

Resource Capital Corp.  
Form 424B5  
August 10, 2017  
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**Filed Pursuant to Rule 424(b)(5)**  
**Registration No. 333-217733**

**The information in this preliminary prospectus supplement and the accompanying prospectus is not complete and may be changed. This preliminary prospectus supplement and the accompanying prospectus are not an offer to sell these securities and are not soliciting an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.**

**SUBJECT TO COMPLETION, DATED AUGUST 10, 2017.**

**Preliminary Prospectus Supplement**

**(To Prospectus Dated June 15, 2017)**

**\$125,000,000**

**% Convertible Senior Notes due 2022**

**Interest payable February 15 and August 15**

We are offering \$125,000,000 principal amount of our % Convertible Senior Notes due 2022, or the notes. The notes will bear interest at a rate of % per year, payable semiannually in arrears on February 15 and August 15 of each year, beginning on February 15, 2018. The notes will mature on August 15, 2022, unless earlier repurchased or converted.

Holders may convert all or any portion of their notes, in multiples of \$1,000 principal amount, at their option, at any time prior to the close of business on the business day immediately preceding the maturity date.

The conversion rate for the notes is initially shares of our common stock per \$1,000 principal amount of notes (equivalent to an initial conversion price of approximately \$ per share of our common stock), subject to adjustment as described in this prospectus supplement. In addition, following certain corporate events that occur prior to the maturity date, we will increase the conversion rate for a holder who elects to convert its notes in connection with such a corporate event in certain circumstances as described under Description of Notes Conversion Rights Increase in Conversion Rate upon Conversion upon a Make-Whole Fundamental Change.

Upon conversion, we will pay or deliver, as the case may be, cash, shares of our common stock or a combination of cash and shares of our common stock, at our election. If we satisfy our conversion obligation solely in cash or through payment and delivery, as the case may be, of a combination of cash and shares of our common stock, the amount of cash and shares of our common stock, if any, due upon conversion will be based on a daily conversion value calculated on a proportionate basis for each trading day in a 25 trading day observation period.

If we undergo a fundamental change, subject to certain conditions, holders may require us to repurchase for cash all or part of their notes in principal amounts of \$1,000 or a multiple thereof. The fundamental change repurchase price will be equal to 100% of the principal amount of the notes to be repurchased, plus accrued and unpaid interest to, but excluding, the fundamental change repurchase date.

The notes will be our senior unsecured obligations and will rank senior in right of payment to any of our existing and future indebtedness that is expressly subordinated in right of payment to the notes; equal in right of payment to any of our existing and future liabilities that are not so subordinated; effectively junior in right of payment to any of our secured indebtedness to the extent of the value of the assets securing such indebtedness; and structurally junior to all existing and future indebtedness, other liabilities (including trade payables) and preferred stock of our subsidiaries.

We do not intend to apply to list the notes on any securities exchange or any automated dealer quotation system. Our common stock is listed on the New York Stock Exchange under the symbol RSO. The last reported sale price of our common stock on the New York Stock Exchange on August 9, 2017 was \$11.01 per share.

**See Risk Factors beginning on page S-7 of this prospectus supplement and in our Annual Report on Form 10-K for the year ended December 31, 2016 to read about important factors that you should consider before investing in the notes.**

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the accuracy or adequacy of this prospectus supplement or the accompanying prospectus. Any representation to the contrary is a criminal offense.**

	<b>Per Note</b>	<b>Total</b>
Public offering price(1)	%	\$
Underwriting discount	%	\$
Proceeds to us, before expenses	%	\$

(1) Plus accrued interest, if any, from August , 2017.

To the extent the underwriters sell more than \$125,000,000 principal amount of notes, the underwriters will have the option to purchase within 30 days from the date of this prospectus supplement up to an additional \$18,750,000 principal amount of notes from us at the public offering price less the underwriting discount, solely to cover over-allotments.

The underwriters expect to deliver the notes in book-entry form only through the facilities of The Depository Trust Company on or about , 2017.

*Bookrunner*

**Credit Suisse**

*Co-Manager*

**JMP Securities**

**August , 2017**

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You should rely only on the information contained in or incorporated by reference into this prospectus supplement and the accompanying prospectus, and any free writing prospectus we may authorize to be delivered to you. We have not, and the underwriters have not, authorized anyone to provide you with different or additional information. If anyone provides you with different or additional information, you should not rely on it. This prospectus supplement is not an offer to sell or a solicitation of an offer to buy the securities offered hereby in any jurisdiction where the offer or sale is not permitted. You should assume that the information appearing in this prospectus supplement or the accompanying prospectus and the documents incorporated by reference herein or therein is accurate only as of their respective dates or on other dates which are specified in those documents, regardless of the time of delivery of this prospectus supplement or of any of the securities offered hereby. Our business, financial condition, results of operations and prospects may have changed since those dates.

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**ABOUT THIS PROSPECTUS SUPPLEMENT**

We are providing information to you about this offering in two parts. The first part is this prospectus supplement, which provides you with specific information regarding the terms of this offering and certain other information. The second part is the accompanying prospectus, which provides general information. Generally, when we refer to this prospectus, we are referring to both documents combined. Both this prospectus supplement and the accompanying prospectus, including the documents incorporated by reference, include important information about us, this offering, and other information you should know before investing in the notes offered hereby.

You should read both this prospectus supplement and the accompanying prospectus, as well as the additional information described under the heading "Where You Can Find More Information" in this prospectus supplement before investing in the notes. This prospectus supplement adds to, updates, and changes information contained in the accompanying prospectus and the information incorporated by reference. To the extent that any statement that we make in this prospectus supplement is inconsistent with the statements made in the accompanying prospectus or any document incorporated by reference, you should rely on the information in this prospectus supplement. If any statement in one of these documents is inconsistent with a statement in another document having a later date, the statement in the document having the later date modifies or supersedes the earlier statement.

As used in this prospectus supplement, and unless otherwise mentioned, the terms "we," "our," "us," or the "Company" refer to Resource Capital Corp. and its subsidiaries, "Manager" refers to Resource Capital Manager, Inc., our external manager, and "Resource America" refers to Resource America, Inc. and its affiliated companies, including our Manager.

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**SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS**

This prospectus supplement, the accompanying prospectus and the documents incorporated by reference herein and therein contain forward-looking statements that involve risks and uncertainties. Forward-looking statements relate to expectations, beliefs, projections, future plans and strategies, anticipated events or trends and similar expressions concerning matters that are not historical facts. In some cases, you can identify forward-looking statements by terms such as anticipate, believe, could, estimate, expects, intend, may, plan, potential, project, should, or will, or the negative of these terms or other comparable terminology.

Forward-looking statements contained or incorporated by reference in this prospectus supplement or the accompanying prospectus are based on our beliefs, assumptions and expectations regarding our future performance, taking into account all information currently available to us. These beliefs, assumptions and expectations can change as a result of many possible events or factors, not all of which are known to us or are within our control. If a change occurs, our business, financial condition, liquidity and results of operations may vary materially from those expressed in our forward-looking statements. Forward-looking statements we make in this prospectus supplement are subject to various risks and uncertainties that could cause actual results to vary from our forward-looking statements, including:

the factors described in our Annual Report on Form 10-K for the year ended December 31, 2016, incorporated by reference in this prospectus supplement and the accompanying prospectus, including those set forth under the sections captioned Risk Factors, Business, and Management's Discussion and Analysis of Financial Conditions and Results of Operations;

changes in our industry, interest rates, the debt securities markets, real estate markets or the general economy;

increased rates of default and/or decreased recovery rates on our investments;

availability, terms and deployment of capital;

availability of qualified personnel;

changes in governmental regulations, tax rates and similar matters;

changes in our business strategy;

availability of investment opportunities in commercial real estate-related and commercial finance assets;

the degree and nature of our competition;

the adequacy of our cash reserves and working capital; and

the timing of cash flows, if any, from our investments.

We caution you not to place undue reliance on these forward-looking statements, which speak only as of the date of this prospectus supplement, the accompanying prospectus or the date of any document incorporated by reference in this prospectus supplement or the accompanying prospectus. All subsequent written and oral forward-looking statements attributable to us or any person acting on our behalf are expressly qualified in their entirety by the cautionary statements contained or referred to in this section. Except to the extent required by applicable law or regulation, we undertake no obligation to update these forward-looking statements to reflect events or circumstances after the date of this filing or to reflect the occurrence of unanticipated events.

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**SUMMARY**

*This summary highlights selected information appearing elsewhere or incorporated by reference in this prospectus supplement and the accompanying prospectus and any free-writing prospectus that we have authorized for use in connection with this offering and may not contain all of the information that is important to you. This prospectus supplement and the accompanying prospectus include information about the notes we are offering as well as information regarding our business and financial data. You should read this prospectus supplement and the accompanying prospectus, including information incorporated by reference, and any free writing prospectus that we have authorized for use in connection with this offering, in their entirety. Investors should carefully consider the information set forth under *Risk Factors* in this prospectus supplement and in our Annual Report on Form 10-K for the year ended December 31, 2016, which is incorporated by reference into this prospectus supplement and the accompanying prospectus. Unless otherwise stated, all information contained in this prospectus supplement assumes no exercise of the underwriters' over-allotment option to purchase additional notes in this offering.*

**Our Company**

We are a real estate finance company that is organized and conducts its operations to qualify as a real estate investment trust, or REIT, for federal income tax purposes under the Internal Revenue Code of 1986, as amended, or the Code. Our investment strategy focuses primarily on originating, holding and managing commercial mortgage loans and other commercial real estate-related debt investments. We have historically made other residential real estate and commercial finance investments but are no longer deploying capital in these areas. In November 2016, our board of directors approved a strategic plan to focus our strategy on commercial real estate ( CRE ) debt investments and, as part of the plan, dispose of certain legacy commercial real estate loans, exit underperforming non-core asset classes and establish a dividend policy based on sustainable earnings.

Our investment strategy targets the following core commercial real estate-related assets:

first mortgage loans, which we refer to as whole loans;

first priority interests in first mortgage loans, which we refer to as A notes;

subordinated interests in first mortgage loans, which we refer to as B notes;

mezzanine debt that is senior to the borrower's equity position but subordinated to other third-party debt; and

commercial mortgage-backed securities, which we refer to as CMBS.

Our objective is to provide our stockholders with attractive total returns over time, including quarterly distributions and capital appreciation, while seeking to manage the risks associated with our investment strategies. We have financed a substantial portion of our portfolio investments through borrowing strategies seeking to match the maturities and repricing dates of our financings with the maturities and repricing dates of those investments, and we have sought to mitigate interest rate and foreign currency risk through derivative investments.

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We are externally managed by Resource Capital Manager, Inc., or our Manager, which is an indirect wholly-owned subsidiary of Resource America, Inc. (formerly traded on NASDAQ: REXI), or Resource America. On September 8, 2016, Resource America was acquired by C-III Capital Partners LLC, or C-III, a leading commercial real estate services company engaged in a broad range of activities, including primary and

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special loan servicing, loan origination, fund management, CDO management, principal investment, zoning diligence services, investment sales and multifamily property management. Our Manager now draws upon C-III's and Resource America's management teams and their collective investment experience to provide its services.

Our principal office is located at 712 Fifth Avenue, 12<sup>th</sup> Floor, New York, New York 10019 and our telephone number is (212) 506-3870. Our website is located at *www.resourcecapitalcorp.com*. The information found on, or otherwise accessible through, our website is not incorporated into, and does not form a part of, this prospectus supplement and the accompanying prospectus or any other report or document we file with or furnish to the SEC.

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*The following is a brief summary of the terms of this offering and the notes. We provide the following summary solely for your convenience. This summary is not a complete description of this offering or the notes. You should read the full text and more specific details contained elsewhere in this prospectus supplement and the accompanying prospectus. For a more detailed description of the notes, see *Description of Notes* in this prospectus supplement and *Description of Debt Securities* in the accompanying prospectus. With respect to the terms of the notes on the cover page of this prospectus supplement, in this section and in the section entitled *Description of Notes*, the terms *the Company*, *we*, *our*, and *us* refer to Resource Capital Corp. and not to any of its subsidiaries.*

<b>Issuer</b>	Resource Capital Corp., a Maryland corporation.
<b>Securities Offered</b>	\$125,000,000 principal amount of % Convertible Senior Notes due 2022 (plus up to an additional \$18,750,000 principal amount if the underwriters exercise their option to purchase additional notes solely to cover over-allotments, if any).
<b>Maturity Date</b>	August 15, 2022, unless earlier repurchased or converted.
<b>Interest Rate</b>	% per year. Interest will accrue from the date of original issuance, which is expected to be August , 2017, and will be payable semiannually in arrears on February 15 and August 15 of each year, beginning on February 15, 2018. We will pay additional interest, if any, at our election, as the sole remedy relating to the failure to comply with our reporting obligations as described under <i>Description of Notes</i> Events of Default.
<b>Ranking</b>	The notes will be our senior unsecured obligations and will rank: <p>senior in right of payment to any of our existing and future indebtedness that is expressly subordinated in right of payment to the notes;</p> <p>equal in right of payment to any of our existing and future unsecured indebtedness that is not so subordinated, including our 6.00% Convertible Senior Notes due 2018, or the 2018 Notes, and our 8.00% Convertible Senior Notes due 2020, or the 2020 Notes;</p>

effectively junior in right of payment to any of our secured indebtedness to the extent of the value of the assets securing such indebtedness; and

structurally junior to all existing and future indebtedness, other liabilities (including trade payables) and preferred stock of our subsidiaries.

As of June 30, 2017, our total consolidated indebtedness was approximately \$1.1 billion, including approximately \$0.3 billion of non-recourse secured indebtedness of our subsidiaries (excluding intercompany obligations and liabilities of a type not required to be reflected on a balance sheet of such subsidiaries in accordance with

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generally accepted accounting principles, or GAAP) to which the notes would have been structurally subordinated. After giving effect to the issuance of the notes (assuming no exercise of the underwriters over-allotment option), but without giving effect to the use of proceeds therefrom, our total consolidated indebtedness as of June 30, 2017 would have been \$1.2 billion.

The indenture governing the notes will not limit the amount of debt that we or our subsidiaries may incur.

**Conversion Rights**

Holders may convert all or any portion of their notes, in multiples of \$1,000 principal amount, at their option at any time prior to the close of business on the business day immediately preceding the maturity date.

The conversion rate for the notes is initially \_\_\_\_\_ shares of our common stock per \$1,000 principal amount of notes (equivalent to an initial conversion price of approximately \$ \_\_\_\_\_ per share of our common stock), subject to adjustment as described in this prospectus supplement.

Upon conversion, we will pay or deliver, as the case may be, cash, shares of our common stock or a combination of cash and shares of our common stock, at our election. If we satisfy our conversion obligation solely in cash or through payment and delivery, as the case may be, of a combination of cash and shares of our common stock, the amount of cash and shares of our common stock, if any, as the case may be, due upon conversion will be based on a daily conversion value (as described herein) calculated on a proportionate basis for each trading day in a 25 trading day observation period, as described below under **Description of Notes Conversion Rights Settlement upon Conversion**.

In addition, following certain corporate events that occur prior to the maturity date, we will increase the conversion rate for a holder who elects to convert its notes in connection with such a corporate event in certain circumstances as described under **Description of Notes Conversion Rights Increase in Conversion Rate upon Conversion upon a Make-Whole Fundamental Change**.

You will not receive any additional cash payment or additional shares of our common stock representing accrued and unpaid interest, if any, upon conversion of a note, except in limited circumstances. Instead, interest will be deemed to be paid by the cash, shares of our common stock or a combination of cash and shares of our common stock paid or delivered,

as the case may be, to you upon conversion of a note.

Any conversion of notes into shares of our common stock will be subject to certain ownership limitations more fully described in Description of Notes Ownership Limit; Limitation on Stock Issuable Upon Conversion.

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**No Redemption**

We may not redeem the notes prior to the maturity date and no sinking fund is provided for the notes, which means that we are not required to redeem or retire the notes periodically.

**Fundamental Change**

If we undergo a fundamental change (as defined in this prospectus supplement under Description of Notes Fundamental Change Permits Holders to Require us to Repurchase Notes ), subject to certain conditions, holders may require us to repurchase for cash all or part of their notes in principal amounts of \$1,000 or a multiple thereof. The fundamental change repurchase price will be equal to 100% of the principal amount of the notes to be repurchased, plus accrued and unpaid interest to, but excluding, the fundamental change repurchase date.

**Book-Entry Form**

The notes will be issued in book-entry form and will be represented by one or more permanent global certificates deposited with, or on behalf of, The Depository Trust Company, or DTC, and registered in the name of a nominee of DTC. Beneficial interests in any of the notes will be shown on, and transfers will be effected only through, records maintained by DTC or its nominee. Any such interest may not be exchanged for certificated securities, except in limited circumstances.

**No Prior Market**

The notes are a new issue of securities with no established trading market. We have been advised by the representative of the underwriters that certain underwriters intend to make a market in the notes but are not obligated to do so and may discontinue market making at any time without notice. Accordingly, we cannot assure you as to the development or liquidity of the trading market for the notes.

**No Listing**

We do not intend to apply to list the notes on any securities exchange or automated dealer quotation system. Our common stock is listed on the New York Stock Exchange under the symbol RSO.

**Trustee, Paying Agent and Conversion Agent**

Wells Fargo Bank, National Association

**Material U.S. Federal Income Tax Considerations**

For certain material U.S. federal income tax considerations relating to the purchase, ownership and disposition of the notes and the shares of our common stock into which the notes are convertible, see Material U.S. Federal Income Tax Considerations.

**Use of Proceeds**



We intend to use the net proceeds of this offering to repurchase a portion of our 2018 Notes and 2020 Notes. Any remaining net proceeds of this offering will be used for general corporate purposes. See Use of Proceeds.

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**Risk Factors**

See **Risk Factors** on page S-7 of this prospectus supplement and in our Annual Report on Form 10-K for the year ended December 31, 2016 for a discussion of factors that should be considered before investing in the notes.

**Restrictions on Ownership and Transfer of Common Stock**

To assist us in maintaining our qualification as a REIT under the Code, our charter generally prohibits any shareholder from beneficially owning or constructively owning more than 9.8% in value or in number of shares, whichever is more restrictive, of any class or series of our capital stock, including our common stock. Our Board of Directors has discretion to grant exemptions from this ownership limitation, subject to such terms and conditions as it deems appropriate. See **Description of Notes Ownership Limit; Limitation on Stock Issuable Upon Conversion** in this prospectus supplement and **Description of Common Stock and Preferred Stock Restrictions on Ownership and Transfer** in the accompanying prospectus for further information about the ownership limitation. The indenture will provide that, notwithstanding any other provision of the indenture, no holder of notes will be entitled to receive shares of our common stock upon conversion to the extent (but only to the extent) that such receipt would cause such converting holder to violate the ownership limitation. Any purported delivery of shares of our common stock upon conversion of notes shall be void and have no effect to the extent (but only to the extent) that such delivery would result in the converting holder violating the ownership limitation. In addition, our charter contains various other restrictions on the ownership and transfer of our capital stock. See **Description of Common Stock and Preferred Stock Restrictions on Ownership and Transfer** in the accompanying prospectus for a description of these other restrictions.

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**RISK FACTORS**

*Investing in the notes being offered by this prospectus supplement and the accompanying prospectus involves a high degree of risk. Before deciding whether to invest in the notes, you should consider carefully the risk factors related to the notes and this offering described below and the other risk factors incorporated herein by reference to our Annual Report on Form 10-K for the year ended December 31, 2016. If any of these risks actually occurs, it may materially harm our business, financial condition, operating results or cash flow. As a result, the market price of our common stock and, in turn, the trading price of the notes, could decline, and you could lose all or part of your investment. Additional risks and uncertainties that are not yet identified or that we think are immaterial may also materially harm our business, operating results and financial condition and could result in a complete loss of your investment.*

**Risks Related to the Notes and This Offering**

*The notes are effectively subordinated to any of our existing and future secured debt and structurally subordinated to the liabilities of our subsidiaries.*

The notes will be our general unsecured obligations and will rank equal in right of payment with any other senior unsecured indebtedness we incur or have incurred, including the 2018 Notes and the 2020 Notes, and senior in right of payment to any existing and future indebtedness that is contractually subordinated to the notes. The notes, however, will be effectively subordinated to our existing and future secured indebtedness to the extent of the value of the collateral securing such indebtedness. As of June 30, 2017, on a consolidated basis, we had approximately \$808.1 million in outstanding secured indebtedness and approximately \$261.2 million in outstanding senior unsecured indebtedness, in each case exclusive of trade and other payables. The provisions of the indenture governing the notes will not prohibit us from incurring additional secured indebtedness in the future. Consequently, in the event of a bankruptcy, liquidation, dissolution, reorganization or similar proceeding with respect to us, the holders of any secured indebtedness will be entitled to proceed directly against the collateral securing such indebtedness. Therefore, such collateral will not be available for satisfaction of any amounts owed under our unsecured indebtedness, including the notes, until such secured indebtedness is satisfied in full.

Our subsidiaries will not guarantee the notes. Accordingly, the notes will also be structurally subordinated to all existing and future unsecured and secured liabilities and preferred equity of our subsidiaries. In the event of a bankruptcy, liquidation, dissolution, reorganization or similar proceeding with respect to any such subsidiary, we, as a common equity owner of such subsidiary, and, therefore, holders of our debt, including holders of the notes, will be subject to the prior claims of such subsidiary's creditors, including trade creditors, and preferred equity holders. As of June 30, 2017, the aggregate amount of secured liabilities of our subsidiaries was approximately \$925.1 million and our subsidiaries had approximately \$285.2 million in unsecured liabilities, in each case including trade and other payables and excluding intercompany liabilities. The provisions of the indenture governing the notes will not prohibit our subsidiaries from incurring additional indebtedness or issuing preferred equity in the future.

*Our indebtedness and liabilities could limit cash flow available for our operations, expose us to risks that could adversely affect our business, financial condition and results of operations and impair our ability to satisfy our obligations under the notes.*

As of June 30, 2017, our total consolidated liabilities were approximately \$1.2 billion. We will incur \$125.0 million of additional indebtedness when we issue the notes, or \$143.8 million of additional indebtedness if the underwriters exercise in full their over-allotment option to purchase additional notes. We may also incur additional indebtedness. Our indebtedness could have significant negative consequences for our business, results of operations and financial condition, including:

increasing our vulnerability to adverse economic and industry conditions;

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limiting our ability to obtain additional financing;

requiring the dedication of a substantial portion of our cash flow from operations to service our indebtedness, thereby reducing the amount of our cash flow available for other purposes;

limiting our flexibility in planning for, or reacting to, changes in our business;

diluting our existing stockholders as a result of the conversion of the notes offered hereby into shares of our common stock; and

placing us at a possible competitive disadvantage with less leveraged competitors and competitors that may have better access to capital resources.

