions effected by a qualified professional asset manager); and PTCE 90-1 (relating to investments by insurance company pooled separate accounts). There can be no assurance that any of these class exemptions or any other exemption will be available with respect to any particular transaction involving the Securities.