We cannot assure you that we will maintain sufficient cash reserves or that our business will continue to generate cash flow from operations at levels sufficient to permit us to pay principal, premium, if any, and interest on our indebtedness, or that our cash needs will not increase. If we are unable to generate sufficient cash flow or otherwise obtain funds necessary to make required payments, or if we fail to comply with the various requirements of the notes to be offered and sold in this offering, or any other indebtedness then outstanding, we would be in default, which would permit the holders of the affected indebtedness to accelerate the maturity of such indebtedness and could cause defaults under our other indebtedness. For an additional discussion of our outstanding indebtedness, see Management's Discussion and Analysis of Financial Condition and Results of Operations included in our Annual Report on Form 10-K for the year ended December 31, 2016 and our Quarterly Report on Form 10-Q for the quarter ended June 30, 2017, each incorporated herein by reference.

***We may not have the ability to raise the funds necessary to settle conversions of the notes in cash or to repurchase the notes for cash upon a fundamental change, and our future debt may contain limitations on our ability to pay cash upon a conversion or repurchase of the notes.***

Holders of the notes will have the right to require us to repurchase their notes upon the occurrence of a fundamental change at a repurchase price equal to 100% of their principal amount, *plus* accrued and unpaid interest, if any, as described under Description of Notes Fundamental Change Permits Holders to Require Us to Repurchase Notes. In addition, upon conversion of the notes, unless we elect to deliver solely shares of our common stock to settle such conversion (other than paying cash in lieu of delivering any fractional share), we will be required to make cash payments in respect of the notes being converted as described in Description of Notes Conversion Rights Settlement upon Conversion. However, we may not have enough available cash or be able to obtain financing at the time we are required to repurchase the notes upon a fundamental change or to settle conversion of the notes in cash.

In addition, our ability to repurchase the notes may be limited by law, by regulatory authority or by agreements governing our future indebtedness. Our failure to repurchase notes at a time when the repurchase is required by the indenture would constitute a default under the indenture. A default under the indenture or the fundamental change itself could also lead to a default under agreements governing our other indebtedness. If the repayment of the related indebtedness were to be accelerated after any applicable notice or grace periods, we may not have sufficient funds to repay the indebtedness and repurchase the notes.

***The conversion rate of the notes may not be adjusted for all dilutive events.***

The conversion rate of the notes is subject to adjustment for certain events, including, but not limited to, certain dividends on our common stock, the issuance of certain rights, options or warrants to holders of our common stock, subdivisions or combinations of our common stock, certain distributions of assets, debt securities, capital stock or cash to holders of our common stock and certain tender or exchange offers, as described under Description of Notes Conversion Rights Conversion Rate Adjustments. The conversion rate will not be adjusted for other events, such as a payment of certain dividends on our common stock or an issuance of our common stock for cash, that may adversely affect the trading price of the notes and the market price of our

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common stock. There can be no assurance that an event will not occur that is adverse to the interests of the holders of the notes and their value, but does not result in an adjustment to the conversion rate.

***Upon conversion of the notes, you may receive less valuable consideration than expected because the value of our common stock may decline after you exercise your conversion right but before we settle our conversion obligation.***

A converting holder will be exposed to fluctuations in the trading price of our common stock during the period from the date the holder elects to convert its notes until the date we settle our conversion obligation. We will have the option to pay or deliver, as the case may be, cash, shares of our common stock or a combination of cash and shares of common stock, at our election to settle our conversion option. If we elect (or are deemed to have elected) to settle our conversion obligation solely in cash or in a combination of cash and shares of common stock, then the amount of consideration that you will receive upon conversion of your notes will be determined by reference to the volume-weighted average prices of our common stock for each trading day in a 25 consecutive trading day observation period. Accordingly, if the trading price of our common stock decreases during this period, or after this period and until we deliver the consideration due upon conversion, the amount or value of consideration you receive will be adversely affected. In addition, if the market price of our common stock on the date we deliver the consideration due upon conversion is below the average of the volume-weighted average price of our common stock during the relevant observation period, then the amount of cash or the value of any shares of our common stock that you will receive in satisfaction of our conversion obligation will be less than the value used to determine the amount of cash or number of shares that you will receive.

***Some significant restructuring transactions may not constitute fundamental changes, in which case we would not be obligated to offer to repurchase the notes.***

Upon the occurrence of specified fundamental changes, you will have the option to require us to repurchase all or any portion of your notes as described in this prospectus supplement under Description of Notes Fundamental Change Permits Holders to Require Us to Repurchase Notes. However, the definition of fundamental change is limited to specified corporate events and may not include other events that might adversely affect our financial condition or the trading price of the notes. For example, events such as leveraged recapitalizations, refinancings, restructurings, or acquisitions initiated by us may not constitute a fundamental change requiring us to repurchase the notes. If any such events occur, the holders of the notes would not have the right to require us to repurchase the notes, even though each of these transactions could increase the amount of our indebtedness, or otherwise adversely affect our capital structure or any credit ratings, thereby adversely affecting the trading price of the notes.

***The adjustment to the conversion rate for notes converted in connection with certain make-whole fundamental change transactions may not adequately compensate holders for the lost option time value of their notes as a result of any such transaction. In addition, the definition of a make-whole fundamental change is limited and may not protect you from losing some of the option value of your notes if transactions that do not constitute a make-whole fundamental change occur.***

If certain transactions that constitute a make-whole fundamental change occur, under certain circumstances and subject to certain limitations, we will increase the conversion rate by a number of additional shares of our common stock. This increased conversion rate will apply only to holders who convert their notes in connection with that transaction. The number of additional shares of our common stock will be determined based on the date on which the make-whole fundamental change transaction becomes effective and the price paid (or deemed paid) per share of our common stock in such transaction, as described in this prospectus supplement under Description of Notes Conversion Rights Increase in Conversion Rate upon Conversion upon a Make-Whole Fundamental Change. While the increase in the conversion rate is designed to compensate holders for the lost option time value of the notes as a result of such

transaction, the increase in the conversion rate is only an approximation of such lost value and may not adequately compensate holders for such loss. In addition,

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notwithstanding the foregoing, if the price paid (or deemed paid) for our common stock in any such transaction is greater than \$        per share or less than \$        per share (in each case, subject to adjustment in accordance with the indenture), then we will not be required to adjust the conversion rate if you convert your notes in connection with such transaction. Moreover, in no event will the total number of shares of our common stock issuable upon the conversion of the notes exceed        per \$1,000 principal amount of notes, subject to adjustment under certain circumstances.

Furthermore, the definition of make-whole fundamental change limits what constitutes a fundamental change to certain enumerated transactions. As a result, the make-whole fundamental change provisions of the indenture will not afford protection to holders of the notes if other transactions occur that could adversely affect the option value of the notes. For example, transactions, such as a spin-off or sale of a subsidiary with volatile earnings, or a change in our subsidiaries' lines of business, could significantly affect the trading characteristics of our common stock and thereby reduce the option value embedded in the notes without triggering a make-whole fundamental change.

Our obligation to increase the conversion rate upon certain make-whole fundamental change transactions could be considered a penalty, in which case the enforceability thereof would be subject to general principles of reasonableness of economic remedies.

***There is currently no trading market for the notes, and an active trading market for the notes may not develop or, if it develops, may not be maintained.***

The notes will be new securities for which there is no established trading market. We do not intend to apply for listing of the notes on any securities exchange or for quotation of the notes on any automated dealer quotation system. Although the underwriters have informed us that they intend to make a market in the notes, they are not obligated to do so, and may discontinue market making at any time without notice. Accordingly, an active trading market may not develop for the notes and, even if one develops, such market may not be maintained. If an active trading market for the notes does not develop or is not maintained, the market price and liquidity of the notes is likely to be adversely affected and holders may not be able to sell their notes at desired times and prices or at all. If any of the notes are traded after their purchase, they may trade at a discount from their purchase price.

The liquidity of the trading market, if any, and future trading prices of the notes will depend on many factors, including, among other things, the market price of our common stock, prevailing interest rates, our dividend yield, financial condition, results of operations, business, prospects and credit quality relative to our competitors, the market for similar securities and the overall securities market, and may be adversely affected by unfavorable changes in any of these factors, some of which are beyond our control and others of which may not affect debt that is not convertible into capital stock. Historically, the market for convertible debt has been volatile. Market volatility could materially and adversely affect the notes, regardless of our financial condition, results of operations, business, prospects or credit quality.

***The issuance of additional stock will dilute all other stockholdings and could affect the market price of our common stock and, therefore, the trading price of the notes.***

As of June 30, 2017, we had an aggregate of approximately 93.6 million shares of common stock authorized but unissued and not reserved for issuance under our equity compensation or dividend reinvestment plans. We may issue all of these shares without any action or approval by our stockholders. The issuance of these unreserved shares, as well as any shares of our common stock issued in connection with the exercise of stock options, restricted stock units, conversion of the 2018 Notes or the 2020 Notes or under convertible or derivative instruments or otherwise would dilute the notional percentage ownership held by the investors who purchase our notes in this offering. In addition, we may issue a substantial number of shares of our common stock upon conversion of the notes, the 2018 Notes and the

2020 notes.

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***The notes will initially be held in book-entry form and, therefore, holders must rely on the procedures and the relevant clearing systems to exercise their rights and remedies.***

Unless and until certificated notes are issued in exchange for book-entry interests in the notes, owners of the book-entry interests will not be considered owners or holders of notes. Instead, DTC, or its nominee, will be the sole holder of the notes. Payments of principal, interest and other amounts owing on or in respect of the notes in global form will be made to the paying agent, which will make payments to DTC. Thereafter, such payments will be credited to DTC participants' accounts that hold book-entry interests in the notes in global form and credited by such participants to indirect participants. Unlike holders of the notes themselves, owners of book-entry interests will not have the direct right to act upon our solicitations for consents or requests for waivers or other actions from holders of the notes. Instead, if a holder owns a book-entry interest, such holder will be permitted to act only to the extent such holder has received appropriate proxies to do so from DTC or, if applicable, a participant. We cannot assure holders that the procedures implemented for the granting of such proxies will be sufficient to enable holders to vote on any requested actions on a timely basis.

***Recent and future regulatory actions and other events may adversely affect the trading price and liquidity of the notes.***

We expect that many investors in, and potential purchasers of, the notes will employ, or seek to employ, a convertible arbitrage strategy with respect to the notes. Investors would typically implement such a strategy by selling short the shares of our common stock underlying the notes and adjusting their short position over time while continuing to hold the notes. Investors may also implement this type of strategy by entering into swaps on our common stock in lieu of or in addition to short selling our common stock.

The SEC and other regulatory and self-regulatory authorities have implemented various rules and taken certain actions, and may in the future adopt additional rules and take other actions, that may impact those engaging in short selling activity involving equity securities, including our common stock. Any governmental or regulatory action that restricts the ability of investors in, or potential purchasers of, the notes to effect short sales of our common stock or enter into swaps on our common stock could adversely affect the trading price and the liquidity of the notes.

In addition, if investors and potential purchasers seeking to employ a convertible arbitrage strategy are unable to borrow or enter into swaps on our common stock, in each case on commercially reasonable terms, the trading price and liquidity of the notes may be adversely affected.

***Holders of the notes, as potential holders of our common stock may experience losses, volatility, and poor liquidity. We may reduce our dividends in a variety of circumstances which could reduce the value of our common stock and, in turn, the value of the notes.***

An investment in the notes and in our common stock may involve a high degree of risk, particularly when compared to other types of investments. Risks related to the economy, the financial markets, our industry, our investing activity, our other business activities, our financial results, the amount of dividends we distribute, the manner in which we conduct our business, and the way we have structured and limited our operations could result in a reduction in, or the elimination of, the value of our common stock, and in turn, of the notes. The level of risk associated with an investment in the notes and in our common stock may not be suitable for the risk tolerance of many investors. Investors may experience volatile returns and material losses. In addition, the trading volume of shares of our common stock may be insufficient to allow investors to sell their shares when they want to or at a price they consider reasonable.

Our earnings, cash flows, book value, and dividends can be volatile and difficult to predict. Investors in the notes and in our common stock should not rely on our estimates, projections or predictions, or on management's beliefs about future events. In particular, the sustainability of our earnings and our cash flows will depend on

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numerous factors, including our level of investment activity, our access to debt and equity financing, the returns we earn, the amount and timing of credit losses, payment rates on loans we invest in or originate or that underlie the mortgage-backed securities or other asset-backed securities that we invest in, the expense of running our business, and other factors, including the risk factors described in this prospectus supplement and in our Annual Report on Form 10-K for the year ended December 31, 2016. As a consequence, although we seek to pay a regular common stock dividend rate that is sustainable, we may reduce our regular dividend rate, or stop paying dividends, in the future for a variety of reasons. We may not provide public warnings of dividend reductions prior to their occurrence. Changes to the amount of dividends we distribute will likely result in a reduction in the value of our common stock and, in turn, of the notes.

***You may be subject to tax upon an adjustment to, or a failure to adjust, the conversion rate of the notes even though you do not receive a corresponding cash distribution.***

The conversion rate of the notes is subject to adjustment in certain circumstances, including the payment of certain cash dividends. If the conversion rate is adjusted, you may be deemed to have received for U.S. federal income tax purposes a taxable dividend to the extent of your proportionate share of our earnings and profits without the receipt of any cash. In addition, a failure to adjust (or adjust adequately) the conversion rate after an event that increases your proportionate interest in us could be treated as a deemed taxable dividend to you. Such deemed dividend may be subject to U.S. federal withholding tax or backup withholding, which may be set off against payments on the notes or our common stock. See Description of Notes Conversion Rights Conversion Rate Adjustments and Material U.S. Federal Income Tax Considerations in this prospectus supplement.

***The notes have not been rated, and if rated in the future, may receive a lower rating than anticipated.***

We do not intend to seek a rating on the notes. However, if one or more rating agencies rates the notes and assigns the notes a rating lower than the rating expected by investors, or reduces its rating in the future, the trading price of the notes and the market price of our common stock could decline.

In addition, the trading price of the notes is directly affected by market perceptions of our creditworthiness. Consequently, if a credit ratings agency rates any of our debt in the future or downgrades or withdraws any such rating, or puts us on credit watch, the trading price of the notes is likely to decline.

***The notes are not protected by restrictive covenants.***

The indenture governing the notes will not contain any financial or operating covenants or restrictions on the payments of dividends, the incurrence of indebtedness or the issuance or repurchase of securities by us or any of our subsidiaries. The indenture governing the notes will not contain any covenants or other provisions to afford protection to holders of the notes in the event of a fundamental change involving us except to the extent described in this prospectus supplement under Description of Notes Conversion Rights Recapitalizations, Reclassifications and Changes of Our Common Stock, Description of Notes Conversion Rights Increase in Conversion Rate upon Conversion upon a Make-Whole Fundamental Change, Description of Notes Fundamental Change Permits Holders to Require Us to Repurchase Notes and Description of Notes Consolidation, Merger and Sale of Assets.

***Certain provisions in the notes and the indenture could delay or prevent an otherwise beneficial takeover or takeover attempt of us and, therefore, the ability of holders to exercise their rights associated with a potential fundamental change or a make-whole fundamental change.***

Certain provisions in the notes and the indenture could make it more difficult or more expensive for a third party to acquire us. For example, if an acquisition event constitutes a fundamental change, holders of the notes will have the right to require us to purchase their notes in cash. In addition, if an acquisition event constitutes a make-

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whole fundamental change, we may be required to increase the conversion rate for holders who convert their notes in connection with such make-whole fundamental change. Our obligations under the notes and the indenture could increase the cost of acquiring us or otherwise discourage a third party from acquiring us or removing incumbent management.

***Holders of the notes will not be entitled to any rights with respect to our common stock, but will be subject to all changes made with respect to our common stock.***

Holders of the notes will not be entitled to any rights with respect to our common stock, including, without limitation, voting rights and rights to receive any dividends or other distributions on our common stock, but holders of the notes will be subject to all changes affecting our common stock. We are not required to settle conversions of the notes by issuing shares of our common stock. Holders of the notes will be entitled to the rights afforded holders of shares of our common stock only if and when shares of our common stock are delivered to them upon the conversion of their notes. For example, in the event that an amendment is proposed to our charter or bylaws requiring stockholder approval and the record date for determining the stockholders of record entitled to vote on the amendment occurs before a holder converts its notes into shares of our common stock, such holder will not be entitled to vote on the amendment, although such holder will, upon conversion, nevertheless be subject to any changes affecting our common stock.

***The notes may be issued with original issue discount for U.S. federal income tax purposes.***

If the stated principal amount of the notes exceeds the issue price of the notes by more than a statutorily defined de minimis amount, the notes will be treated as issued with original issues discount ( OID ) in an amount equal to such difference. In such event, a holder subject to U.S. federal income taxation, regardless of such holder's regular method of tax accounting, generally will be required to include the OID in gross income (as ordinary income) as the OID accrues (on a constant yield to maturity basis), in advance of the receipt of the cash payments attributable to the OID. See Material U.S. Federal Income Tax Considerations.

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**USE OF PROCEEDS**

We estimate that the net proceeds we will receive from this offering will be approximately \$        million (\$        million if the underwriters exercise their over-allotment option to purchase additional notes in full), after deducting underwriting discounts and commissions and estimated offering expenses payable by us. We intend to use the net proceeds from this offering to repurchase a portion of our outstanding 2018 Notes and 2020 Notes in privately negotiated transactions, open market purchases or otherwise. The amount, timing and price at which any such repurchase transactions may be effected will be in our sole discretion. Although we intend to use the net proceeds from this offering to repurchase a portion of the outstanding 2018 Notes and 2020 Notes, we do not have the right to call such notes prior to their maturity, and, therefore, we may not be successful in repurchasing any such notes. The 2018 Notes mature on December 1, 2018 and bear interest at 6.00% per annum. The 2020 Notes mature on January 15, 2020 and bear interest at 8.00% per annum. Any remaining net proceeds from this offering will be used for general corporate purposes.

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The following table sets forth our cash and cash equivalents and capitalization as of June 30, 2017:

on an actual basis; and

on an as adjusted basis to reflect the sale of the notes, assuming the underwriters do not exercise their option to purchase additional notes and after deducting underwriting discounts and commissions and estimated offering expenses payable by us, but before giving effect to any repurchase of our 2018 Notes and 2020 Notes, or other uses of proceeds from this offering.

The following information should be read in conjunction with our consolidated financial statements and related notes incorporated by reference in this prospectus supplement and the accompanying prospectus. For more details on how you can obtain our SEC reports and other information, you should read the section of this prospectus supplement entitled *Where You Can Find More Information*.

	<b>As of June 30, 2017</b>	
	<b>Actual</b>	<b>As adjusted</b>
	<b>(in thousands)</b>	
	<b>unaudited</b>	
Cash and cash equivalents	\$ 102,733	\$
<b>Long-term debt:</b>		
% Convertible Senior Notes offered hereby(1)	\$	\$
6.00% Convertible Senior Notes due 2018(2)	112,607	
8.00% Convertible Senior Notes due 2020(2)	97,097	
Borrowings nonrecourse	305,212	
Borrowings recourse	554,423	
Total long-term debt	1,069,339	
<b>Equity:</b>		
Preferred stock, par value \$0.001: 8.50% Series A, 10,000,000 shares authorized, 1,069,016 shares issued and outstanding (actual and as-adjusted)		1
Preferred stock, par value \$0.001: 8.25% Series B, 10,000,000 shares authorized, 5,544,579 shares issued and outstanding (actual and as-adjusted)		6
Preferred stock, par value \$0.001: 8.625% Fixed-to-Floating Series C, 10,000,000 shares authorized, 4,800,000 shares issued and outstanding (actual and as-adjusted)		5
Common stock, par value \$0.001: 125,000,000 shares authorized; 31,388,953 shares issued and outstanding (including 555,658 unvested restricted shares) (actual and as-adjusted)		31
Additional paid-in capital(3)	1,219,982	

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Accumulated other comprehensive income	500	
Distributions in excess of earnings	(515,148)	
<b>Total Resource Capital Corp. stockholders equity(3)</b>	<b>705,377</b>	
Non-controlling interests	(1,405)	
<b>Total equity(3)</b>	<b>703,972</b>	
<b>Total capitalization</b>	<b>\$ 1,773,311</b>	<b>\$</b>

- (1) In accordance with ASC 470-20, a convertible debt instrument (such as the notes) that may be wholly or partially settled in cash is required to be separated into a liability and an equity component, such that interest

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expense reflects the issuer's non-convertible debt interest rate. Upon issuance, a debt discount is recognized as a decrease in debt and an increase in equity. The debt component accretes up to the principal amount over the expected term of the debt. ASC 470-20 does not affect the actual amount that we are required to repay, and the amount shown in the table above for the notes, is the aggregate principal amount of the notes, without reflecting the debt discount or fees and expenses that we are required to recognize or the increase in paid in capital on our consolidated balance sheet.

- (2) Actual values reflect the application of ASC 470-20, which requires issuers to separately account for the liability and equity components of convertible debt instruments that may be settled entirely or partially in cash.
- (3) Issuance of the notes (giving effect to the application of ASC 470-20 as described in note (1) above) will result in a net increase in additional paid-in capital and, therefore, a net increase in total Resource Capital Corp. stockholders' equity and total equity.

The number of shares of our common and preferred stock, actual and as adjusted, shown in the table above exclude the following:

the shares of our common stock reserved for issuance upon conversion of the notes offered hereby and upon conversion of the 2018 Notes and the 2020 Notes; and

approximately 10,000 shares reserved for issuance pursuant to our equity compensation plan.

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**RATIOS OF EARNINGS TO FIXED CHARGES AND TO COMBINED FIXED CHARGES AND  
PREFERRED STOCK DIVIDENDS**

Our ratios of earnings to fixed charges and of earnings to combined fixed charges and preferred stock dividends for the periods indicated are set forth below. For purposes of calculating the ratios set forth below, earnings represent pre-tax income from continuing operations, as adjusted for fixed charges; and fixed charges represent interest expensed and capitalized, amortized premiums, discounts and capitalized expenses related to indebtedness, and an estimate of the interest within rental expense.

	<b>Six months ended</b>		<b>Year ended December 31,</b>			
	<b>June 30, 2017</b>	<b>2016</b>	<b>2015</b>	<b>2014</b>	<b>2013</b>	<b>2012</b>
Ratio of earnings to combined fixed charges	2.02	(2)	1.35	2.27	1.73	3.11
Ratio of earnings to combined fixed charges and preferred stock dividends(1)	1.42	(3)	(3)	1.62	1.55	3.02

- (1) We did not have any shares of preferred stock outstanding until June 2012 and paid our first preferred stock dividend in July 2012.
- (2) The dollar amount of the deficiency for the year ended December 31, 2016 was \$4.7 million.
- (3) The dollar amounts of the deficiencies for the years ended December 31, 2016 and 2015 were \$28.8 million and \$4.8 million, respectively.

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**DESCRIPTION OF NOTES**

We will issue the notes under a base indenture between us and Wells Fargo Bank, National Association, as trustee, dated as of October 21, 2013 (the "base indenture"), as supplemented by a supplemental indenture with respect to the notes to be dated as of the date of the initial issuance of the notes (the "supplemental indenture" and, together with the base indenture, the "indenture.") This description of the notes supplements and, to the extent it is inconsistent, replaces the description of the general provisions of the notes and the base indenture in the accompanying prospectus. The terms of the notes include those expressly set forth in the indenture and those made part of the indenture by reference to the Trust Indenture Act of 1939, as amended (the "Trust Indenture Act").

The following description is a summary of the material provisions of the notes and the indenture and does not purport to be complete. This summary is subject to and is qualified by reference to all the provisions of the notes and the indenture, including the definitions of certain terms used in the indenture. We urge you to read the indenture because it, and not this description, defines your rights as a holder of the notes. You may request a copy of the indenture from us. We will file the supplemental indenture by means of a Current Report on Form 8-K. See "Where You Can Find More Information" in this prospectus supplement.

For purposes of this description, references to "the Company," "we," "our" and "us" refer only to Resource Capital Corp. and not to its subsidiaries.

**General**

The notes will:

be our general unsecured, senior obligations;

initially be limited to an aggregate principal amount of \$125.0 million (or \$143.8 million if the underwriters over-allotment option to purchase additional notes is exercised in full);

bear cash interest from the date of original issuance, which is expected to be August 1, 2017, at an annual rate of 5.00% payable semiannually on February 15 and August 15 of each year, beginning on February 15, 2018;

not be redeemable prior to maturity;

be subject to repurchase by us at the option of the holders following a fundamental change (as defined below under "Fundamental Change Permits Holders to Require Us to Repurchase Notes"), at a repurchase price equal to 100% of the principal amount of the notes to be repurchased, plus accrued and unpaid interest to, but excluding, the fundamental change repurchase date;

mature on August 15, 2022, unless earlier converted or repurchased;

be issued in denominations of \$1,000 and multiples of \$1,000; and

be represented by one or more registered notes in global form, but in certain limited circumstances may be represented by notes in definitive form. See Book-Entry, Settlement and Clearance.

The notes may be converted at an initial conversion rate of \_\_\_\_\_ shares of our common stock per \$1,000 principal amount of notes (equivalent to an initial conversion price of approximately \$ \_\_\_\_\_ per share of common stock). The conversion rate is subject to adjustment if certain events occur.

We will settle conversions of notes by paying or delivering, as the case may be, cash, shares of our common stock or a combination of cash and shares of our common stock, at our election, as described under Conversion Rights Settlement upon Conversion. You will not receive any separate cash payment for interest, if any, accrued and unpaid to the conversion date except under the limited circumstances described below.

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Any conversion of notes into shares of our common stock will be subject to certain ownership limitations more fully described in [Ownership Limit; Limitation on Stock Issuable upon Conversion](#).

The indenture will not limit the amount of debt, including secured debt, that may be issued by us or our subsidiaries under the indenture or otherwise. The indenture does not contain any financial covenants and does not restrict us from paying dividends or issuing or repurchasing our other securities. Other than restrictions described under [Fundamental Change Permits Holders to Require Us to Repurchase Notes](#) and [Consolidation, Merger and Sale of Assets](#) below and except for the provisions set forth under [Conversion Rights](#) [Increase in Conversion Rate upon Conversion upon a Make-Whole Fundamental Change](#), the indenture does not contain any covenants or other provisions designed to afford holders of the notes protection in the event of a highly leveraged transaction involving us or in the event of a decline in our credit rating as the result of a takeover, recapitalization, highly leveraged transaction or similar restructuring involving us that could adversely affect such holders.

We may, without the consent of the holders, reopen the indenture for the notes and may issue additional notes under the indenture with the same terms and the same or a new CUSIP number as the notes offered hereby (other than differences in the issue price and interest accrued prior to the issue date of such additional notes and any transfer restrictions as a result of a private placement of such additional notes) in an unlimited aggregate principal amount so long as such additional notes are fungible with the notes initially offered hereby for U.S. federal income tax purposes.

No sinking fund will be provided for the notes. See [No Optional Redemption or Sinking Fund](#).

We do not intend to list the notes on any securities exchange or any automated dealer quotation system.

## **Purchase and Cancellation**

We will cause all notes surrendered for payment, repurchase (including as described below), registration of transfer or exchange or conversion, if surrendered to any person other than the trustee (including any of our agents, subsidiaries or affiliates), to be delivered to the trustee for cancellation. All notes delivered to the trustee shall be cancelled promptly by the trustee in accordance with its customary procedures. No notes shall be authenticated in exchange for any notes cancelled as provided in the indenture.

We may, to the extent permitted by law, and directly or indirectly (regardless of whether such notes are surrendered to us), repurchase notes in the open market or otherwise, whether by us or our subsidiaries or through a private or public tender or exchange offer or through counterparties to private agreements, including by cash-settled swaps or other derivatives, in each case without prior notice to the holders of the notes. We will cause any notes so repurchased (other than notes repurchased pursuant to cash-settled swaps or other derivatives) to be surrendered to the trustee for cancellation, and they will no longer be considered [outstanding](#) under the indenture upon their repurchase.

## **Payments on the Notes; Paying Agent and Registrar; Transfer and Exchange**

We will pay or cause the paying agent to pay the principal of, and interest on, notes in global form registered in the name of or held by DTC or its nominee in immediately available funds to DTC or its nominee, as the case may be, as the registered holder of such global note.

We will pay or cause the paying agent to pay the principal of any certificated notes at the office or agency designated by us for that purpose. We have initially designated the trustee as our paying agent and registrar and its corporate trust office as a place where notes may be presented for payment or for registration of transfer. We may, however, change the paying agent or registrar without prior notice to the holders of the notes, and we may act as paying agent or

registrar. Interest on certificated notes will be payable (i) to holders holding certificated notes having an aggregate principal amount of \$5,000,000 or less, by check mailed to the holders of these notes

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and (ii) to holders holding certificated notes having an aggregate principal amount of more than \$5,000,000, either by check mailed to each holder or, upon written application by such a holder to the registrar not later than the relevant regular record date, by wire transfer in immediately available funds to that holder's account within the United States, which application shall remain in effect until the holder notifies, in writing, the registrar to the contrary.

A holder of notes may transfer or exchange notes at the office of the registrar in accordance with the indenture. The registrar and the trustee may require a holder, among other things, to furnish appropriate endorsements and transfer documents. No service charge will be imposed by us, the trustee or the registrar for any registration of transfer or exchange of notes, but we may require a holder to pay a sum sufficient to cover any transfer tax or other similar governmental charge required by law or permitted by the indenture. We are not required to transfer or exchange any note surrendered for conversion or required repurchase. The transferor of any note shall provide or cause to be provided to the trustee all information necessary to allow the trustee to comply with any applicable tax reporting obligations, including without limitation any cost basis reporting obligations under Internal Revenue Code Section 6045. The trustee may rely on information provided to it and shall have no responsibility to verify or ensure the accuracy of such information.

The registered holder of a note will be treated as its owner for all purposes.

## **Interest**

The notes will bear cash interest at a rate of  $\frac{\quad}{\quad}$  % per year until maturity. Interest on the notes will accrue from the date of original issuance, expected to be August  $\quad$ , 2017, or from the most recent date on which interest has been paid or duly provided for. Interest will be payable semiannually in arrears on February 15 and August 15 of each year, beginning on February 15, 2018.

Interest will be paid to the person in whose name a note is registered at the close of business on February 1 or August 1, as the case may be, immediately preceding the relevant interest payment date whether or not a business day (each, a regular record date). Interest on the notes will be computed on the basis of a 360-day year composed of twelve 30-day months and, for partial months, on the basis of the number of days actually elapsed in a 30-day month.

If additional interest is payable on the notes, we will provide an officers' certificate to the trustee and to the paying agent prior to the time such additional interest is payable setting forth the amount of such additional interest in reasonable detail. Neither the trustee nor the paying agent shall have any responsibility or liability for the determination, verification or calculation of any additional interest.

If any interest payment date, the maturity date or any earlier required repurchase date upon a fundamental change of a note falls on a day that is not a business day, the required payment will be made on the next succeeding business day and no interest on such payment will accrue in respect of the delay. The term "business day" means, with respect to any note, any day other than a Saturday, a Sunday or a day on which the Federal Reserve Bank of New York is authorized or required by law or executive order to close or be closed.

Unless the context otherwise requires, all references to interest in this prospectus supplement include additional interest, if any, payable at our election as the sole remedy relating to the failure to comply with our reporting obligations as described under "Events of Default."

## **Ranking**

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The notes will be our general unsecured obligations that rank senior in right of payment to all of our existing and future indebtedness that is expressly subordinated in right of payment to the notes. The notes will rank equal in right of payment with all of our existing and future liabilities that are not so subordinated. The notes will

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effectively rank junior to any of our secured indebtedness to the extent of the value of the assets securing such indebtedness. In the event of our bankruptcy, liquidation, reorganization or other winding up, our assets that secure secured debt will be available to pay obligations on the notes only after all indebtedness under such secured debt has been repaid in full from such assets. The notes will rank structurally junior to all existing and future indebtedness, other liabilities and preferred stock of our subsidiaries (including trade payables but excluding intercompany obligations and liabilities of a type not required to be reflected on a balance sheet of such subsidiaries in accordance with GAAP). We advise you that there may not be sufficient assets remaining to pay amounts due on any or all of the notes then outstanding.

As of June 30, 2017, we and our subsidiaries had total consolidated indebtedness of approximately \$1.1 billion, of which an aggregate of approximately \$0.3 billion was non-recourse secured indebtedness of our subsidiaries (including trade payables but excluding intercompany obligations and liabilities of a type not required to be reflected on a balance sheet of such subsidiaries in accordance with GAAP) to which the notes would have been structurally subordinated. After giving effect to the issuance of the notes (assuming no exercise of the underwriters' over-allotment option to purchase additional notes), but without giving effect to the use of proceeds therefrom, our total consolidated indebtedness as of June 30, 2017 would have been approximately \$1.2 billion.

Our subsidiaries have no obligation to pay any amounts due on the notes or to provide us with funds for our payment obligations, whether by dividends, distributions, loans or other payments. In addition, any payment of dividends, distributions, loans or advances by our subsidiaries to us could be subject to statutory or contractual restrictions. Payments to us by our subsidiaries will also be contingent upon our subsidiaries' earnings. We may not be able to pay the cash portions of any settlement amount upon conversion of the notes, or to pay cash for the fundamental change repurchase price upon a fundamental change if a holder requires us to repurchase notes as described below. See **Risk Factors** **Risks Related to the Notes and This Offering**. We may not have the ability to raise the funds necessary to settle conversions of the notes in cash or to repurchase the notes for cash upon a fundamental change, and our future debt may contain limitations on our ability to pay cash upon conversion or repurchase of the notes.

### **No Optional Redemption or Sinking Fund**

No sinking fund is provided for the notes, which means that we are not required to redeem or retire the notes periodically. We are also not permitted to redeem the notes prior to the maturity date, though the indenture does not limit our ability to make open-market purchases of the notes at any time.

### **Conversion Rights**

#### ***General***

Prior to the close of business on the business day immediately preceding the maturity date, holders may convert all or any portion of their notes at the conversion rate at any time.

Any conversion of notes into shares of our common stock will be subject to certain ownership limitations more fully described in **Ownership Limit; Limitation on Stock Issuable upon Conversion**.

The conversion rate initially will be \_\_\_\_\_ shares of our common stock per \$1,000 principal amount of notes (equivalent to an initial conversion price of approximately \$ \_\_\_\_\_ per share of common stock). Upon conversion of a note, we will satisfy our conversion obligation by paying or delivering, as the case may be, cash, shares of our common stock or a combination of cash and shares of our common stock, at our election, all as set forth below under **Settlement upon Conversion**. If we satisfy our conversion obligation solely in cash or through payment and delivery,

as the case may be, of a combination of cash and shares of our common stock, the amount of cash and the number of shares of our common stock, if any, due upon conversion will be based on a

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daily conversion value (as defined below) calculated on a proportionate basis for each trading day in a 25 trading day observation period (as defined below under Settlement upon Conversion ). The trustee initially will act as the conversion agent.

A holder may convert fewer than all of such holder's notes so long as the notes converted are an integral multiple of \$1,000 principal amount.

Upon conversion, you will not receive any separate cash payment for accrued and unpaid interest, if any, except as described below. We will not issue fractional shares of our common stock upon conversion of notes. Instead, we will pay cash in lieu of delivering any fractional share as described under Settlement upon Conversion. Our payment and delivery, as the case may be, to you of the cash, shares of our common stock or a combination thereof, as the case may be, into which a note is convertible will be deemed to satisfy in full our obligation to pay:

the principal amount of the note; and

accrued and unpaid interest, if any, to, but not including, the relevant conversion date.

As a result, accrued and unpaid interest, if any, to, but not including, the relevant conversion date will be deemed to be paid in full rather than cancelled, extinguished or forfeited. Upon a conversion of notes into a combination of cash and shares of our common stock, accrued and unpaid interest will be deemed to be paid first out of the cash paid upon such conversion.

Notwithstanding the immediately preceding paragraph, if notes are converted after 5:00 p.m., New York City time, on a regular record date for the payment of interest, holders of such notes at 5:00 p.m., New York City time, on such regular record date will receive the full amount of interest payable on such notes on the corresponding interest payment date notwithstanding the conversion. Notes surrendered for conversion during the period from 5:00 p.m., New York City time, on any regular record date to 9:00 a.m., New York City time, on the immediately following interest payment date must be accompanied by funds equal to the amount of interest payable on the notes so converted; provided that no such payment need be made:

for conversions following the regular record date immediately preceding the maturity date;

if we have specified a fundamental change repurchase date that is after a regular record date and on or prior to the corresponding interest payment date; or

to the extent of any overdue interest, if any overdue interest exists at the time of conversion with respect to such note.

Therefore, for the avoidance of doubt, all record holders on the regular record date immediately preceding the maturity date will receive the full interest payment due on the maturity date regardless of whether their notes have been converted following such regular record date.

If a holder converts notes, we will pay any documentary, stamp or similar issue or transfer tax due on any issuance of any shares of our common stock upon the conversion, unless the tax is due because the holder requests any such shares to be issued in a name other than the holder's name, in which case the holder will pay that tax.

Any conversion of notes into shares of our common stock will be subject to certain ownership limitations more fully described in Ownership Limit; Limitation on Stock Issuable upon Conversion.

***Conversion Procedures***

If you hold a beneficial interest in a global note, to convert you must comply with DTC's procedures for converting a beneficial interest in a global note and, if required, pay funds equal to interest payable on the next interest payment date to which you are not entitled.

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If you hold a certificated note, to convert you must:

complete and manually sign the conversion notice on the back of the note, or a facsimile of the conversion notice;

deliver the conversion notice, which is irrevocable, and the note to the conversion agent;

if required, furnish appropriate endorsements and transfer documents; and

if required, pay funds equal to interest payable on the next interest payment date to which you are not entitled.

We will pay any documentary, stamp or similar issue or transfer tax on the issuance of any shares of our common stock upon conversion of the notes, unless the tax is due because the holder requests such shares to be issued in a name other than the holder's name, in which case the holder will pay the tax.

We refer to the date you comply with the relevant procedures for conversion described above as the conversion date. If a holder has already delivered a repurchase notice as described under *Fundamental Change Permits Holders to Require Us to Repurchase Notes* with respect to a note, the holder may not surrender that note for conversion until the holder has withdrawn the repurchase notice in accordance with the relevant provisions of the indenture. If a holder submits its notes for required repurchase, the holder's right to withdraw the repurchase notice and convert the notes that are subject to repurchase will terminate at the close of business on the business day immediately preceding the relevant fundamental change repurchase date.

***Settlement upon Conversion***

Upon conversion, we may choose to pay or deliver, as the case may be, either cash ( *cash settlement* ), shares of our common stock ( *physical settlement* ) or a combination of cash and shares of our common stock ( *combination settlement* ), as described below. We refer to each of these settlement methods as a *settlement method*.

Subject to the limitations on conversions that would cause a violation of certain stock ownership limitations described in *Ownership Limit; Limitation on Stock Issuable upon Conversion*, we will use the same settlement method for all conversions occurring on the same conversion date, but we will not have any obligation to use the same settlement method with respect to conversions that occur on different conversion dates. That is, we may choose for notes converted on one conversion date to settle conversions in physical settlement, and choose for notes converted on another conversion date cash settlement or combination settlement. Notwithstanding the foregoing, all conversions for which the relevant conversion date occurs on or after the 30th scheduled trading day immediately preceding the maturity date will be settled using the same settlement method.

If we elect a settlement method, we will inform holders so converting through the conversion agent and the trustee of the settlement method we have selected no later than the close of business on the trading day immediately following the related conversion date (or, in the case of any conversions whose conversion date is on or after the 30th scheduled trading day immediately preceding the maturity date, no later than the close of business on the 32nd scheduled trading day immediately preceding the maturity date). If we do not timely elect a settlement method, we will no longer have

the right to elect cash settlement or physical settlement and we will be deemed to have elected combination settlement in respect of our conversion obligation, as described below, and the specified dollar amount (as defined below) per \$1,000 principal amount of notes will be equal to \$1,000. If we elect combination settlement, but we do not timely notify converting holders of the specified dollar amount per \$1,000 principal amount of notes, such specified dollar amount will be deemed to be \$1,000. It is our current intent and policy to settle conversions through combination settlement with a specified dollar amount per \$1,000 principal amount of notes of \$1,000. Settlement amounts will be computed as follows:

if we elect physical settlement, we will deliver to the converting holder in respect of each \$1,000 principal amount of notes being converted a number of shares of our common stock equal to the conversion rate;

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if we elect cash settlement, we will pay to the converting holder in respect of each \$1,000 principal amount of notes being converted cash in an amount equal to the sum of the daily conversion values for each of the 25 consecutive trading days during the related observation period; and

if we elect (or are deemed to have elected) combination settlement, we will pay or deliver, as the case may be, to the converting holder in respect of each \$1,000 principal amount of notes being converted a settlement amount equal to the sum of the daily settlement amounts for each of the 25 consecutive trading days during the related observation period.

The daily settlement amount, for each of the 25 consecutive trading days during the observation period, shall consist of:

cash equal to the lesser of (i) the maximum cash amount per \$1,000 principal amount of notes to be received upon conversion as specified in the notice specifying our chosen settlement method (the specified dollar amount), if any, divided by 25 (such quotient, the daily measurement value) and (ii) the daily conversion value; and

if the daily conversion value exceeds the daily measurement value, a number of shares equal to (i) the difference between the daily conversion value and the daily measurement value, divided by (ii) the daily VWAP for such trading day.

The daily conversion value means, for each of the 25 consecutive trading days during the observation period, one-25th of the product of (1) the conversion rate on such trading day and (2) the daily VWAP on such trading day.

The daily VWAP means, for each of the 25 consecutive trading days during the relevant observation period, the per share volume-weighted average price as displayed under the heading Bloomberg VWAP on Bloomberg page RSO US<equity> AQR (or its equivalent successor if such page is not available) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such trading day (or if such volume-weighted average price is unavailable, the market value of one share of our common stock on such trading day determined, using a volume-weighted average method, by a nationally recognized independent investment banking firm retained for this purpose by us). The daily VWAP will be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours.

The observation period with respect to any note surrendered for conversion means:

if the relevant conversion date occurs prior to the 30<sup>th</sup> scheduled trading day immediately preceding the maturity date, the 25 consecutive trading day period beginning on, and including, the second trading day immediately succeeding such conversion date; and

if the relevant conversion date occurs on or after the 30<sup>th</sup> scheduled trading day immediately preceding the maturity date, the 25 consecutive trading days beginning on, and including, the 27<sup>th</sup> scheduled trading day immediately preceding the maturity date.

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For the purposes of determining amounts due upon conversion only, **trading day** means a day on which (i) there is no **market disruption event** (as defined below) and (ii) trading in our common stock generally occurs on the New York Stock Exchange or, if our common stock is not then listed on the New York Stock Exchange, on the principal other U.S. national or regional securities exchange on which our common stock is then listed or, if our common stock is not then listed on a U.S. national or regional securities exchange, on the principal other market on which our common stock is then listed or admitted for trading. If our common stock is not so listed or admitted for trading, **trading day** means a **business day**.

**Scheduled trading day** means a day that is scheduled to be a trading day on the principal U.S. national or regional securities exchange or market on which our common stock is listed or admitted for trading. If our common stock is not so listed or admitted for trading, **scheduled trading day** means a **business day**.

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For the purposes of determining amounts due upon conversion, market disruption event means (i) a failure by the primary U.S. national or regional securities exchange or market on which our common stock is listed or admitted for trading to open for trading during its regular trading session or (ii) the occurrence or existence prior to 1:00 p.m., New York City time, on any scheduled trading day for our common stock for more than one half-hour period in the aggregate during regular trading hours of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant stock exchange or otherwise) in our common stock or in any options contracts or futures contracts relating to our common stock.

Except as described under Increase in Conversion Rate upon Conversion upon a Make-Whole Fundamental Change and Recapitalizations, Reclassifications and Changes of our Common Stock, we will deliver the consideration due in respect of conversion on the third business day immediately following the relevant conversion date, if we elect physical settlement, or on the third business day immediately following the last trading day of the relevant observation period, in the case of any other settlement method.

We will pay cash in lieu of delivering any fractional share of common stock issuable upon conversion based on the daily VWAP on the relevant conversion date (in the case of physical settlement) or based on the daily VWAP on the last trading day of the relevant observation period (in the case of combination settlement).

Each conversion will be deemed to have been effected as to any notes surrendered for conversion on the conversion date; provided, however, that the person in whose name any shares of our common stock shall be issuable upon such conversion will become the holder of record of such shares as of the close of business on the conversion date (in the case of physical settlement) or the last trading day of the relevant observation period (in the case of combination settlement).

***Conversion Rate Adjustments***

The conversion rate will be adjusted as described below, except that we will not make any adjustments to the conversion rate if holders of the notes participate (other than in the case of a share split or share combination), at the same time and upon the same terms as holders of our common stock and solely as a result of holding the notes, in any of the transactions described below without having to convert their notes as if they held a number of shares of our common stock equal to the conversion rate, multiplied by the principal amount (expressed in thousands) of notes held by such holder.

(1) If we exclusively issue shares of our common stock as a dividend or distribution on shares of our common stock, or if we effect a share split or share combination, the conversion rate will be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_1}{OS_0}$$

where,

$CR_0$  = the conversion rate in effect immediately prior to the open of business on the ex-dividend date of such dividend or distribution, or immediately prior to the open of business on the effective date of such share split or share combination, as applicable;

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$CR_1$  = the conversion rate in effect immediately after the open of business on such ex-dividend date or effective date;

$OS_0$  = the number of shares of our common stock outstanding immediately prior to the open of business on such ex-dividend date or effective date; and

$OS_1$  = the number of shares of our common stock outstanding immediately after giving effect to such dividend, distribution, share split or share combination.

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Any adjustment made under this clause (1) shall become effective immediately after the open of business on the ex-dividend date for such dividend or distribution, or immediately after the open of business on the effective date for such share split or share combination, as applicable. If any dividend or distribution of the type described in this clause (1) is declared but not so paid or made, the conversion rate shall be immediately readjusted, effective as of the date our board of directors or a committee thereof determines not to pay such dividend or distribution, to the conversion rate that would then be in effect if such dividend or distribution had not been declared.

(2) If we issue to all or substantially all holders of our common stock any rights, options or warrants entitling them, for a period of not more than 45 calendar days after the announcement date of such issuance, to subscribe for or purchase shares of our common stock at a price per share that is less than the average of the last reported sale prices of our common stock for the 10 consecutive trading day period ending on, and including, the trading day immediately preceding the date of announcement of such issuance, the conversion rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

$CR_0$  = the conversion rate in effect immediately prior to the open of business on the ex-dividend date for such issuance;

$CR_1$  = the conversion rate in effect immediately after the open of business on such ex-dividend date;

$OS_0$  = the number of shares of our common stock outstanding immediately prior to the open of business on such ex-dividend date;

$X$  = the total number of shares of our common stock issuable pursuant to such rights, options or warrants; and

$Y$  = the number of shares of our common stock equal to the aggregate price payable to exercise such rights, options or warrants, divided by the average of the last reported sale prices of our common stock over the 10 consecutive trading day period ending on, and including, the trading day immediately preceding the date of announcement of the issuance of such rights, options or warrants.

The last reported sale price of our common stock on any date means the closing sale price per share (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on that date as reported in composite transactions for the principal U.S. national or regional securities exchange on which our common stock is traded. If our common stock is not listed for trading on a U.S. national or regional securities exchange on the relevant date, the last reported sale price will be the last quoted bid price per share for our common stock in the over-the-counter market on the relevant date as reported by OTC Markets Group, Inc. or a similar organization. If our common stock is not so quoted, the last reported sale price will be the average of the mid- point of the last bid and ask prices per share for our common stock on the

relevant date from each of at least three nationally recognized independent investment banking firms selected by us for this purpose. The last reported sale price will be determined without regard to after-hours trading or any other trading outside of regular trading session hours.

Any increase made under this clause (2) will be made successively whenever any such rights, options or warrants are issued and shall become effective immediately after the open of business on the ex-dividend date for such issuance. To the extent that shares of common stock are not delivered after the expiration of such rights, options or warrants, the conversion rate shall be decreased to the conversion rate that would then be in effect had the increase with respect to the issuance of such rights, options or warrants been made on the basis of delivery of only the number of shares of common stock actually delivered. If such rights, options or warrants are not so issued, the conversion rate shall be decreased to the conversion rate that would then be in effect if such ex-dividend date for such issuance had not occurred.

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For the purpose of this clause (2), in determining whether any rights, options or warrants entitle the holders to subscribe for or purchase shares of our common stock at less than such average of the last reported sale prices for the 10 consecutive trading day period ending on, and including, the trading day immediately preceding the date of announcement of such issuance, and in determining the aggregate offering price of such shares of common stock, there shall be taken into account any consideration received by us for such rights, options or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by our board of directors or a committee thereof.

(3) If we distribute shares of our capital stock, evidences of our indebtedness, other assets or property of ours or rights, options or warrants to acquire our capital stock or other securities, to all or substantially all holders of our common stock, excluding:

dividends, distributions or issuances as to which an adjustment was effected pursuant to clause (1) or (2) above;

dividends or distributions paid exclusively in cash as to which an adjustment was effected pursuant to clause (4) below; and

spin-offs as to which the provisions set forth below in this clause (3) shall apply;  
then the conversion rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{SP_0}{SP_0 \text{ FMV}}$$

where,

$CR_0$  = the conversion rate in effect immediately prior to the open of business on the ex-dividend date for such distribution;

$CR_1$  = the conversion rate in effect immediately after the open of business on such ex-dividend date;

$SP_0$  = the average of the last reported sale prices of our common stock over the 10 consecutive trading day period ending on, and including, the trading day immediately preceding the ex-dividend date for such distribution;  
and

FMV = the fair market value (as determined by our board of directors or a committee thereof) of the shares of capital stock, evidences of indebtedness, assets, property, rights, options or warrants distributed with respect to each outstanding share of our common stock on the ex-dividend date for such distribution.

Any increase made under the portion of this clause (3) above will become effective immediately after the open of business on the ex-dividend date for such distribution. If such distribution is not so paid or made, the conversion rate shall be decreased to be the conversion rate that would then be in effect if such distribution had not been declared. Notwithstanding the foregoing, if FMV (as defined above) is equal to or greater than  $S_0$  (as defined above), in lieu of the foregoing increase, each holder of a note shall receive, in respect of each \$1,000 principal amount thereof, at the same time and upon the same terms as holders of our common stock, the amount and kind of our capital stock, evidences of our indebtedness, other assets or property of ours or rights, options or warrants to acquire our capital stock or other securities that such holder would have received if such holder owned a number of shares of common stock equal to the conversion rate in effect on the ex-dividend date for the distribution.

With respect to an adjustment pursuant to this clause (3) where there has been a payment of a dividend or other distribution on our common stock of shares of capital stock of any class or series, or similar equity interest, of or relating to a subsidiary or other business unit, that are, or, when issued, will be, listed or admitted for



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trading on a U.S. national securities exchange, which we refer to as a spin-off, the conversion rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{FMV_0 + MP_0}{MP_0}$$

where,

$CR_0$  = the conversion rate in effect immediately prior to the end of the valuation period (as defined below);

$CR_1$  = the conversion rate in effect immediately after the end of the valuation period;

$FMV_0$  = the average of the last reported sale prices of the capital stock or similar equity interest distributed to holders of our common stock applicable to one share of our common stock (determined by reference to the definition of last reported sale price set forth above as if references therein to our common stock were to such capital stock or similar equity interest) over the first 10 consecutive trading day period after, and including, the ex-dividend date of the spin-off (the valuation period); and

$MP_0$  = the average of the last reported sale prices of our common stock over the valuation period.

The adjustment to the conversion rate under the preceding paragraph will occur on the last trading day of the valuation period; provided that in respect of any conversion of notes during the valuation period, references in the preceding paragraph to 10 trading days shall be deemed to be replaced with such lesser number of trading days as have elapsed between the ex-dividend date of such spin-off and the conversion date in determining the conversion rate. If the ex-dividend date of the spin-off is after the 10th trading day immediately preceding, and including, the end of any observation period in respect of a conversion of notes, references in the preceding paragraph to 10 trading days will be deemed to be replaced, solely in respect of that conversion, with such lesser number of trading days as have elapsed from, and including, the ex-dividend date for the spin-off to, and including, the last trading day of such observation period.

(4) If we pay any cash dividend or distribution to all or substantially all holders of our common stock that, together with all prior dividends or distributions paid during the calendar quarter in which the ex-dividend date for such dividend or distribution occurs (such calendar quarter, the dividend period), exceeds \$0.10 per share, the conversion rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{SP_0^T}{SP_0^C}$$

where,

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- $CR_0$  = the conversion rate in effect immediately prior to the open of business on the ex-dividend date for such dividend or distribution;
- $CR_1$  = the conversion rate in effect immediately after the open of business on the ex-dividend date for such dividend or distribution;
- $SP_0$  = the last reported sale price of our common stock on the trading day immediately preceding the ex-dividend date for such dividend or distribution;
- $T$  = \$0.10 (the dividend threshold ); provided, however, that the dividend threshold with respect to any date shall be reduced by the aggregate per share cash dividends or distributions that were paid to all or substantially all holders of our common stock during the applicable dividend period prior to such payment and provided further that if the result of such reduction is a negative number, the dividend threshold shall be deemed to be zero; and
- $C$  = the amount in cash per share we distribute to all or substantially all holders of our common stock in such dividend or distribution.

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The dividend threshold is subject to adjustment in a manner inversely proportional to adjustments to the conversion rate made pursuant to the provisions under this Conversion Rate Adjustments section; provided that no adjustment will be made to the dividend threshold for any adjustment to the conversion rate pursuant to this clause (4).

Any increase to the conversion rate made under this clause (4) shall become effective immediately after the open of business on the ex-dividend date for such dividend or distribution. If such dividend or distribution is not so paid, the conversion rate shall be decreased, effective as of the date our board of directors or a committee thereof determines not to make or pay such dividend or distribution, to be the conversion rate that would then be in effect if such dividend or distribution had not been declared. Notwithstanding the foregoing, if  $C$  (as defined above) is equal to or greater than  $SP$  (as defined above), in lieu of the foregoing increase, each holder of a note shall receive, for each \$1,000 principal amount of notes, at the same time and upon the same terms as holders of shares of our common stock, the amount of cash that such holder would have received if such holder owned a number of shares of our common stock equal to the conversion rate on the ex-dividend date for such cash dividend or distribution.

(5) If we or any of our subsidiaries make a payment in respect of a tender or exchange offer for our common stock (that is subject to the tender offer rules of the Exchange Act that are then applicable), other than odd lot tender offers, to the extent that the cash and value of any other consideration included in the payment per share of common stock exceeds the average of the last reported sale prices of our common stock over the 10 consecutive trading day period commencing on, and including, the trading day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer, the conversion rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{AC + (SP_1 \times OS_1)}{OS_0 \times SP_1}$$

where,

$CR_0$  = the conversion rate in effect immediately prior to the close of business on the 10th trading day immediately following, and including, the trading day next succeeding the date such tender or exchange offer expires;

$CR_1$  = the conversion rate in effect immediately after the close of business on the 10th trading day immediately following, and including, the trading day next succeeding the date such tender or exchange offer expires;

$AC$  = the aggregate value of all cash and any other consideration (as determined by our board of directors or a committee thereof) paid or payable for shares purchased or exchanged in such tender or exchange offer;

$OS_0$  = the number of shares of our common stock outstanding immediately prior to the date such tender or exchange offer expires (prior to giving effect to the purchase or exchange of all shares accepted for purchase or exchange in such tender or exchange offer);

$OS_1$  = the number of shares of our common stock outstanding immediately after the date such tender or exchange offer expires (after giving effect to the purchase or exchange of all shares accepted for purchase or exchange

in such tender or exchange offer); and

$SP_1$  = the average of the last reported sale prices of our common stock over the 10 consecutive trading day period commencing on, and including, the trading day next succeeding the date such tender or exchange offer expires.

The adjustment to the conversion rate under the preceding paragraph will occur at the close of business on the 10th trading day immediately following, and including, the trading day next succeeding the date such tender or exchange offer expires; provided that in respect of any conversion of notes within the 10 trading days immediately following, and including, the trading day next succeeding the expiration date of any tender or

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exchange offer, references with respect to 10 trading days shall be deemed replaced with such lesser number of trading days as have elapsed between the expiration date of such tender or exchange offer and the conversion date in determining the conversion rate. In addition, if the trading day next succeeding the date such tender or exchange offer expires is after the 10th trading day immediately preceding, and including, the end of any observation period in respect of a conversion of notes, references in the preceding paragraph to 10 trading days shall be deemed to be replaced, solely in respect of that conversion, with such lesser number of trading days as have elapsed from, and including, the trading day next succeeding the date such tender or exchange offer expires to, and including, the last trading day of such observation period.

Notwithstanding the foregoing, if a conversion rate adjustment becomes effective on any ex-dividend date as described above, and a holder that has converted its notes on or after such ex-dividend date and on or prior to the related record date would be treated as the record holder of shares of our common stock as of the related conversion date as described under Settlement upon Conversion based on an adjusted conversion rate for such ex-dividend date, then, notwithstanding the foregoing conversion rate adjustment provisions, the conversion rate adjustment relating to such ex-dividend date will not be made for such converting holder. Instead, such holder will be treated as if such holder were the record owner of the shares of our common stock on an unadjusted basis and participate in the related dividend, distribution or other event giving rise to such adjustment.

Except as stated herein, we will not adjust the conversion rate for the issuance of shares of our common stock or any securities convertible into or exchangeable for shares of our common stock or the right to purchase shares of our common stock or such convertible or exchangeable securities.

As used in this section, ex-dividend date means the first date on which the shares of our common stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question, from us or, if applicable, from the seller of our common stock on such exchange or market (in the form of due bills or otherwise) as determined by such exchange or market, and effective date means the first date on which the shares of our common stock trade on the applicable exchange or in the applicable market, regular way, reflecting the relevant share split or share combination, as applicable.

Subject to the applicable listing standards of the New York Stock Exchange, we are permitted to increase the conversion rate of the notes by any amount for a period of at least 20 business days if our board of directors or a committee thereof determines that such increase would be in our best interest. Subject to the applicable listing standards of the New York Stock Exchange, we may also (but are not required to) increase the conversion rate to avoid or diminish income tax to holders of our common stock or rights to purchase shares of our common stock in connection with a dividend or distribution of shares (or rights to acquire shares) or similar event.

A holder may, in some circumstances, including a distribution of cash dividends to holders of our shares of common stock, be deemed to have received a distribution subject to U.S. federal income tax as a result of an adjustment or the nonoccurrence of an adjustment to the conversion rate. For a discussion of the U.S. federal income tax treatment of an adjustment to the conversion rate, see Material U.S. Federal Income Tax Considerations.

We currently do not have a preferred stock rights plan. If we have a rights plan in effect upon conversion of the notes into common stock, you will receive, in addition to any shares of common stock received in connection with such conversion, the rights under the rights plan. However, if, prior to any conversion, the rights have separated from the shares of common stock in accordance with the provisions of the applicable rights plan, the conversion rate will be adjusted at the time of separation as if we distributed to all or substantially all holders of our common stock, shares of our capital stock, evidences of indebtedness, assets, property, rights, options or warrants as described in clause (3) above, subject to readjustment in the event of the expiration, termination or redemption of such rights.

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Notwithstanding any of the foregoing, the conversion rate will not be adjusted:

upon the issuance of any shares of our common stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on our securities and the investment of additional optional amounts in shares of our common stock under any plan;

upon the issuance of any shares of our common stock or options or rights to purchase those shares pursuant to any present or future employee, director or consultant benefit plan or program of or assumed by us or any of our subsidiaries;

upon the issuance of any shares of our common stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in the preceding bullet and outstanding as of the date the notes were first issued;

upon the repurchase of any shares of our common stock pursuant to an open-market share repurchase program or other buy-back transaction that is not a tender offer or exchange offer of the nature described under clause (5) above;

solely for a change in the par value of our common stock; or

for accrued and unpaid interest, if any.

Adjustments to the conversion rate will be calculated to the nearest 1/10,000th of a share.

Whenever the conversion rate is adjusted as herein provided, we shall promptly file with the trustee (and the conversion agent if not the trustee) an officers' certificate setting forth the conversion rate after such adjustment and setting forth a brief statement of the facts requiring such adjustment. In the absence of an officers' certificate being filed with the trustee (and the conversion agent if not the trustee), the trustee may assume without inquiry that the conversion rate has not been adjusted and that the last conversion rate of which it has knowledge remains in effect.

***Recapitalizations, Reclassifications and Changes of Our Common Stock***

In the case of:

any recapitalization, reclassification or change of our common stock (other than changes resulting from a subdivision or combination),

any consolidation, merger or combination involving us,

any sale, lease or other transfer to a third party of the consolidated assets of ours and our subsidiaries substantially as an entirety, or

any statutory share exchange,

in each case, as a result of which our common stock would be converted into, or exchanged for, stock, other securities, other property or assets (including cash or any combination thereof) (and such event, a share exchange event ), then, at and after the effective time of the transaction, the right to convert each \$1,000 principal amount of notes will be changed into a right to convert such principal amount of notes into the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) that a holder of a number of shares of common stock equal to the conversion rate immediately prior to such transaction would have owned or been entitled to receive (the reference property ) upon such transaction.

However, at and after the effective time of the transaction, (i) we will continue to have the right to determine the form of consideration to be paid or delivered, as the case may be, upon conversion of notes, as set forth under Settlement upon Conversion and (ii)(x) any amount payable in cash upon conversion of the notes as set forth under Settlement upon Conversion will continue to be payable in cash, (y) any shares of our common stock



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that we would have been required to deliver upon conversion of the notes as set forth under Settlement upon Conversion will instead be deliverable in the amount and type of reference property that a holder of that number of shares of our common stock would have received in such transaction and (z) the daily VWAP and the last reported sale price, to the extent possible, will be calculated based on the value of a unit of reference property that a holder of one share of our common stock would have received in such transaction. If the transaction causes our common stock to be converted into, or exchanged for, the right to receive more than a single type of consideration (determined based in part upon any form of stockholder election), the reference property into which the notes will be convertible will be deemed to be (i) the weighted average of the types and amounts of consideration received by the holders of our common stock that affirmatively make such an election or (ii) if no holders of our common stock affirmatively make such an election, the types and amounts of consideration actually received by the holders of our common stock. If the holders receive only cash in such transaction, then for all conversions that occur after the effective date of such transaction (i) the consideration due upon conversion of each \$1,000 principal amount of notes shall be solely cash in an amount equal to the conversion rate in effect on the conversion date (as may be increased as described under

Increase in Conversion Rate upon Conversion upon a Make-Whole Fundamental Change ), multiplied by the price paid per share of common stock in such transaction and (ii) we will satisfy our conversion obligation by paying cash to converting holders on the third business day immediately following the conversion date. We will notify holders, the trustee and the conversion agent (if other than the trustee) of the weighted average as soon as practicable after such determination is made. We will agree in the indenture not to become a party to any such transaction unless its terms are consistent with the foregoing.

***Adjustments of Prices***

Whenever any provision of the indenture requires us to calculate the last reported sale prices, the daily VWAPs, the daily conversion values or the daily settlement amounts over a span of multiple days (including an observation period and the stock price for purposes of a make-whole fundamental change), our board of directors or a committee thereof will make appropriate adjustments (to the extent no corresponding adjustment is otherwise made pursuant to the provisions described under Conversion Rate Adjustments above) to each to account for any adjustment to the conversion rate that becomes effective, or any event requiring an adjustment to the conversion rate where the ex-dividend date of the event occurs, at any time during the period when such last reported sale prices, daily VWAPs, daily conversion values or daily settlement amounts are to be calculated.

***Increase in Conversion Rate upon Conversion upon a Make-Whole Fundamental Change***

If the effective date (as defined below) of a make-whole fundamental change (as defined below) occurs prior to the maturity date of the notes and a holder elects to convert its notes in connection with such make-whole fundamental change, we will, under certain circumstances, increase the conversion rate for the notes so surrendered for conversion by a number of additional shares of common stock (the additional shares ), as described below. A make-whole fundamental change means any transaction or event that constitutes a fundamental change (as defined below in

Fundamental Change Permits Holders to Require Us to Repurchase Notes ), after giving effect to any exceptions or exclusions from such definition, but without regard to subclause (a) of the proviso in clause (2) of the definition thereof. A conversion of notes will be deemed for these purposes to be in connection with such make-whole fundamental change if the relevant notice of conversion of the notes is received by the conversion agent from, and including, the effective date of the make-whole fundamental change up to, and including, the business day immediately prior to the related fundamental change repurchase date (or, in the case of a make-whole fundamental change that would have been a fundamental change but for subclause (a) of the proviso in clause (2) of the definition thereof, the 35th trading day immediately following the effective date of such make-whole fundamental change). Upon surrender of notes for conversion in connection with a make-whole fundamental change, we will, at our option, satisfy our conversion obligation by physical settlement, cash settlement or combination settlement, based on the

conversion rate as increased to reflect the additional shares pursuant to the table set forth below, as described under Settlement upon Conversion. However, if the consideration for our common stock in any make-whole fundamental change described in clause

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(2) of the definition of fundamental change is composed entirely of cash, for any conversion of notes following the effective date of such make-whole fundamental change, the conversion obligation will be calculated based solely on the stock price (as defined below) for the transaction and will be deemed to be an amount of cash per \$1,000 principal amount of converted notes equal to the conversion rate (including any increase to reflect the additional shares as described in this section), multiplied by such stock price. In such event, the conversion obligation will be determined and paid to holders in cash on the third business day following the conversion date. We will notify holders, the trustee and the conversion agent of the effective date of any make-whole fundamental change no later than five business days after such effective date.

The number of additional shares, if any, by which the conversion rate will be increased will be determined by reference to the table below, based on the date on which the make-whole fundamental change occurs or becomes effective (the effective date) and the price (the stock price) paid (or deemed to be paid) per share of our common stock in the make-whole fundamental change. If the holders of our common stock receive in exchange for their common stock only cash in a make-whole fundamental change described in clause (2) of the definition of fundamental change, the stock price will be the cash amount paid per share. Otherwise, the stock price will be the average of the last reported sale prices of our common stock over the five trading day period ending on, and including, the trading day immediately preceding the effective date of the make-whole fundamental change.

The stock prices set forth in the column headings of the table below will be adjusted as of any date on which the conversion rate of the notes is otherwise adjusted. The adjusted stock prices will equal the stock prices immediately prior to such adjustment, multiplied by a fraction, the numerator of which is the conversion rate immediately prior to the adjustment giving rise to the stock price adjustment and the denominator of which is the conversion rate as so adjusted. The number of additional shares as set forth in the table below will be adjusted in the same manner and at the same time as the conversion rate as set forth under Conversion Rate Adjustments.

The following table sets forth the number of additional shares by which the conversion rate will be increased per \$1,000 principal amount of notes for each stock price and effective date set forth below:

Effective date	Stock price									
	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
August , 2017										
August 15, 2018										
August 15, 2019										
August 15, 2020										
August 15, 2021										
August 15, 2022										

The exact stock prices and effective dates may not be set forth in the table above, in which case

If the stock price is between two stock prices in the table or the effective date is between two effective dates in the table, the number of additional shares by which the conversion rate will be increased will be determined by a straight-line interpolation between the number of additional shares set forth for the higher and lower stock prices and the earlier and later effective dates, as applicable, based on a 365-day year.

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If the stock price is greater than \$ \_\_\_\_\_ per share (subject to adjustment in the same manner as the stock prices set forth in the column headings of the table above), no additional shares will be added to the conversion rate.

If the stock price is less than \$ \_\_\_\_\_ per share (subject to adjustment in the same manner as the stock prices set forth in the column headings of the table above), no additional shares will be added to the conversion rate.

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Notwithstanding the foregoing, in no event will the conversion rate per \$1,000 principal amount of notes exceed shares of common stock, subject to adjustment in the same manner as the conversion rate as set forth under Conversion Rate Adjustments.

Our obligation to increase the conversion rate for notes converted in connection with a make-whole fundamental change could be considered a penalty, in which case the enforceability thereof would be subject to general principles of reasonableness and equitable remedies.

## **Fundamental Change Permits Holders to Require Us to Repurchase Notes**

If a fundamental change (as defined below in this section) occurs at any time prior to the maturity date, holders will have the right, at their option, to require us to repurchase for cash all of their notes, or any portion of the principal amount thereof that is equal to \$1,000 or an integral multiple of \$1,000. The fundamental change repurchase date will be a date specified by us that is not less than 20 or more than 35 business days following the date of our fundamental change notice as described below or, if we fail to specify a fundamental change repurchase date, the 35th business day following the date of our fundamental change notice.

The fundamental change repurchase price we are required to pay will be equal to 100% of the principal amount of the notes to be repurchased, plus accrued and unpaid interest to, but excluding, the fundamental change repurchase date (unless the fundamental change repurchase date falls after a regular record date but on or prior to the interest payment date to which such regular record date relates, in which case we will instead pay the full amount of accrued and unpaid interest to the holder of record on such regular record date, and the fundamental change repurchase price will be equal to 100% of the principal amount of the notes to be repurchased).

A fundamental change will be deemed to have occurred at the time after the notes are originally issued if any of the following occurs:

(1) a person or group within the meaning of Section 13(d) of the Exchange Act, other than us, our subsidiaries and our or their employee benefit plans, files a Schedule TO or any schedule, form or report under the Exchange Act disclosing that such person or group has become the direct or indirect beneficial owner, as defined in Rule 13d-3 under the Exchange Act, of our common equity representing more than 50% of the voting power of our common equity;

(2) the consummation of (A) any recapitalization, reclassification or change of our common stock (other than changes resulting from a subdivision or combination) as a result of which our common stock would be converted into, or exchanged for, stock, other securities, other property or assets; (B) any share exchange, consolidation or merger of us pursuant to which our common stock will be converted into cash, securities or other property or assets; or (C) any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of us and our subsidiaries, taken as a whole, to any person other than one of our subsidiaries; provided, however, that neither (a) a transaction described in clause (A) or (B) in which the holders of all classes of our common equity immediately prior to such transaction beneficially own, directly or indirectly, more than 50% of all classes of common equity of the continuing or surviving corporation or transferee or the parent thereof immediately after such transaction in substantially the same proportions as such ownership immediately prior to such transaction nor (b) any merger of us solely for the purpose of changing our jurisdiction of incorporation that results in a reclassification, conversion or exchange of outstanding shares of our common stock solely into shares of common stock of the surviving entity shall be a fundamental change pursuant to this clause (2);

(3) our stockholders approve any plan or proposal for the liquidation or dissolution of us; or

(4) our common stock (or other common stock underlying the notes) ceases to be listed or quoted on any of the New York Stock Exchange, the NASDAQ Global Select Market or the NASDAQ Global Market (or any of their respective successors).

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A transaction or transactions described in clause (1) or (2) above will not constitute a fundamental change, however, if at least 90% of the consideration received or to be received by our common stockholders, excluding cash payments for fractional shares, in connection with such transaction or transactions consists of shares of common stock that are listed or quoted on any of the New York Stock Exchange, the NASDAQ Global Select Market or the NASDAQ Global Market (or any of their respective successors) or will be so listed or quoted when issued or exchanged in connection with such transaction or transactions and as a result of such transaction or transactions the notes become convertible into such consideration, excluding cash payments for fractional shares (subject to the provisions set forth above under Conversion Rights Settlement upon Conversion ).

On or before the 20th calendar day after the occurrence of a fundamental change, we will provide to all holders of the notes, the conversion agent, the trustee and the paying agent a written notice of the occurrence of the fundamental change and of the resulting repurchase right. Such notice shall state, among other things:

the events causing a fundamental change;

the effective date of the fundamental change;

the last date on which a holder may exercise the repurchase right;

the fundamental change repurchase price;

the fundamental change repurchase date;

the name and address of the paying agent and the conversion agent, if applicable;

if applicable, the conversion rate and any adjustments to the conversion rate;

that the notes with respect to which a fundamental change repurchase notice has been delivered by a holder may be converted only if the holder withdraws the fundamental change repurchase notice in accordance with the terms of the indenture; and

the procedures that holders must follow to require us to repurchase their notes.

To exercise the fundamental change repurchase right, you must deliver, on or before the business day immediately preceding the fundamental change repurchase date, the notes to be repurchased, duly endorsed for transfer, together with a written repurchase notice, to the paying agent. Each repurchase notice must state:

if certificated, the certificate numbers of your notes to be delivered for repurchase;

the portion of the principal amount of notes to be repurchased, which must be \$1,000 or an integral multiple thereof; and

that the notes are to be repurchased by us pursuant to the applicable provisions of the notes and the indenture.

If the notes are not in certificated form, such repurchase notice must comply with appropriate DTC procedures.

Holders may withdraw any repurchase notice (in whole or in part) by a written notice of withdrawal delivered to the paying agent prior to the close of business on the business day immediately preceding the fundamental change repurchase date. The notice of withdrawal shall state:

the principal amount of the withdrawn notes, which must be \$1,000 aggregate principal amount or an integral multiple thereof;

if certificated notes have been issued, the certificate numbers of the withdrawn notes; and

the principal amount, if any, which remains subject to the repurchase notice, which must be \$1,000 aggregate principal amount or an integral multiple thereof.



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If the notes are not in certificated form, such notice of withdrawal must comply with appropriate DTC procedures.

We will be required to repurchase the notes on the fundamental change repurchase date. Holders who have exercised the repurchase right will receive payment of the fundamental change repurchase price on the later of (i) the fundamental change repurchase date and (ii) the time of book-entry transfer or the delivery of the notes. If the paying agent holds money sufficient to pay the fundamental change repurchase price of the notes on the fundamental change repurchase date, then, with respect to the notes that have been properly surrendered for repurchase and have not been validly withdrawn:

the notes will cease to be outstanding and interest will cease to accrue (whether or not book-entry transfer of the notes is made or whether or not the notes are delivered to the paying agent); and

all other rights of the holder will terminate (other than the right to receive the fundamental change repurchase price).

In connection with any repurchase offer pursuant to a fundamental change repurchase notice, we will, if required:

comply with the provisions of Rule 13e-4, Rule 14e-1 and any other tender offer rules under the Exchange Act that may then be applicable;

file a Schedule TO or any other required schedule under the Exchange Act; and

otherwise comply with all federal and state securities laws in connection with any offer by us to repurchase the notes,

in each case, so as to permit the rights and obligations under this Fundamental Change Permits Holders to Require us to Repurchase Notes to be exercised in the time and in the manner specified in the indenture.

No notes may be repurchased by us on any date at the option of holders upon a fundamental change if the principal amount of the notes has been accelerated, and such acceleration has not been rescinded, on or prior to such date (except in the case of an acceleration resulting from a default by us in the payment of the fundamental change repurchase price with respect to such notes).

The repurchase rights of the holders could discourage a potential acquirer of us. The fundamental change repurchase feature, however, is not the result of management's knowledge of any specific effort to obtain control of us by any means or part of a plan by management to adopt a series of anti-takeover provisions.

We will not be required to make an offer to purchase the notes upon a fundamental change if a third party makes such an offer in the manner, at the times and otherwise in compliance with the requirements for an offer made by us and such third party purchases all notes properly tendered and not validly withdrawn under its offer.

To the extent that the provisions of any securities laws or regulations conflict with the provisions of the indenture relating to our obligations to purchase the notes upon a fundamental change, we will comply with the applicable

securities laws and regulations and will not be deemed to have breached our obligations under such provisions of the indenture by virtue of such conflict.

The term fundamental change is limited to specified transactions and may not include other events that might adversely affect our financial condition. In addition, the requirement that we offer to repurchase the notes upon a fundamental change may not protect holders in the event of a highly leveraged transaction, reorganization, merger or similar transaction involving us.

Furthermore, holders may not be entitled to require us to repurchase their notes upon a fundamental change or entitled to an increase in the conversion rate upon conversion as described under [Conversion Rights](#)

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Increase in Conversion Rate upon Conversion upon a Make-Whole Fundamental Change in circumstances involving a significant change in the composition of our board, unless such change is in connection with a fundamental change or make-whole fundamental change as described herein.

The definition of fundamental change includes a phrase relating to the sale, lease or other transfer of all or substantially all of our consolidated assets. There is no precise, established definition of the phrase substantially all under applicable law. Accordingly, the ability of a holder of the notes to require us to repurchase its notes as a result of the sale, conveyance, lease or other transfer of less than all of our assets may be uncertain.

If a fundamental change were to occur, we may not have enough funds to pay the fundamental change repurchase price. Our ability to repurchase the notes for cash may be limited by restrictions on our ability to obtain funds for such repurchase through dividends from our subsidiaries, the terms of our then existing borrowing arrangements or otherwise. See Risk Factors Risks Related to the Notes and This Offering We may not have the ability to raise the funds necessary to settle conversions of the notes or to repurchase the notes for cash upon a fundamental change and our future debt may contain limitations on our ability to pay cash upon conversion or repurchase of the notes. If we fail to repurchase the notes when required following a fundamental change, we will be in default under the indenture. In addition, we may in the future incur other indebtedness with similar change in control provisions permitting our holders to accelerate or to require us to repurchase our indebtedness upon the occurrence of similar events or on some specific dates.

## **Ownership Limit; Limitation on Stock Issuable upon Conversion**

To assist us in satisfying the requirements for qualification as a REIT, our charter, subject to certain exceptions, prohibits any person from beneficially owning or constructively owning more than 9.8%, in value or in number of shares, whichever is more restrictive, of the outstanding shares of any class or series of our capital stock, including our common stock (the Charter Limitation ), unless our board of directors waives or modifies this ownership limit. We have previously granted limited waivers of this prohibition and, subject to the approval of our board of directors, we may grant additional waivers at any time, including in connection with this offering. In addition, our charter contains various other restrictions on the ownership and transfer of our capital stock. See Description of Common Stock and Preferred Stock Restrictions on Ownership and Transfer in the accompanying prospectus.

The indenture will provide that, notwithstanding any other provision of the indenture, no holder of notes will be entitled to receive shares of our common stock upon conversion to the extent (but only to the extent) that such receipt would cause such converting holder to violate the Charter Limitation. Any purported delivery of shares of common stock upon conversion of notes shall be void and have no effect to the extent (but only to the extent) that such delivery would result in the converting holder violating the Charter Limitation. If any delivery of shares of our common stock owed to a holder upon conversion of notes is not made, in whole or in part, as a result of the Charter Limitation, our obligation to make such delivery shall not be extinguished, and we will deliver such shares as promptly as practicable after any such converting holder gives notice to us that such delivery would not result in such converting holder being in violation of the Charter Limitation. See Description of Common Stock and Preferred Stock Restrictions on Ownership and Transfer in the accompanying prospectus.

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

The indenture provides that we shall not consolidate with or merge with or into, or sell, convey, transfer or lease all or substantially all of our properties and assets to, another person, unless (i) the resulting, surviving or transferee person (if not us) is a corporation organized and existing under the laws of the United States of America, any state thereof or the District of Columbia, and such corporation (if not us) expressly assumes by supplemental indenture all of our

obligations under the notes and the indenture; (ii) immediately after giving effect to such transaction, no default or event of default has occurred and is continuing under the indenture and (iii) we have delivered an officers certificate and an opinion of counsel to the trustee providing that such merger,

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consolidation or sale and supplemental indenture (if any) comply with the indenture and an opinion of counsel stating that the notes and the indenture are valid and binding obligations of such surviving corporation. Upon any such consolidation, merger or sale, conveyance, transfer or lease, the resulting, surviving or transferee person (if not us) shall succeed to, and may exercise every right and power of, ours under the indenture, and we shall be discharged from our obligations under the notes and the indenture except in the case of any such lease.

Although these types of transactions are permitted under the indenture, certain of the foregoing transactions could constitute a fundamental change permitting each holder to require us to repurchase the notes of such holder as described above.

## **Events of Default**

Each of the following is an event of default with respect to the notes:

- (1) default in any payment of interest on any note when due and payable and the default continues for a period of 30 days;
- (2) default in the payment of principal of any note when due and payable at its stated maturity, upon any required repurchase, upon declaration of acceleration or otherwise;
- (3) our failure to comply with our obligation to convert the notes in accordance with the indenture upon exercise of a holder's conversion right and such failure continues for a period of five business days;
- (4) our failure to give a fundamental change notice as described under **Fundamental Change Permits Holders to Require us to Repurchase Notes** when due, which default continues for five days;
- (5) our failure to comply with our obligations under **Consolidation, Merger and Sale of Assets** ;
- (6) our failure for 60 days after written notice from the trustee or the holders of at least 25% in principal amount of the notes then outstanding (with a copy to the trustee) has been received to comply with any of our other agreements contained in the notes or indenture;
- (7) default by us or any of our subsidiaries with respect to any mortgage, agreement or other instrument under which there may be outstanding, or by which there may be secured or evidenced, any indebtedness for money borrowed (other than non-recourse debt of a subsidiary) in excess of \$25 million (or its foreign currency equivalent) in the aggregate of us and/or any such subsidiary, whether such indebtedness now exists or shall hereafter be created (i) resulting in such indebtedness becoming or being declared due and payable or (ii) constituting a failure to pay the principal or interest of any such debt when due and payable at its stated maturity, upon required repurchase, upon declaration of acceleration or otherwise, and such acceleration shall not have been rescinded or annulled or such failure to pay shall not have been cured, as the case may be, within 30 days after written notice to us by the trustee or to us and the trustee by the holders of at least 25% in principal amount of the notes then outstanding has been received;
- (8) a final judgment for the payment of \$25 million (or its foreign currency equivalent) or more (excluding any amounts covered by insurance) rendered against us or any of our subsidiaries, which judgment is not discharged or stayed within 60 days after (i) the date on which the right to appeal thereof has expired if no such appeal has commenced, or (ii) the date on which all rights to appeal have been extinguished;

(9) certain events of bankruptcy, insolvency, or reorganization of us or any of our significant subsidiaries that are not CLO subsidiaries (as defined below);

(10) a CLO subsidiary files for bankruptcy or other events of bankruptcy, insolvency or reorganization occur relating to a CLO subsidiary (such bankruptcy filing or event, a reference event ) and the potential loss in the case of a complete loss of our capital at risk in such CLO subsidiary, together with such potential losses from any other CLO subsidiaries that have filed for bankruptcy or commenced such other events within a period of 90

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days prior to a reference event, exceeds 10% of our consolidated net assets as of the fiscal quarter immediately prior to the date of the reference event.

A **significant subsidiary** is a subsidiary that is a **significant subsidiary** as defined in Article 1, Rule 1-02 of Regulation S-X promulgated by the SEC; provided that the term **significant subsidiary** shall not include any entity consolidated by us where we, either directly or through a subsidiary, hold 50% or less of the voting power of such entity. The term **CLO subsidiary** as used above means any subsidiary that is an issuer of collateralized debt obligations or collateralized loan obligations and the term **consolidated net assets** means the excess of consolidated assets over consolidated liabilities.

If an event of default occurs and is continuing, the trustee by notice to us, or the holders of at least 25% in principal amount of the outstanding notes by written notice to us and the trustee, may declare 100% of the principal of and accrued and unpaid interest, if any, on all the notes to be due and payable. Upon such a declaration of acceleration, such principal and accrued and unpaid interest, if any, will be due and payable immediately. However, in case of certain events of bankruptcy, insolvency or reorganization, involving us (and not solely with respect to one or more significant subsidiaries), 100% of the principal of and accrued and unpaid interest on the notes will automatically become due and payable.

Notwithstanding the foregoing, the indenture will provide that, to the extent we elect, the sole remedy for an event of default relating to our failure to comply with our obligations as set forth under **Reports** below, will, for the first 270 days after the occurrence of such an event of default, consist exclusively of the right to receive additional interest on the notes at a rate equal to 0.25% per annum of the principal amount of the notes outstanding for each day during the first 180 days after the occurrence of such an event of default and at a rate equal to 0.50% per annum of the principal amount of the notes outstanding from the 181st day until the 270th day following the occurrence of such an event of default during which such event of default is continuing.

If we so elect, such additional interest will be payable in the same manner and on the same dates as the stated interest payable on the notes. On the 271st day after such event of default (if the event of default relating to the reporting obligations is not cured or waived prior to such 271st day), the notes will be subject to acceleration as provided above. The provisions of the indenture described in this paragraph will not affect the rights of holders of notes in the event of the occurrence of any other event of default. In the event we do not elect to pay the additional interest following an event of default in accordance with this paragraph or we elected to make such payment but do not pay the additional interest when due, the notes will be immediately subject to acceleration as provided above.

In order to elect to pay the additional interest as the sole remedy during the first 270 days after the occurrence of an event of default relating to the failure to comply with the reporting obligations in accordance with the immediately preceding paragraph, we must notify all holders of the notes, the trustee and the paying agent of such election prior to the beginning of such 180-day period. Upon our failure to timely give such notice, the notes will be immediately subject to acceleration as provided above.

If any portion of the amount payable on the notes upon acceleration is considered by a court to be unearned interest (through the allocation of the value of the instrument to the embedded warrant or otherwise), the court could disallow recovery of any such portion.

The holders of a majority in principal amount of the outstanding notes may waive all past defaults (except with respect to nonpayment of principal or interest or with respect to the failure to deliver the consideration due upon conversion or any other provision that requires the consent of each affected holder to amend) and rescind any such acceleration with respect to the notes and its consequences if (i) rescission would not conflict with any judgment or decree of a court of

competent jurisdiction and (ii) all existing events of default, other than the nonpayment of the principal of and interest on the notes that have become due solely by such declaration of acceleration, have been cured or waived and all amounts owing to the trustee have been paid.

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Each holder shall have the right to receive payment or delivery, as the case may be, of:

the principal (including the fundamental change repurchase price, if applicable) of;

accrued and unpaid interest, if any, on; and

the consideration due upon conversion of, its notes, on or after the respective due dates expressed or provided for in the indenture, or to institute suit for the enforcement of any such payment or delivery, as the case may be, and such right to receive such payment or delivery, as the case may be, on or after such respective dates shall not be impaired or affected without the consent of such holder.

Subject to the provisions of the indenture relating to the duties of the trustee, if an event of default occurs and is continuing, the trustee will be under no obligation to exercise any of the rights or powers under the indenture at the request or direction of any of the holders unless such holders have offered to the trustee indemnity or security satisfactory to it against any loss, liability or expense. Except to enforce the right to receive payment of principal or interest when due, or the right to receive payment or delivery of the consideration due upon conversion, no holder may pursue any remedy with respect to the indenture or the notes unless:

- (1) such holder has previously given the trustee written notice that an event of default is continuing;
- (2) holders of at least 25% in principal amount of the outstanding notes have made a written request to the trustee to pursue the remedy;
- (3) such holders have offered the trustee security or indemnity satisfactory to it against any loss, liability or expense;
- (4) the trustee has not complied with such request within 60 days after the receipt of the request and the offer of security or indemnity; and
- (5) the holders of a majority in principal amount of the outstanding notes have not given the trustee a direction that, in the opinion of the trustee, is inconsistent with such request within such 60-day period.

Subject to certain restrictions, the holders of a majority in principal amount of the outstanding notes are given the right to direct the time, method and place of conducting any proceeding for any remedy available to the trustee or of exercising any trust or power conferred on the trustee.

The indenture provides that in the event an event of default has occurred and is continuing, the trustee will be required in the exercise of its powers vested in it by the indenture to use the degree of care that a prudent person would use under the circumstances in the conduct of its own affairs. The trustee, however, may refuse to follow any direction that conflicts with law or the indenture or that the trustee determines is unduly prejudicial to the rights of any other holder (it being understood that the trustee does not have an affirmative duty to ascertain whether or not any such directions are unduly prejudicial to such holders) or that would involve the trustee in personal liability. Prior to taking any action under the indenture, the trustee will be entitled to indemnification satisfactory to it against any loss, liability or expense caused by taking or not taking such action.

The indenture provides that if a default occurs and is continuing and is actually known to a responsible officer of the trustee, the trustee must send to each holder notice of the default within 90 days after it receives notice thereof. Except in the case of a default in the payment of principal of or interest on any note or a default in the payment or delivery of the consideration due upon conversion, the trustee may withhold notice if and so long as it in good faith determines that withholding notice is in the interests of the holders. In addition, we are required to deliver to the trustee, within 120 days after the end of each fiscal year, a certificate indicating whether the signers thereof know of any default that occurred during the previous year. We are also required to deliver to the trustee, within 30 days after the occurrence thereof, written notice of any events which would constitute certain defaults, their status and what action we are taking or proposing to take in respect thereof.

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Payments of the fundamental change repurchase price, principal and interest that are not made when due will accrue interest per annum at the then-applicable interest rate from the required payment date.

### **Modification and Amendment**

Subject to certain exceptions, the indenture or the notes may be amended with the consent of the holders of at least a majority in principal amount of the notes then outstanding (including without limitation, consents obtained in connection with a repurchase of, or tender or exchange offer for, notes) and, subject to certain exceptions, any past default or compliance with any provisions may be waived with the consent of the holders of a majority in principal amount of the notes then outstanding (including, without limitation, consents obtained in connection with a repurchase of, or tender or exchange offer for, notes). However, without the consent of each holder of an outstanding note affected, no amendment may, among other things:

- (1) reduce the amount of notes whose holders must consent to an amendment;
- (2) reduce the rate of or extend the stated time for payment of interest on any note;
- (3) reduce the principal of or extend the stated maturity of any note;
- (4) make any change that adversely affects the conversion rights of any notes;
- (5) reduce the fundamental change repurchase price of any note or amend or modify in any manner adverse to the holders of notes our obligation to make such payments, whether through an amendment or waiver of provisions in the covenants, definitions or otherwise;
- (6) make any note payable in money, or at a place of payment, other than that stated in the note;
- (7) change the ranking of the notes;
- (8) impair the right of any holder to receive payment of principal and interest on such holder's notes on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such holder's notes; or
- (9) make any change in the amendment provisions that require each holder's consent or in the waiver provisions.

Without the consent of any holder, we and the trustee may supplement or amend the indenture to:

- (1) cure any ambiguity, omission, defect or inconsistency that does not adversely affect holders of the notes;
- (2) provide for the assumption by a successor corporation of our obligations under the indenture and the notes;
- (3) add guarantees with respect to the notes;
- (4) secure the notes;
- (5) add to our covenants or events of default for the benefit of the holders or surrender any right or power conferred upon us;

- (6) make any change that does not adversely affect the rights of any holder (the trustee shall not be responsible for making a determination as to whether or not such a change adversely affects any holder);
- (7) increase the conversion rate as provided in the indenture;
- (8) provide for the issuance of additional notes solely in accordance with the limitations set forth in the indenture;

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(9) comply with requirements of the SEC in order to effect or maintain the qualification of the indenture under the Trust Indenture Act;

(10) provide for the acceptance of appointment by a successor trustee or facilitate the administration of the trusts under the indenture by more than one trustee; or

(11) conform the provisions of the indenture to any provision of the Description of Notes in the preliminary prospectus supplement, as supplemented by the issuer free writing prospectus related to the offering of the notes, as determined in good faith by us and evidenced by an officers certificate.

Holders do not need to approve the particular form of any proposed amendment. It will be sufficient if such holders approve the substance of the proposed amendment. After an amendment under the indenture becomes effective, we are required to mail or send to the holders a notice briefly describing such amendment. However, the failure to give such notice to all the holders, or any defect in the notice, will not impair or affect the validity of the amendment.

## **Discharge**

We may satisfy and discharge our obligations under the indenture by delivering to the securities registrar for cancellation all outstanding notes or by depositing with the trustee or delivering to the holders, as applicable, after the notes have become due and payable, whether at maturity, any fundamental change repurchase date, upon conversion or otherwise, cash or cash and/or shares of common stock, solely to satisfy outstanding conversions, as applicable, sufficient to pay all of the outstanding notes and paying all other sums payable under the indenture by us. Such discharge is subject to terms contained in the indenture.

## **Calculations in Respect of Notes**

We will be responsible for making all calculations called for under the notes. These calculations include, but are not limited to, determinations of the last reported sale prices of our common stock, the daily VWAPs, the daily conversion values, the daily settlement amounts, accrued interest payable on the notes and the conversion rate of the notes. We will make all these calculations in good faith and, absent manifest error, our calculations will be final and binding on holders of notes. We will provide a schedule of our calculations to each of the trustee and the conversion agent, and each of the trustee and the conversion agent is entitled to rely conclusively upon the accuracy of our calculations without independent verification. The trustee will forward our calculations to any holder of notes upon the written request of that holder.

## **Reports**

The indenture provides that any documents or reports that we are required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act (excluding any such information, documents or reports or portions thereof, subject to confidential treatment and any correspondence with the SEC) must be filed by us with the trustee within 15 days after the same are required to be filed with the SEC (giving effect to any grace period provided by Rule 12b-25 under the Exchange Act). Documents filed by us with the SEC via the EDGAR system will be deemed to be filed with the trustee as of the time such documents are filed via EDGAR, it being understood that the trustee shall not be responsible for determining whether such filings have been made.

Delivery of such reports, information and documents to the trustee is for informational purposes only and the trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including our compliance with any of our covenants under the indenture (as to which

the trustee is entitled to rely exclusively on officers' certificates).

**Trustee**

Wells Fargo Bank, National Association is the trustee, security registrar, paying agent, and conversion agent. Wells Fargo Bank, National Association, in each of its capacities, including without limitation as trustee,

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security registrar, paying agent, and conversion agent, assumes no responsibility for the accuracy or completeness of the information concerning us or our affiliates or any other party contained in this document or the related documents or for any failure by us or any other party to disclose events that may have occurred and may affect the significance or accuracy of such information.

Wells Fargo Bank, National Association and/or its affiliates has engaged in, and may in the future engage in, banking and other commercial dealings with us in the ordinary course of business. It receives customary fees and commissions for these services.

The trustee (including in its capacities as conversion agent, paying agent or registrar) shall have no responsibility to determine the sale price, the trading price, any settlement amount, the conversion rate or whether any adjustments to the conversion rate are required. The trustee (including in its capacities as conversion agent, paying agent or registrar) shall have no obligation to make any calculation or to determine whether the notes may be surrendered for conversion, or to notify us, DTC or any holders of the notes if the notes have become convertible. The trustee in any of its capacities shall not be responsible for determining whether any fundamental change or make-whole fundamental change has occurred and whether any fundamental change repurchase notice or conversion rate adjustment with respect to the notes is required.

## **Governing Law**

The indenture provides that it and the notes, and any claim, controversy or dispute arising under or related to the indenture or the notes, will be governed by and construed in accordance with the laws of the State of New York (without regard to the conflicts of laws principles thereof). The indenture further provides that we and Wells Fargo Bank, National Association, as trustee, waive any right to a trial by jury in any claim, controversy or dispute arising under or related to the indenture, the notes or the transactions contemplated thereby, to the fullest extent permitted by law.

## **Book-Entry, Settlement and Clearance**

### ***The Global Notes***

The notes will be initially issued in the form of one or more registered notes in global form, without interest coupons (the *global notes* ). Upon issuance, each of the global notes will be deposited with the trustee as custodian for DTC and registered in the name of a nominee of DTC.

Ownership of beneficial interests in a global note will be limited to persons who have accounts with DTC ( *DTC participants* ) or persons who hold interests through DTC participants. We expect that under procedures established by DTC:

upon deposit of a global note with DTC's custodian, DTC will credit portions of the principal amount of the global note to the accounts of the DTC participants designated by the underwriters; and

ownership of beneficial interests in a global note will be shown on, and transfer of ownership of those interests will be effected only through, records maintained by DTC (with respect to interests of DTC participants) and the records of DTC participants (with respect to other owners of beneficial interests in the

global note).

Beneficial interests in global notes may not be exchanged for notes in physical, certificated form except in the limited circumstances described below.

***Book-Entry Procedures for the Global Notes***

All interests in the global notes will be subject to the operations and procedures of DTC. We provide the following summary of those operations and procedures solely for the convenience of investors. The operations and procedures of DTC are controlled by that settlement system and may be changed at any time. Neither we nor the underwriters are responsible for those operations or procedures.

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DTC has advised us that it is:

a limited purpose trust company organized under the laws of the State of New York;

a banking organization within the meaning of the New York State Banking Law;

a member of the Federal Reserve System;

a clearing corporation within the meaning of the Uniform Commercial Code, as adopted by the State of New York; and

a clearing agency registered under Section 17A of the Exchange Act.

DTC was created to hold securities for its participants and to facilitate the clearance and settlement of securities transactions between its participants through electronic book-entry changes to the accounts of its participants. DTC's participants include securities brokers and dealers, including the underwriters; banks and trust companies; clearing corporations and other organizations. Indirect access to DTC's system is also available to others such as banks, brokers, dealers and trust companies; these indirect participants clear through or maintain a custodial relationship with a DTC participant, either directly or indirectly. Investors who are not DTC participants may beneficially own securities held by or on behalf of DTC only through DTC participants or indirect participants in DTC.

So long as DTC's nominee is the registered owner of a global note, that nominee will be considered the sole owner or holder of the notes represented by that global note for all purposes under the indenture. Except as provided below, owners of beneficial interests in a global note:

will not be entitled to have notes represented by the global note registered in their names;

will not receive or be entitled to receive physical, certificated notes; and

will not be considered the owners or holders of the notes under the indenture for any purpose, including with respect to delivery of notices or the giving of any direction, instruction or approval to the trustee under the indenture.

As a result, each investor who owns a beneficial interest in a global note must rely on the procedures of DTC to exercise any rights of a holder of notes under the indenture (and, if the investor is not a participant or an indirect participant in DTC, on the procedures of the DTC participant through which the investor owns its interest).

Payments of principal and interest with respect to the notes represented by a global note will be made by the trustee to DTC's nominee as the registered holder of the global note. Neither we nor the trustee will have any responsibility or liability for the payment of amounts to owners of beneficial interests in a global note, for any aspect of the records

relating to or payments made on account of those interests by DTC, or for maintaining, supervising or reviewing any records of DTC relating to those interests.

Payments by participants and indirect participants in DTC to the owners of beneficial interests in a global note will be governed by standing instructions and customary industry practice and will be the responsibility of those participants or indirect participants and DTC.

Transfers between participants in DTC will be effected under DTC's procedures and will be settled in same-day funds.

***Certificated Notes***

Notes in physical, certificated form will be issued and delivered to each person that DTC identifies as a beneficial owner of the related notes only if:

DTC notifies us at any time that it is unwilling or unable to continue as depository for the global notes and a successor depository is not appointed within 90 days;

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DTC ceases to be registered as a clearing agency under the Exchange Act and a successor depository is not appointed within 90 days; or

an event of default with respect to the notes has occurred and is continuing and such beneficial owner requests that its notes be issued in physical, certificated form.

In connection with any proposed exchange of a certificated note for a global note, we or DTC shall be required to provide or cause to be provided to the trustee all information necessary to allow the trustee to comply with any applicable tax reporting obligations, including without limitation any cost basis reporting obligations under Internal Revenue Code Section 6045. The trustee may rely on information provided to it and shall have no responsibility to verify or ensure the accuracy of such information.

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**MATERIAL U.S. FEDERAL INCOME TAX CONSIDERATIONS**

The discussion set forth below, which deals with the taxation of the notes as well as of the conversion of the notes into our common stock and ownership and disposition of our common stock, does not address all aspects of U.S. federal income taxation that may be relevant to a particular purchaser of the notes in light of his or her personal investment circumstances or to certain types of purchasers subject to special tax rules (including financial institutions, insurance companies, broker-dealers and, except to the limited extent discussed below, tax-exempt entities and foreign taxpayers) and it does not discuss any aspects of state, local, or foreign country tax law. This discussion assumes that you acquire the notes in the initial offering for cash at their issue price, within the meaning of Section 1273 of the Code (*i.e.*, the first price at which a substantial amount of the notes is sold to purchasers other than bond houses, brokers or similar persons or organizations acting in the capacity of underwriters, placement agents or wholesalers) and that you hold the notes as a capital asset (generally, property held for investment) under the Code. This summary is for general information only and is not tax advice.

The information in this summary is based upon current law, including the Code, existing Treasury Department regulations, revenue rulings, revenue procedures, proposed regulations and case law, all of which are subject to change both prospectively or retroactively. Moreover, relevant laws or other legal authorities may change in a manner that could adversely affect the tax considerations contained in this discussion.

**You are urged to consult your tax advisors regarding the specific tax consequences to you of:**

the acquisition, ownership, and/or sale, conversion or other disposition of the notes or common stock, including any U.S. federal, state, local, foreign, and other tax consequences; and

potential changes in the applicable tax laws and regulations described below.

**Taxation of Our Company**

We elected to be taxed as a REIT under the federal income tax laws effective for our initial taxable year ended on December 31, 2005. We believe that, commencing with such taxable year, we have been organized and operated in such a manner so as to qualify for taxation as a REIT under the federal income tax laws, and we intend to continue to operate in such a manner, but no assurances can be given that we have qualified or will continue to operate in a manner so as to qualify or remain qualified as a REIT. This section discusses the laws governing the federal income tax treatment of a REIT and its stockholders. These laws are highly technical and complex.

We believe that we have been organized and operated in a manner that will allow us to qualify for taxation as a REIT under the Code, and we intend to continue to be organized and operated in such a manner. Qualification and taxation as a REIT depends on our ability to meet, on a continuing basis, through actual operating results, distribution levels, diversity of stock ownership, and various qualification requirements imposed upon REITs by the Code and the Treasury regulations issued thereunder, including requirements relating to the nature and composition of our assets and income. Our ability to comply with the REIT asset requirements also depends, in part, upon the fair market values of assets that we own directly or indirectly. Such values may not be susceptible to a precise determination. For a discussion of the federal income tax consequences of our failure to qualify as a REIT, see Failure to Qualify.

If we qualify as a REIT, we generally will not be subject to federal income tax on our net taxable income that we distribute currently to our stockholders, but taxable income generated by all of our domestic taxable REIT

subsidiaries, or TRSs, will be subject to regular corporate income tax. However, our stockholders will generally be taxed on dividends that they receive at ordinary income rates unless such dividends are designated by us as capital gain dividends, return of capital or qualified dividend income. This differs from non-REIT C corporations, which generally are subject to federal corporate income taxes but whose individual and certain

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non-corporate trust and estate stockholders are generally taxed on dividends they receive at a maximum rate of 20% on qualified dividend income, and whose corporate stockholders generally receive the benefits of a dividends received deduction that substantially reduces the effective rate that they pay on such dividends. In general, income earned by a REIT and distributed to its stockholders will be subject to less federal income taxation than if such income were earned by a non-REIT C corporation, subjected to corporate income tax, and then distributed and taxed to stockholders.

While we generally are not subject to corporate income taxes on income that we distribute currently to our stockholders, we will be subject to federal tax in the following circumstances:

We will pay federal income tax on taxable income, including net capital gain, that we do not distribute to our stockholders during, or within a specified time period after, the calendar year in which the income is earned.

We may be subject to the alternative minimum tax on any items of tax preference that we do not distribute or allocate to our stockholders.

We will pay income tax at the highest corporate rate on:

net income from the sale or other disposition of property acquired through foreclosure, or foreclosure property, that we hold primarily for sale to customers in the ordinary course of business, and

other non-qualifying income from foreclosure property.

We will pay a 100% tax on net income earned on sales or other dispositions of property, other than foreclosure property, that we hold primarily for sale to customers in the ordinary course of business.

If we fail to satisfy the 75% gross income test or the 95% gross income test due to reasonable cause and not willful neglect, as described below under Requirements for Qualification Gross Income Tests, and nonetheless continue to qualify as a REIT, we will pay a 100% tax on the amount by which we fail the 75% gross income test or the 95% gross income test, multiplied, in either case, by a fraction intended to reflect our profitability.

In the event of a failure of any of the asset tests (other than certain de minimis failures of the 5% and 10% asset tests), as described below under Requirements for Qualification Asset Tests, as long as the failure was due to reasonable cause and not to willful neglect and we dispose of the assets or otherwise comply with such asset tests within six months after the last day of the quarter, we will pay a tax equal to the greater of (i) \$50,000 or (ii) an amount determined by multiplying the highest federal income tax rate applicable to corporations by the net income from the nonqualifying assets during the period in which we failed to satisfy such asset tests.

If we fail to satisfy one or more requirements for REIT qualification, other than the gross income tests and the asset tests, and the violation is due to reasonable cause, we may retain our qualification as a REIT but will be required to pay a penalty of \$50,000 for each such failure.

If we fail to distribute during a calendar year at least the sum of:

85% of our REIT ordinary income for the year,

95% of our REIT capital gain net income for the year, and

any undistributed taxable income from earlier periods, we will pay a 4% nondeductible excise tax on the excess of the required distribution over the amount we actually distributed, plus any retained amounts on which income tax has been paid at the corporate level.

We may elect to retain and pay income tax on our net capital gain. In that case, a U.S. stockholder (as defined below) would be deemed to have paid tax on its proportionate share of our undistributed capital gain and include such proportionate share in income as long-term capital gains (to the extent that we

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make a timely designation of such gain to the stockholder) and would receive a credit for its proportionate share of the tax we paid or receive a refund to the extent the tax paid by us exceeds the U.S. stockholder's tax liability on the undistributed capital gains.

We will be subject to a 100% excise tax on transactions between us and a TRS that are not conducted on an arm's-length basis.

If we acquire any asset from a C corporation, or a corporation that generally is subject to full corporate-level tax, in a merger or other transaction in which we acquire a basis in the asset that is determined by reference either to the C corporation's basis in the asset or to another asset, we will pay tax at the highest regular corporate rate applicable if we recognize gain on the sale or disposition of the asset during the five-year period after we acquire the asset. The amount of gain on which we will pay tax is the lesser of:

the amount of gain that we recognize at the time of the sale or disposition, and

the amount of gain that we would have recognized if we had sold the asset at the time we acquired it, assuming that the C corporation will not elect in lieu of this treatment to an immediate tax when the asset is acquired.

If we own a residual interest in a real estate mortgage investment conduit, or REMIC, we will be taxable at the highest corporate rate on the portion of any excess inclusion income that we derive from the REMIC residual interests allocable to stockholders that are disqualified organizations. Similar rules will also apply if we own an equity interest in a taxable mortgage pool. To the extent that we own a REMIC residual interest or a taxable mortgage pool through a TRS, we will not be subject to this tax. For a discussion of excess inclusion income, see Requirements for Qualification Taxable Mortgage Pools. A disqualified organization includes:

The United States;

Any state or political subdivision of the United States;

Any foreign government;

Any international organization;

any agency or instrumentality of any of the foregoing;



any other tax-exempt organization, other than a farmer's cooperative described in section 521 of the Code, that is exempt both from income taxation and from taxation under the unrelated business taxable income provisions of the Code; and

any rural electrical or telephone cooperative.

We do not currently hold, or intend to hold, REMIC residual interests nor do we currently own residual interests in taxable mortgage pools.

In addition, notwithstanding our qualification as a REIT, we may also have to pay certain state and local income taxes, because not all states and localities treat REITs in the same manner that they are treated for federal income tax purposes. Moreover, as further described below, any domestic TRS in which we own an interest, will be subject to federal corporate income tax on its taxable income.

***Requirements for Qualification***

A REIT is a corporation, trust, or association that meets each of the following requirements:

It is managed by one or more trustees or directors.

Its beneficial ownership is evidenced by transferable shares, or by transferable certificates of beneficial interest.

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It would be taxable as a domestic corporation, but for the REIT provisions of the federal income tax laws.

It is neither a financial institution nor an insurance company subject to special provisions of the federal income tax laws.

At least 100 persons are beneficial owners of its shares or ownership certificates.

Not more than 50% in value of its outstanding shares or ownership certificates is owned, directly or indirectly, by five or fewer individuals, which the federal income tax laws define to include certain entities, during the last half of any taxable year.

It elects to be a REIT, or has made such an election for a previous taxable year, which has not been revoked or terminated, and satisfies all filing and other administrative requirements established by the IRS that must be met to elect and maintain REIT status.

It meets certain other qualification tests, described below, regarding the nature of its income and assets. We must meet the first four requirements during our entire taxable year and must meet the fifth requirement during at least 335 days of a taxable year of 12 months, or during a proportionate part of a taxable year of less than 12 months. If we comply with regulatory rules pursuant to which we are required to send annual letters to our stockholders requesting information regarding the actual ownership of our stock, and we do not know, or exercising reasonable diligence would not have known, whether we failed to meet the sixth requirement, we will be treated as having met the requirement. For purposes of determining share ownership under the sixth requirement, an individual generally includes a supplemental unemployment compensation benefits plan, a private foundation, or a portion of a trust permanently set aside or used exclusively for charitable purposes. An individual, however, generally does not include a trust that is a qualified employee pension or profit sharing trust under the federal income tax laws, and beneficiaries of such a trust will be treated as holding our stock in proportion to their actuarial interests in the trust for purposes of the sixth requirement.

We believe that we have issued sufficient common stock with sufficient diversity of ownership to satisfy the fifth and sixth requirements. In addition, our charter restricts the ownership and transfer of our stock so that we should continue to satisfy these requirements. In addition, we must satisfy all relevant filing and other administrative requirements established by the IRS that must be met to elect and maintain our REIT qualification, use a calendar year for federal income tax purposes, and comply with the record keeping requirements of the Code and regulations promulgated thereunder which we have satisfied or intend to satisfy.

*Qualified REIT Subsidiaries.* A corporation that is a qualified REIT subsidiary is not treated as a corporation separate from its parent REIT. All assets, liabilities, and items of income, deduction and credit of a qualified REIT subsidiary are treated as assets, liabilities, and items of income, deduction and credit of the REIT. A qualified REIT subsidiary is a corporation, other than a TRS, all of the capital stock of which is owned by the REIT. Thus, in applying the requirements described herein, any qualified REIT subsidiary that we own will be ignored, and all assets, liabilities, and items of income, deduction, and credit of such subsidiary will be treated as our assets, liabilities, and items of income, deduction and credit.

*Other Disregarded Entities and Partnerships.* An unincorporated domestic entity, such as a partnership or limited liability company, that has a single owner, generally is not treated as an entity separate from its parent for federal income tax purposes. An unincorporated domestic entity with two or more owners generally is treated as a partnership for federal income tax purposes. In the case of a REIT that is a partner in a partnership that has other partners, the REIT is treated as owning its proportionate share of the assets of the partnership and as earning its allocable share of the gross income of the partnership for purposes of the applicable REIT qualification tests. For purposes of the 10% value test (described in Asset Tests ), our proportionate share is based on our proportionate interest in the equity interests and certain debt securities issued by the partnership. For all of the other asset and income tests, our proportionate share is based on our proportionate interest in the

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capital interests in the partnership. Our proportionate share of the assets, liabilities and items of income of any partnership, joint venture, or limited liability company that is treated as a partnership for federal income tax purposes in which we acquire an interest, directly or indirectly, will be treated as our assets and gross income for purposes of applying the various REIT qualification requirements.

*Taxable REIT Subsidiaries.* A REIT is permitted to own up to 100% of the stock of one or more TRSs. A TRS is generally a fully taxable corporation that may earn income that would not be qualifying income if earned directly by the parent REIT. The subsidiary and the REIT must jointly elect to treat the subsidiary as a TRS. A corporation of which a TRS directly or indirectly owns more than 35% of the voting power or value of the stock will automatically be treated as a TRS. However, an entity will not qualify as a TRS if it directly or indirectly operates or manages a lodging or health care facility or, generally, provides to another person, under a franchise, license or otherwise, rights to any brand name under which any lodging facility or health care facility is operated. Overall, no more than 25% (20% for years beginning after December 31, 2017) of the value of a REIT's assets may consist of stock or securities of one or more TRSs.

TRSs are subject to federal income tax, and state and local income tax where applicable, on their taxable income. To the extent that a TRS is required to pay taxes, it will have less cash available for distribution to us. If our TRSs pay dividends to us, then the dividends we pay to our stockholders who are taxed as individuals, up to the amount of dividends we receive from such TRSs, will generally be eligible to be taxed at the reduced rate applicable to qualified dividend income. See Taxation of Taxable U.S. Stockholders. The decision as to whether our TRSs will distribute their after-tax income to us will be made on a periodic basis, subject to our compliance with the 25% (20% for years beginning after December 31, 2017) asset test with respect to TRSs.

We have made a TRS election with respect to Apidos CDO I, Ltd., or Apidos CDO I, Apidos CDO III, Ltd., or Apidos CDO III, Apidos Cinco CDO, Ltd., or Apidos Cinco CDO, Harvest CLO VII Ltd., or Harvest VII, Resource TRS, Inc., or Resource TRS, Resource TRS II, Inc., Resource TRS III, Inc., Resource TRS IV, Inc., Sportsmen's Preferred SPE, LLC, Westward Look SPE, LLC, Apidos CLO VIII, Ltd., or Apidos CLO VIII, Resource TRS V, Inc., Whitney CLO I, Ltd., Harvest X Investor, Ltd., or Harvest X, Harvest X CLO, Ltd., or Harvest X CLO, Long Term Care Conversion, Inc., RCC Residential Inc., Harvest CLO VIII Ltd., or Harvest VIII, RCC Residential Portfolio TRS, Inc., Harvest CLO XV Designated Activity Company, or Harvest XV CLO, and we may in the future make TRS elections with respect to certain entities that issue equity interests to us pursuant to CDO securitizations. The Code and the Treasury regulations promulgated thereunder provide a specific exemption from federal income tax to non-U.S. corporations that restrict their activities in the United States to trading in stock and securities (or any activity closely related thereto) for their own account, whether such trading (or such other activity) is conducted by the corporation or its employees through a resident broker, commission agent, custodian or other agent. Certain U.S. stockholders of such non-U.S. corporations are required to include in their income currently their proportionate share of the earnings of such a corporation, whether or not such earnings are distributed. Apidos CDO I, Apidos CDO III, Apidos Cinco CDO, Harvest VII, Harvest VIII, Apidos CLO VIII, Whitney CLO I, Harvest X, Harvest X CLO, Harvest XV CLO and, we expect, certain of the additional CDO vehicles in which we may invest and with which we will jointly make a TRS election, are or will be organized as Cayman Islands companies and either rely on such exemption or otherwise operate in a manner so that are not be subject to federal income tax on their net income. Therefore, despite such contemplated entities' anticipated status as TRSs, such entities generally are not subject to federal corporate income tax on their earnings. However, we are required to include in our income, on a current basis, the earnings of these TRSs. This could affect our ability to comply with the REIT income tests and distribution requirements. On June 30, 2016, Resource TRS Inc., Resource TRS II, Inc., Resource TRS III, Inc., Resource TRS IV, Inc., and Resource TRS V, Inc. converted to single member limited liability companies under RCC Residential Portfolio TRS, Inc. On the same day, Long Term Care Conversion, Inc. and Resource TRS II, Inc. merged with and into RCC Residential Portfolio TRS, Inc., with RCC Residential Portfolio TRS, Inc. as the surviving corporation. On September 30, 2016, RCC

Residential, Inc. merged with and into RCC Residential Portfolio, with RCC Residential Portfolio as the surviving corporation. See Gross Income Tests and Distribution Requirements.

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The TRS rules limit the deductibility of interest paid or accrued by a TRS to its parent REIT to assure that the TRS is subject to an appropriate level of corporate taxation. Further, the rules impose a 100% excise tax on transactions between a TRS and its parent REIT or the REIT's tenants that are not conducted on an arm's-length basis.

*Taxable Mortgage Pools.* An entity, or a portion of an entity, may be classified as a taxable mortgage pool under the Code if:

substantially all of its assets consist of debt obligations or interests in debt obligations;

more than 50% of those debt obligations are real estate mortgage loans or interests in real estate mortgage loans as of specified testing dates;

the entity has issued debt obligations that have two or more maturities; and

the payments required to be made by the entity on its debt obligations bear a relationship to the payments to be received by the entity on the debt obligations that it holds as assets.

Under the Treasury regulations, if less than 80% of the assets of an entity (or a portion of an entity) consists of debt obligations, these debt obligations are considered not to comprise substantially all of its assets, and therefore the entity would not be treated as a taxable mortgage pool.

We have made and may continue to in the future to make investments or enter into financing and securitization transactions that give rise to us being considered to own an interest in one or more taxable mortgage pools. Where an entity, or a portion of an entity, is classified as a taxable mortgage pool, it is generally treated as a taxable corporation for federal income tax purposes. However, special rules apply to a REIT, a portion of a REIT, or a qualified REIT subsidiary that is a taxable mortgage pool. The portion of the REIT's assets, held directly or through a qualified REIT subsidiary that qualifies as a taxable mortgage pool is treated as a qualified REIT subsidiary that is not subject to corporate income tax, and the taxable mortgage pool classification does not affect the tax qualification of the REIT. Rather, the consequences of the taxable mortgage pool classification are generally, except as described below, limited to the tax liability on the REIT and the REIT's stockholders. The Treasury Department has yet to issue regulations governing the tax treatment of the stockholders of a REIT that owns an interest in a taxable mortgage pool.

A portion of our income from a taxable mortgage pool arrangement, which might be non-cash accrued income, or phantom taxable income, could be treated as excess inclusion income and allocated to our stockholders. Excess inclusion income is an amount, with respect to any calendar quarter, equal to the excess, if any, of (i) income allocable to the holder of a REMIC residual interest or taxable mortgage pool interest over (ii) the sum of an amount for each day in the calendar quarter equal to its ratable portion of the product of (a) the adjusted issue price of the interest at the beginning of the quarter multiplied by (b) 120% of the long-term federal rate (determined on the basis of compounding at the close of each calendar quarter and properly adjusted for the length of such quarter). This non-cash or phantom income would be subject to the distribution requirements that apply to us and could therefore adversely affect our liquidity. See Distribution Requirements.

Our excess inclusion income would be allocated among our stockholders in proportion to dividends paid. A stockholder's share of excess inclusion income (i) would not be allowed to be offset by any net operating losses

otherwise available to the stockholder, (ii) would be subject to tax as unrelated business taxable income in the hands of most types of stockholders that are otherwise generally exempt from federal income tax, (iii) would result in the application of federal income tax withholding at the maximum rate (30%), without reduction for any otherwise applicable income tax treaty, to the extent allocable to most types of foreign stockholders and (iv) in the case of a stockholder that is a REIT, a regulated investment company or common trust fund, would be considered excess inclusion income of such entity.

Excess inclusion income is taxable (at the highest corporate tax rates) to us, rather than our stockholders, to the extent allocable to our shares held in record name by disqualified organizations (generally, tax-exempt

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entities not subject to unrelated business income tax, including governmental organizations). Nominees who hold our shares on behalf of disqualified organizations are subject to this tax on the portion of our excess inclusion income allocable to the capital stock held on behalf of disqualified organizations. A regulated investment company or other pass-through entity owning our capital stock in record name will be subject to tax at the highest corporate tax rate on any excess inclusion income allocated to their owners that are disqualified organizations. In addition, we will withhold on dividends paid to non-U.S. stockholders (as defined below) with respect to the excess inclusion portion of dividends paid to such stockholders without regard to any treaty exception or reduction in tax rate.

**The manner in which excess inclusion income would be allocated among shares of different classes of stock is not clear under current law. Tax-exempt investors, regulated investment company or REIT investors, foreign investors and taxpayers with net operating losses should consult their tax advisors with respect to excess inclusion income.**

If we own less than 100% of the ownership interests in a subsidiary that is a taxable mortgage pool, or if we made a TRS election with respect to a subsidiary that is a taxable mortgage pool, the foregoing rules would not apply. Rather, the subsidiary would be treated as a corporation for federal income tax purposes, and would potentially be subject to corporate income tax. In addition, this characterization would alter our REIT income and asset test calculations and could adversely affect our compliance with those requirements. We currently do not have any subsidiary in which we own some, but less than all, of the ownership interests that is or will become a taxable mortgage pool and for which we have not made TRS elections. We intend to monitor the structure of any taxable mortgage pools in which we have an interest to ensure that they will not adversely affect our qualification as a REIT.

## ***Gross Income Tests***

We must satisfy two gross income tests annually to maintain our qualification as a REIT. First, at least 75% of our gross income for each taxable year must consist of defined types of income that we derive, directly or indirectly, from investments relating to real property or mortgage loans on real property or qualified temporary investment income. Qualifying income for purposes of the 75% gross income test generally includes:

rents from real property;

interest on debt secured by a mortgage on real property, or on interests in real property;

dividends or other distributions on, and gain from the sale of, shares in other REITs;

gain from the sale of real estate assets;

income derived from a REMIC in proportion to the real estate assets held by the REMIC, unless at least 95% of the REMIC's assets are real estate assets, in which case all of the income derived from the REMIC; and



income derived from the temporary investment of new capital that is attributable to the issuance of our stock or a public offering of our debt with a maturity date of at least five years and that we receive during the one-year period beginning on the date on which we received such new capital.

Second, in general, at least 95% of our gross income for each taxable year must consist of income that is qualifying income for purposes of the 75% gross income test, other types of interest and dividends, gain from the sale or disposition of stock or securities or any combination of these. Cancellation of indebtedness income and gross income from our sale of property that we hold primarily for sale to customers in the ordinary course of business are excluded from both the numerator and the denominator in both income tests. In addition, income and gain from certain hedging transactions, as defined in Hedging Transactions, that we enter into in the normal course of our business to hedge indebtedness incurred or to be incurred to acquire or carry real estate assets or to manage risk of currency fluctuations with respect to certain items of income or gain and that are

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clearly and timely identified as such will be excluded from both the numerator and the denominator for purposes of the gross income tests (but for hedges entered into prior to July 30, 2008, the rules applicable to hedging transactions were more restrictive). We will monitor the amount of our non-qualifying income and we will manage our investment portfolio to comply at all times with the gross income tests. The following paragraphs discuss the specific application of the gross income tests to us.

*Interest.* The term interest, as defined for purposes of both gross income tests, generally excludes any amount that is based in whole or in part on the income or profits of any person. However, interest generally includes the following:

an amount that is based on a fixed percentage or percentages of receipts or sales; and

an amount that is based on the income or profits of a debtor, as long as the debtor derives substantially all of its income from the real property securing the debt from leasing substantially all of its interest in the property, and only to the extent that the amounts received by the debtor would be qualifying rents from real property if received directly by a REIT.

If a loan contains a provision that entitles a REIT to a percentage of the borrower's gain upon the sale of the real property securing the loan or a percentage of the appreciation in the property's value as of a specific date, income attributable to that loan provision will be treated as gain from the sale of the property securing the loan, which generally is qualifying income for purposes of both gross income tests, provided that the property is not held as inventory or dealer property.

In the case of real estate mortgage loans secured by both real and personal property, if the fair market value of such personal property does not exceed 15% of the total fair market value of all property securing the loan, then the personal property securing the loan will be treated as real property for purposes of determining whether the mortgage is qualifying under the 75% asset test and interest income that qualifies for purposes of the 75% gross income test.

Interest on debt secured by a mortgage on real property or on interests in real property, including, for this purpose, discount points, prepayment penalties, loan assumption fees, and late payment charges that are not compensation for services, generally is qualifying income for purposes of the 75% gross income test. However, if the highest principal amount of a loan outstanding during a taxable year exceeds (1) the fair market value of the real property securing the loan as of the date the REIT agreed to originate or acquire the loan or (2) as discussed further below, in the event of a significant modification, the date we modified the loan, a portion of the interest income from such loan will not be qualifying income for purposes of the 75% gross income test, but will be qualifying income for purposes of the 95% gross income test. The portion of the interest income that will not be qualifying income for purposes of the 75% gross income test will be equal to the interest income multiplied by the proportion the amount by which the loan exceeds the value of the real estate that is security for the loan bears to the outstanding principal amount of the loan.

The interest, original issue discount, and market discount income that we receive from our mortgage-related assets generally, including B notes, will be qualifying income for purposes of both gross income tests. We expect that some of our loans, which we have called mezzanine loans, will not be secured by a direct interest in real property. Instead, such loans will be secured by ownership interests in a non-corporate entity owning real property. In Revenue Procedure 2003-65, the IRS established a safe harbor under which interest from loans secured by a first priority security interest in ownership interests in a partnership or limited liability company owning real property will be treated as qualifying income for both the 75% and 95% gross income tests, and the loans will be treated as qualifying assets for the purposes of the 75% asset test, provided several requirements are satisfied. Although the Revenue

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Procedure provides a safe harbor on which taxpayers may rely, it does not prescribe rules of substantive law. In situations where a loan is secured by interests in non-corporate entities but not all of the requirements of the safe harbor are met, the interest income from the loan will be qualifying income for purposes of the 95% gross income test, but potentially will not be qualifying income for purposes of the 75%

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gross income test. We have not limited ourselves to acquiring mezzanine loans that comply with all requirements of the safe harbor. Based on advice of counsel, we believe that substantially all of our mezzanine loans should be treated as qualifying assets notwithstanding the failures to comply with all of the requirements of the safe harbor and we will not treat any future mezzanine loans as qualifying assets absent such advice. Nevertheless, in light of the sparse guidance regarding mezzanine loans that do not meet with foregoing safe harbor, it is possible that the IRS could disagree and challenge the treatment of these loans as qualifying assets and/or our qualification as a REIT. In addition, certain investments characterized by us as debt for federal income tax purposes could, if successfully challenged and determined to represent equity for federal income tax purposes, result in us failing to meet the REIT gross income tests; the result of which could cause us to fail to qualify as a REIT or be subject to a penalty tax. Finally, some of our loans will not be secured by mortgages on real property or interests in real property. Our interest income from those loans will be qualifying income for purposes of the 95% gross income test, but not the 75% gross income test. Further, as discussed above, if the fair market value of the real estate securing any of our loans is less than the principal amount of the loan, a portion of the income from that loan will be qualifying income for purposes of the 95% gross income test but not the 75% gross income test.

We hold certain participation interests, including B Notes, in mortgage loans and mezzanine loans. Such interests in an underlying loan are created by virtue of a participation or similar agreement to which the originator of the loan is a party, along with one or more participants. The borrower on the underlying loan is typically not a party to the participation agreement. The performance of this investment depends upon the performance of the underlying loan, and if the underlying borrower defaults, the participant typically has no recourse against the originator of the loan. The originator often retains a senior position in the underlying loan, and grants junior participations which absorb losses first in the event of a default by the borrower. We believe that our participation interests qualify as real estate assets for purposes of the REIT asset tests described below, and that the interest that we derive from such investments will be treated as qualifying mortgage interest for purposes of the 75% income test. The appropriate treatment of participation interests for federal income tax purposes is not entirely certain, however, and no assurance can be given that the IRS will not challenge our treatment of our participation interests. In the event of a determination that such participation interests do not qualify as real estate assets, or that the income that we derive from such participation interests does not qualify as mortgage interest for purposes of the REIT asset and income tests, we could be subject to a penalty tax, or could fail to qualify as a REIT. See [Taxation of Our Company](#), [Requirements for Qualification, Tests and Failure to Qualify](#).

We have modified some of our loans by agreement with the borrowers and may modify in the future depending on economic conditions. If the amendments to an outstanding loan results in a significant modifications under the applicable Treasury regulations, the modified debt is generally treated for federal income tax purposes as a new debt instrument issued in exchange for the original loan. Long-standing REIT regulations might be read to require us to redetermine whether the amount of the loan exceeds the fair market value of the real property securing the loan as of the date of such a significant modification for purposes of apportioning interest under the gross income tests. Because modifications often occur in distressed scenarios, this retesting of the new debt instrument for REIT qualification purposes may result in a portion of a loan that was a qualifying real estate asset prior to modification to be treated as a non-qualifying security that produces non-qualifying income for the 75% income test, which could result in loss of our REIT qualification. The IRS issued Revenue Procedure 2011-16, which was recently modified and superseded by Revenue Procedure 2014-51, under which we would not be required to revalue the real estate underlying the new debt instrument for purposes of the 75% gross income test and the REIT asset tests if the modification occurred by default or certain other conditions apply.

In addition, although not currently contemplated, in the event that we invest in a mortgage that is secured by both real property and other property, and the loan is not fully secured by real property, we would be required to apportion our annual interest income to the real property security based on a fraction, the numerator of which is the value of the real

property securing the loan, determined when we commit to acquire the loan, and the denominator of which is the highest principal amount of the loan during the year. Revenue Procedure 2014-51

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interprets the principal amount of the loan to be the face amount of the loan, despite the Code requiring taxpayers to treat any market discount, that is the difference between the purchase price of the loan and its face amount, for all purposes (other than certain withholding and information reporting purposes) as interest rather than principal. Any mortgage loan that we invest in that is not fully secured by real property may therefore be subject to the interest apportionment rules and the position taken in Revenue Procedure 2014-51 as described above.

*Fee Income.* We may receive various fees in connection with our operations. The fees will be qualifying income for purposes of both the 75% and 95% gross income tests if they are received in consideration for entering into an agreement to make a loan secured by mortgages on real property and the fees are not determined by income and profits. Other fees for services are not qualifying income for purposes of either gross income test. Any fees earned by Resource TRS and any other TRS, will not be included in our gross income for purposes of the gross income tests.

*Dividends.* Our share of any dividends received from any corporation (including any TRS, but excluding any REIT) in which we own an equity interest will qualify for purposes of the 95% gross income test but not for purposes of the 75% gross income test. Our share of any dividends received from any other REIT in which we own an equity interest will be qualifying income for purposes of both gross income tests.

We treat certain income inclusions received with respect to our current and contemplated equity investments in foreign TRSs, such as Apidos CDO I, Apidos CDO III, Apidos Cinco CDO, Harvest VII, Harvest VIII and Harvest XV CLO as qualifying income for purposes of the 95% gross income test but not the 75% gross income test. The provisions that set forth what income is qualifying income for purposes of the 95% gross income test provide that gross income derived from dividends, interest and certain other enumerated classes of passive income qualify for purposes of the 95% gross income test. Income inclusions from equity investments in our foreign TRSs are technically neither dividends nor any of the other enumerated categories of income specified in the 95% gross income test for federal income tax purposes, and there is no clear precedent with respect to the qualification of such income for purposes of the REIT gross income tests. However, based on advice of counsel, we treat such income inclusions, to the extent distributed by a foreign TRS in the year accrued, as qualifying income for purposes of the 95% gross income test. The IRS has issued private letter rulings considering situations in which a REIT had to include income from foreign corporations. The IRS has ruled that such income would qualify for the 95% gross income test. Since private letter rulings only protect the recipient of the letter, it is still possible that, because this income does not meet the literal requirements of the REIT provisions, the IRS could successfully take the position that such income is not qualifying income. In the event that such income was determined not to qualify for the 95% gross income test, we would be subject to a penalty tax with respect to such income to the extent it and other nonqualifying income exceeds 5% of our gross income and/or we could fail to qualify as a REIT. In any event, as noted above, such income does not constitute qualifying income satisfying the 75% gross income test. The amount of such income could be substantial, and a decline in the amount of income from qualifying sources relative to income from such TRSs could jeopardize our compliance with the 75% gross income test, and in the event determined to be non-qualifying income for the 95% gross income test such income from TRSs could result in our failing to qualify as a REIT or having to pay a substantial penalty tax.

*Rents from Real Property.* We have acquired real property through foreclosure and may acquire additional real property or an interest therein in the future. To the extent that we acquire real property or an interest therein, rents we receive will qualify as rents from real property in satisfying the gross income requirements for a REIT described above only if the following conditions are met:

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First, the amount of rent must not be based in whole or in part on the income or profits of any person. However, an amount received or accrued generally will not be excluded from rents from real property solely by reason of being based on fixed percentages of receipts or sales.

Second, rents we receive from a related party tenant will not qualify as rents from real property in satisfying the gross income tests unless the tenant is a TRS, at least 90% of the property is leased to

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unrelated tenants and the rent paid by the TRS is substantially comparable to the rent paid by the unrelated tenants for comparable space. A tenant is a related party tenant if the REIT, or an actual or constructive owner of 10% or more of the REIT, actually or constructively owns 10% or more of the tenant.

Third, if rent attributable to personal property, leased in connection with a lease of real property, is greater than 15% of the total rent received under the lease, then the portion of rent attributable to the personal property will not qualify as rents from real property.

Fourth, we generally must not operate or manage our real property or furnish or render services to our tenants, other than through an independent contractor who is adequately compensated and from whom we do not derive revenue. However, we may provide services directly to tenants if the services are usually or customarily rendered in connection with the rental of space for occupancy only and are not considered to be provided for the tenants' convenience. In addition, we may provide a minimal amount of non-customary services to the tenants of a property, other than through an independent contractor, as long as our income from the services does not exceed 1% of our income from the related property. Furthermore, we may own up to 100% of the stock of a TRS, which may provide customary and non-customary services to tenants without tainting its rental income from the related properties.

*Hedging Transactions and Foreign Currency Gains.* From time to time, we may enter into hedging transactions with respect to one or more of our assets or liabilities. Income and gain from a hedging transaction that is clearly identified as a hedging transaction as specified in the Code will not constitute gross income and thus will be exempt from the 95% gross income test and the 75% gross income test. The term hedging transaction as used above generally means any transaction entered into in the normal course of business primarily to manage risk of (1) interest rate changes or fluctuations with respect to borrowings made or to be made, or incurred or to be incurred, to acquire or carry real estate assets, or (2) currency fluctuations with respect to an item of qualifying income under the 75% or 95% gross income test. In addition, if we entered into a hedging transaction (i) to manage the risk of interest rate, price changes or currency fluctuations with respect to borrowings made or to be made or (ii) to manage the risk of currency fluctuations, and a portion of the hedged indebtedness or property is disposed of and in connection with such extinguishment or disposition we enter into a new clearly identified hedging transaction (a Counteracting Hedge), income from the applicable hedge and income from the Counteracting Hedge (including gain from the disposition of such Counteracting Hedge) will not be treated as gross income for purposes of the 95% and 75% gross income tests. We are required to clearly identify any such hedging transaction before the close of the day on which it was acquired, originated, or entered into. To the extent that we do not properly identify such transactions as hedges or hedge with other types of financial instruments, the income from those transactions will likely be treated as nonqualifying income for purposes of the gross income tests. We intend to structure any hedging transactions in a manner that does not jeopardize our qualification as a REIT. In addition, certain foreign currency gains will be excluded from gross income for purposes of one or both of the gross income tests.

*Prohibited Transactions.* A REIT will incur a 100% tax on the net income derived from any sale or other disposition of property, other than foreclosure property, that the REIT holds primarily for sale to customers in the ordinary course of a trade or business. We believe that none of our assets will be held primarily for sale to customers and that a sale of any of our assets will not be in the ordinary course of our business. Whether a REIT holds an asset primarily for sale to customers in the ordinary course of a trade or business depends, however, on the facts and circumstances in effect from time to time, including those related to a particular asset. Nevertheless, we will attempt to comply with the terms of safe-harbor provisions in the federal income tax laws prescribing when a sale of real property will not be characterized as a prohibited transaction. We cannot assure you however, that we can comply with the safe-harbor provisions or that we will avoid owning property that may be characterized as property that we hold primarily for sale



to customers in the ordinary course of a trade or business. To the extent necessary to avoid the prohibited transactions tax, we will conduct sales of our assets through a TRS.

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*Foreclosure Property.* We will be subject to tax at the maximum corporate rate on any income from foreclosure property, other than income that otherwise would be qualifying income for purposes of the 75% gross income test, less expenses directly connected with the production of that income. However, gross income from foreclosure property will qualify under the 75% and 95% gross income tests. Foreclosure property is any real property, including interests in real property, and any personal property incident to such real property:

that is acquired by a REIT as the result of the REIT having bid on such property at foreclosure, or having otherwise reduced such property to ownership or possession by agreement or process of law, after there was default or default was imminent on a lease of such property or on indebtedness that such property secured;

for which the related loan or lease was acquired by the REIT at a time when the default was not imminent or anticipated; and

for which the REIT makes a proper election to treat the property as foreclosure property.

However, a REIT will not be considered to have foreclosed on a property where the REIT takes control of the property as a mortgagee-in-possession and cannot receive any profit or sustain any loss except as a creditor of the mortgagor. Property generally ceases to be foreclosure property at the end of the third taxable year following the taxable year in which the REIT acquired the property, or longer if an extension is granted by the Secretary of the Treasury. This grace period terminates and foreclosure property ceases to be foreclosure property on the first day:

on which a lease is entered into for the property that, by its terms, will give rise to income that does not qualify for purposes of the 75% gross income test, or any amount is received or accrued, directly or indirectly, pursuant to a lease entered into on or after such day that will give rise to income that does not qualify for purposes of the 75% gross income test;

on which any construction takes place on the property, other than completion of a building or any other improvement, where more than 10% of the construction was completed before default became imminent; or

which is more than 90 days after the day on which the REIT acquired the property and the property is used in a trade or business which is conducted by the REIT, other than through an independent contractor from whom the REIT itself does not derive or receive any income.

*Failure to Satisfy Gross Income Tests.* If we fail to satisfy one or both of the gross income tests for any taxable year, we nevertheless may qualify as a REIT for that year if we qualify for relief under certain provisions of the federal income tax laws. Those relief provisions generally will be available if:

our failure to meet such tests is due to reasonable cause and not due to willful neglect; and

following such failure for any taxable year, a schedule of the sources of our income is filed in accordance with regulations prescribed by the Secretary of the Treasury.

It is not possible, however, to state whether in all circumstances we would be entitled to the benefit of these relief provisions. For example, if the IRS were to determine that we failed the 95% gross income test because income inclusions with respect to our equity investments in foreign TRSs that were distributed by the foreign TRSs during the year such income was accrued are not qualifying income for purposes of the 95% gross income test, or if such income caused us to fail the 75% gross income test, the IRS could conclude that our failure to satisfy the applicable gross income test was not due to reasonable cause. If these relief provisions are inapplicable to such failure, we will fail to qualify as a REIT. See Failure to Qualify. In addition, as discussed above in Taxation of Our Company, even if the relief provisions apply, we would incur a 100% tax on the gross income attributable to the amount by which we fail the 75% or 95% gross income test, multiplied, in either case, by a fraction intended to reflect our profitability.

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***Asset Tests***

To qualify as a REIT, we also must satisfy the following asset tests at the end of each quarter of each taxable year. First, at least 75% of the value of our total assets must consist of:

cash or cash items, including certain receivables;

government securities;

interests in real property, including leaseholds and options to acquire real property and leaseholds;

interests in mortgage loans secured by real property (including mortgages secured by both real and personal property if the value of such property does not exceed 15% of the total property securing the loan);

stock in other REITs;

debt instruments issued by publicly-traded REITs (not to exceed 25% of our assets unless secured by interests in real property);

investments in stock or debt instruments during the one-year period following our receipt of new capital that we raise through equity offerings or public offerings of debt with at least a five-year term; and

regular or residual interests in a REMIC.

However, if less than 95% of the assets of a REMIC consists of assets that are qualifying real estate-related assets under the federal income tax laws, determined as if we held such assets, we will be treated as holding directly our proportionate share of the assets of such REMIC.

Second, of our investments not included in the 75% asset class, the value of our interest in any one issuer's securities may not exceed 5% of the value of our total assets.

Third, of our investments not included in the 75% asset class, we may not own more than 10% of the voting power or value of any one issuer's outstanding securities.

Fourth, of our investments not included in the 75% asset class, no more than 25% (20% for years beginning after December 31, 2017) of the value of our total assets may consist of the securities of one or more TRSs.

Fifth, of our investments not included in the 75% asset class, no more than 25% of the value of our total assets may consist of securities other than those in the 75% asset class.

For purposes of the second, third and fifth asset tests, the term securities does not include stock in another REIT, equity or debt securities of a qualified REIT subsidiary or TRS, mortgage loans that constitute real estate assets, or equity interests in a partnership.

For purposes of the 10% value test, the term securities does not include:

Straight debt securities, which is defined as a written unconditional promise to pay on demand or on a specified date a sum certain in money if (i) the debt is not convertible, directly or indirectly, into stock, and (ii) the interest rate and interest payment dates are not contingent on profits, the borrower's discretion, or similar factors. Straight debt securities do not include any securities issued by a partnership or a corporation in which we or any controlled TRS (i.e., a TRS in which we own directly or indirectly more than 50% of the voting power or value of the stock) hold non- straight debt securities that have an aggregate value of more than 1% of the issuer's outstanding securities. However, straight debt securities include debt subject to the following contingencies:

a contingency relating to the time of payment of interest or principal, as long as either (i) there is no change to the effective yield of the debt obligation, other than a change to the annual yield that

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does not exceed the greater of 0.25% or 5% of the annual yield, or (ii) neither the aggregate issue price nor the aggregate face amount of the issuer's debt obligations held by us exceeds \$1 million and no more than 12 months of unaccrued interest on the debt obligations can be required to be prepaid; and

a contingency relating to the time or amount of payment upon a default or prepayment of a debt obligation, as long as the contingency is consistent with customary commercial practice.

Any loan to an individual or an estate.

Any section 467 rental agreement, other than an agreement with a related party tenant.

Any obligation to pay rents from real property.

Certain securities issued by governmental entities.

Any security issued by a REIT.

Any debt instrument issued by an entity treated as a partnership for federal income tax purposes to the extent of our interest as a partner in the partnership.

Any debt instrument issued by an entity treated as a partnership for federal income tax purposes not described above if at least 75% of the partnership's gross income, excluding income from prohibited transaction, is qualifying income for purposes of the 75% gross income test described above in Gross Income Tests.

As discussed above under Gross Income Tests, we hold and may make additional mezzanine loans that do not comply with the IRS safe harbor, but which we treat as qualifying assets. Although we believe substantially all of our mezzanine loans are qualifying assets, it is possible that the IRS could challenge our characterization of such loans and our qualification as a REIT. If any such IRS challenge was successful, the applicable mezzanine loan would be subject to the second, third and fifth asset tests described above.

We believe that most of the residential mortgage loans (including the B notes) and mortgage-backed securities, or MBS, that we have held and expect to hold have been and will be qualifying assets for purposes of the 75% asset test. For purposes of these rules, however, if the outstanding principal balance of a mortgage loan exceeds the fair market value of the real property securing the loan at the time we commit to acquire the loan, a portion of such loan likely will not be a qualifying real estate asset under the federal income tax laws. Furthermore, we may be required to retest modified loans that we hold to determine if the modified loan is adequately secured by real property if the modification results in a significant modification, as discussed above in Gross Income Tests-Interest. Although the law on the matter is not entirely clear, it appears that the non-qualifying portion of that mortgage loan will be equal to the portion of the loan amount that exceeds the value of the associated real property that is security for that loan.

In the event that we invest in a mortgage loan that is secured by both real property and other property, Revenue Procedure 2014-51 may apply to determine what portion of the mortgage loan will be treated as a real estate asset for purposes of the 75% asset test. Pursuant to Revenue Procedure 2014-51, modifying and superseding Revenue Procedure 2011-16, the IRS will not challenge a REIT's treatment of a loan as being, in part, a qualifying real estate asset in an amount equal to the lesser of (1) the fair market value of the loan on the date of the relevant quarterly REIT asset testing date or (2) the greater of (a) the fair market value of the real property securing the loan on the date of the relevant quarterly REIT asset testing date or (b) the fair market value of the real property securing the loan determined as of the date the REIT committed to acquire the loan. Our debt securities issued by other REITs or corporations that are not secured by mortgages on real property will not be qualifying assets for purposes of the 75% asset test. We believe that any stock that we will acquire in other REITs will be qualifying assets for purposes of the 75% asset test. However, if a REIT in which we own stock fails to qualify as a REIT in any year, the stock in such REIT will not be a qualifying asset for purposes of the 75% asset test. Instead, we would be subject to the second, third, and fifth assets tests described above with

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respect to our investment in such a disqualified REIT. We will also be subject to those assets tests with respect to our investments in any non-REIT C corporations for which we do not make a TRS election. We believe that the value of our investment in Resource TRS, together with the value of our interest in the securities of our TRSs, including our TRS securitizations such as Apidos CDO I, Apidos CDO III, Apidos Cinco CDO, Harvest VII, Harvest VIII and Harvest XV CLO, has been and will continue to be less than 25% (and less than 20% for years beginning after December 31, 2017) of the value of our total assets.

We will monitor the status of our assets for purposes of the various asset tests and will seek to manage our portfolio to comply at all times with such tests. There can be no assurances, however, that we will be successful in this effort. In this regard, to determine our compliance with these requirements, we will need to estimate the value of the real estate securing our mortgage loans at various times, including at the time of any modification that results in a significant modification to a debt instrument we hold. In addition, we will have to value our investment in our other assets to ensure compliance with the asset tests. Although we will seek to be prudent in making these estimates, there can be no assurances that the IRS might not disagree with these determinations and assert that a different value is applicable, in which case we might not satisfy the 75% and the other asset tests and would fail to qualify as a REIT. If we fail to satisfy the asset tests at the end of a calendar quarter, we will not lose our REIT qualification if:

we satisfied the asset tests at the end of the preceding calendar quarter; and

the discrepancy between the value of our assets and the asset test requirements arose from changes in the market values of our assets and was not wholly or partly caused by the acquisition of one or more non-qualifying assets

If we did not satisfy the condition described in the second item, above, we still could avoid disqualification by eliminating any discrepancy within 30 days after the close of the calendar quarter in which it arose.

In the event that we violate the second or third asset tests described above at the end of any calendar quarter, we will not lose our REIT qualification if the failure is de minimis (up to the lesser of 1% of the total value of our assets at the end of the quarter in which the failure occurs or \$10 million) and we dispose of assets or otherwise comply with the asset tests within six months after the last day of the quarter. In the event of a failure of any of the asset tests (other than a de minimis failure of the 5% and 10% asset tests described in the preceding sentence), as long as the failure was due to reasonable cause and not to willful neglect, we will not lose our REIT qualification if we dispose of assets or otherwise comply with the asset tests within six months after the last day of the quarter in which our identification of the failure occurs and pay a tax equal to the greater of \$50,000 or an amount determined by multiplying the highest federal income tax rate applicable to corporations by the net income from the nonqualifying assets during the period in which we failed to satisfy the asset tests.

We currently believe that the mortgage-related assets, securities and other assets that we expect to hold will satisfy the foregoing asset test requirements. However, no independent appraisals will be obtained to support our conclusions as to the value of our assets and securities, or in many cases, the real estate collateral for the mortgage loans that we hold. Moreover, the values of some assets, such as the securities of some of our TRSs, may not be susceptible to a precise determination. As a result, there can be no assurance that the IRS will not contend that our ownership of securities and other assets violates one or more of the asset tests applicable to REITs.

We currently have financing arrangements that are structured as sale and repurchase agreements pursuant to which we sell certain of our assets to a counter party and simultaneously enter into an agreement to repurchase these assets at a



later date in exchange for a purchase price. Economically, these agreements are financings which are secured by the assets sold pursuant thereto. We believe that we would be treated for REIT asset and income test purposes as the owner of the assets that are the subject of any such sale and repurchase agreement notwithstanding that such agreements may transfer record ownership of the assets to the counterparty during the term of the agreement. It is possible, however, that the IRS could assert that we did not own the assets during the term of the sale and repurchase agreement, in which case we could fail to qualify as a REIT.

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***Distribution Requirements***

Each taxable year, we must distribute dividends, other than capital gain dividends and deemed distributions of retained capital gain, to our stockholders in an aggregate amount at least equal to:

the sum of

90% of our REIT taxable income, computed without regard to the dividends paid deduction and our net capital gain, and

90% of our after-tax net income, if any, from foreclosure property, minus

the sum of certain items of non-cash income.

We must make such distributions in the taxable year to which they relate, or in the following taxable year if either (i) we declare the distribution before we timely file our federal income tax return for the year and pay the distribution on or before the first regular dividend payment date after such declaration or (ii) we declare the distribution in October, November or December of the taxable year, payable to stockholders of record on a specified day in any such month, and we actually make the distribution before the end of January of the following year. The distributions under clause (i) are taxable to the stockholders in the year in which paid, and the distributions in clause (ii) are treated as paid on December 31 of the prior taxable year. In both instances, these distributions relate to our prior taxable year for purposes of the 90% distribution requirement.

We may satisfy the 90% distribution test with taxable distributions of our stock or debt securities. The IRS has issued private letter rulings to other REITs treating certain distributions that are paid partly in cash and partly in stock as dividends that would satisfy the REIT annual distribution requirement and qualify for the dividends paid deduction for federal income tax purposes. Those rulings may be relied upon only by taxpayers to whom they were issued, but we could request a similar ruling from the IRS. Accordingly, it is unclear whether and to what extent we will be able to make taxable dividends payable in cash and stock. We have no current intention to make a taxable dividend payable in our stock.

We will pay federal income tax on taxable income, including net capital gain, that we do not distribute to stockholders. Furthermore, if we fail to distribute during a calendar year, or by the end of January following the calendar year in the case of distributions with declaration and record dates falling in the last three months of the calendar year, at least the sum of:

85% of our REIT ordinary income for such year,

95% of our REIT capital gain income for such year, and

any undistributed taxable income from prior periods.

We will incur a 4% nondeductible excise tax on the excess of such required distribution over the amounts we actually distribute. We may elect to retain and pay income tax on the net capital gain we receive in a taxable year. See

Taxation of Taxable U.S. Stockholders. If we so elect, we will be treated as having distributed any such retained amount for purposes of the 4% nondeductible excise tax described above. We intend to make timely distributions sufficient to satisfy the annual distribution requirements and to avoid corporate income tax and the 4% nondeductible excise tax.

It is possible that, from time to time, we may experience timing differences between the actual receipt of income and actual payment of deductible expenses and the inclusion of that income and deduction of such expenses in arriving at our REIT taxable income. Possible examples of those timing differences include the following:

Because we may deduct capital losses only to the extent of our capital gains, we may have taxable income that exceeds our economic income.

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We will recognize taxable income in advance of the related cash flow if any of our MBS are deemed to have original issue discount. We generally must accrue original issue discount based on a constant yield method that takes into account projected prepayments but that defers taking into account credit losses until they are actually incurred.

We will include in our taxable income for federal income tax purposes, items of income from certain of our CDO entities, such as Apidos CDO I, Apidos CDO III, Apidos Cinco CDO, Harvest VII, Harvest VIII and Harvest XV CLO, in which we hold an interest, even in the absence of actual cash distributions.

We may recognize taxable market discount income when we receive the proceeds from the disposition of, or principal payments on, loans that have a stated redemption price at maturity that is greater than our tax basis in those loans, although such proceeds often will be used to make non-deductible principal payments on related borrowings.

We may recognize phantom taxable income from any residual interests in REMICs or equity interests in taxable mortgage pools not held through a TRS.

Although several types of non-cash income are excluded in determining the annual distribution requirement, we will incur corporate income tax and the 4% nondeductible excise tax with respect to those non-cash income items if we do not distribute those items on a current basis. As a result of the foregoing, we may have less cash than is necessary to distribute all of our taxable income and thereby avoid corporate income tax and the excise tax imposed on certain undistributed income. In such a situation, we may need to borrow funds or issue additional common or preferred stock.

Under certain circumstances, we may be able to correct a failure to meet the distribution requirement for a year by paying deficiency dividends to our stockholders in a later year. We may include such deficiency dividends in our deduction for dividends paid for the earlier year. Although we may be able to avoid income tax on amounts distributed as deficiency dividends, we will be required to pay interest to the IRS based upon the amount of any deduction we take for deficiency dividends.

### ***Recordkeeping Requirements***

We must maintain certain records in order to qualify as a REIT. In addition, to avoid a monetary penalty, we must request on an annual basis information from our stockholders designed to disclose the actual ownership of our outstanding stock. We intend to comply with these requirements.

### ***Failure to Qualify***

If we fail to satisfy one or more requirements for REIT qualification, other than the gross income tests and the asset tests, we could avoid disqualification if our failure is due to reasonable cause and not to willful neglect and we pay a penalty of \$50,000 for each such failure. In addition, there are relief provisions for a failure of the gross income tests and asset tests, as described in **Gross Income Tests** and **Asset Tests**.

If we fail to qualify as a REIT in any taxable year, and no relief provision applies, we would be subject to federal income tax and any applicable alternative minimum tax on our taxable income at regular corporate rates. In calculating our taxable income in a year in which we fail to qualify as a REIT, we would not be able to deduct

amounts paid out to stockholders. In fact, we would not be required to distribute any amounts to stockholders in that year. In such event, to the extent of our current and accumulated earnings and profits, all distributions to stockholders would be taxable as dividend income. Subject to certain limitations of the federal income tax laws, corporate stockholders might be eligible for the dividends received deduction, and individual and certain non-corporate trust and estate stockholders may be eligible for the reduced federal income tax rate of 15% on such dividends. Unless we qualified for relief under specific statutory provisions, we also would be disqualified from electing to be taxed as a REIT for the four taxable years following the year during which we ceased to qualify as a REIT. We cannot predict whether in all circumstances we would qualify for such statutory relief.

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**Taxation of Holders of the Notes**

***U.S. Holders***

A U.S. Holder is a beneficial holder of notes or our common stock, as applicable, who is:

an individual citizen or resident of the United States;

a corporation (or other entity treated as a corporation for U.S. federal income tax purposes) created or organized under the laws of the United States, any state thereof or the District of Columbia;

an estate, the income of which is subject to U.S. federal income tax regardless of its source; or

a trust, if (i) a U.S. court can exercise primary supervision over the administration of the trust and one or more U.S. persons have the authority to control all substantial decisions of the trust, or (ii) it has a valid election in place to be treated as a U.S. person.

If a partnership, or an entity or arrangement treated as a partnership for U.S. federal income tax purposes, is a beneficial owner of the notes or common stock, the treatment of a partner in the partnership will generally depend on the status of the partner and the activities of the partnership. If you are a partner in a partnership holding the notes or common stock, you should consult your tax advisor regarding the consequences of the purchase, ownership and/or sale, conversion or other disposition of the notes or common stock by the partnership.

***Interest and OID.*** U.S. Holders generally must include stated interest on the notes in their gross income as ordinary income:

when it accrues, for U.S. Holders that use the accrual method of accounting for U.S. federal income tax purposes; or

when it is actually or constructively received, for U.S. Holders that use the cash method of accounting for U.S. federal income tax purposes.

In addition, the notes will be treated as issued with original issue discount (OID) for U.S. federal income tax purposes if the stated principal amount of the notes exceeds their issue price by more than a statutory de minimis amount. The issue price of the notes will be the first price at which a substantial amount of the notes is sold for cash to investors (excluding sales to persons acting in the capacity of underwriters, placement agents or wholesalers). If you hold a note issued with OID, you will be required to accrue and include in gross income the sum of the daily portions of total OID on such note for each day during the taxable year on which you held such note, regardless of your usual method of accounting for U.S. Federal income tax purposes. Thus, you generally will be taxed on OID income in advance of the receipt of cash attributable to such income (but will not be taxed again when such cash is received). The daily portion is determined by allocating to each day in any accrual period a pro rata portion of the OID allocable to that accrual period. The accrual period for a note may be of any length and may vary in length over the term of the note, provided

that each accrual period is no longer than one year and each scheduled payment of principal or interest occurs on the first day or the final day of an accrual period. The amount of OID allocable to any accrual period is an amount equal to the excess, if any, of:

the product of the note's adjusted issue price at the beginning of such accrual period and its yield to maturity (determined on the basis of compounding of the close of each accrual period and properly adjusted for the length of the accrual period), over

the aggregate of all qualified stated interest allocable to the accrual period.

OID allocable to a final accrual period is the difference between the amount payable at maturity (other than a payment of stated interest) and the adjusted issue price at the beginning of the final accrual period. The adjusted issue price of a note at the beginning of any accrual period generally is equal to its issue price increased by the accrued OID for each prior accrual period. Under these rules, you generally will have to include in income increasingly greater amounts of OID in successive accrual periods.

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***Additional Interest.*** As described under the heading *Description of Notes Events of Default*, we may elect to pay you additional amounts in certain circumstances. According to the applicable Treasury regulations, the possibility of a change in the interest rate on the notes will not affect the amount or timing of interest income recognized by a holder of a note if the likelihood of the change, as of the date the notes are issued, is remote. We intend to take the position that the likelihood of the payment of additional interest with respect to the notes is remote and do not intend to treat that possibility of a change in the interest rate as affecting the yield to maturity of the notes. Accordingly, any additional interest payable to holders of the notes in that event should be includible in gross income by a U.S. Holder at the time the payment is paid or accrues in accordance with the U.S. Holder's regular method of tax accounting. Our determination that such possibility is a remote contingency is binding on you, unless you explicitly disclose to the Internal Revenue Service, or IRS, on your tax return for such year during which you acquire the notes that you are taking a different position. However, the IRS may take a contrary position from that described above, which could affect the timing and character of both your income on the notes and our deduction with respect to the payments of additional interest.

If we elect to pay additional interest, you should consult your tax advisor concerning the appropriate tax treatment of the payment of additional interest with respect to the notes.

***Sale, Exchange, Redemption or Other Taxable Disposition of Notes.*** Except as provided below under *Conversion of Notes into Cash, Stock or a Combination of Cash and Common Stock*, a U.S. Holder will generally recognize gain or loss upon the sale, exchange, redemption or other taxable disposition of a note equal to the difference between the amount realized (less an amount attributable to any accrued interest, which, if not previously included in income, will be taxable as such) upon the sale, exchange, redemption or other taxable disposition and your tax basis in the note. Your tax basis in a note will generally be equal to the amount you paid for the note, increased by any OID included in income with respect to the note. Any gain or loss recognized on a taxable disposition of the note will generally be capital gain or loss. If you are taxed at individual rates and, at the time of the sale, exchange, redemption or other taxable disposition, have held the note for more than one year, such capital gain will generally be subject to reduced rates of taxation. Your ability to deduct capital losses may be limited under the Code.

***Conversion of Notes into Cash, Stock or a Combination of Cash and Common Stock***

***Conversion into cash.*** If you receive solely cash in exchange for your notes upon conversion, your gain or loss will be determined in the same manner as if you disposed of the notes in a taxable disposition (as described above under *Sale, Exchange, Redemption, or Other Taxable Disposition of Notes*).

***Conversion into stock.*** If you receive solely stock and cash in lieu of a fractional share of common stock upon conversion, neither gain nor loss generally will be recognized, except to the extent of cash received in lieu of a fractional share and except to the extent of the fair market value of common stock received with respect to accrued interest, which, if not previously included in income, will be taxable as such. The tax basis of the shares of common stock received upon a conversion (other than common stock attributable to accrued interest, the tax basis of which will equal its fair market value) will equal the tax basis of the note that was converted (excluding the portion of the tax basis that is allocable to any fractional share). Your holding period for shares of common stock will include the period during which you held the notes except that the holding period of any common stock received with respect to accrued interest will commence on the day after the date of receipt. The amount of gain or loss recognized on the receipt of cash in lieu of a fractional share will be equal to the difference between the amount of cash you receive in respect of the fractional share and the portion of your tax basis in the note that is allocable to the fractional share. Any gain recognized on conversion generally will be capital gain and will be long-term capital gain if, at the time of the conversion, the note has been held for more than one year.



*Conversion into common stock and cash.* If a combination of cash and common stock is received in exchange for your notes upon conversion, we intend to take the position that the conversion should be treated as a recapitalization for U.S. federal income tax purposes. In this case, gain, but not loss, will be realized in an

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amount equal to the excess of the fair market value of the common stock and cash received (other than amounts attributable to accrued interest, which, if not previously included in income, will be taxable as such) over your tax basis in the note, but such gain will only be recognized to the extent of such cash received (excluding cash attributable to accrued interest or received in lieu of a fractional share).

The amount of gain or loss recognized on the receipt of cash in lieu of a fractional share will be equal to the difference between the amount of cash you receive in respect of the fractional share and the portion of your tax basis in the note that is allocable to the fractional share. Any gain recognized on conversion generally will be capital gain and will be long-term capital gain if, at the time of the conversion, the note has been held for more than one year.

The tax basis of the shares of common stock received upon a conversion (other than common stock attributable to accrued interest, the tax basis of which will equal its fair market value) will equal the tax basis of the note that was converted (excluding the portion of the tax basis that is allocable to any fractional share), reduced by the amount of any cash received (other than cash received in lieu of a fractional share or cash attributable to accrued interest), and increased by the amount of gain, if any, recognized (other than with respect to a fractional share). Your holding period for shares of common stock will include the period during which you held the notes except that the holding period of any common stock received with respect to accrued interest will commence on the day after the date of receipt.

Alternative treatments of the conversion of the notes into cash and common stock are possible. For example, the conversion of a note into cash and common stock may instead be treated for U.S. federal income tax purposes as in part a conversion into stock and in part a payment in redemption of a portion of the note.

You should consult your tax advisors regarding the tax treatment of the receipt of cash and stock in exchange for notes upon conversion or repurchase, including any alternative treatments.

***Adjustments to Conversion Rate.*** Under section 305 of the Code, a holder of notes will be deemed to have received a distribution of or with respect to our common stock if and to the extent that the conversion rate is adjusted as a result of certain events, including a distribution on our common stock, resulting in dividend income to the extent of our current and accumulated earnings and profits and capital gain to the extent such deemed distribution exceeds our current and accumulated earnings and profits. Adjustments to the exchange rate made pursuant to a bona fide reasonable adjustment formula which has the effect of preventing the dilution of the interest of the holders of the notes will generally not be deemed to result in a constructive distribution on our common stock. Certain of the possible adjustments provided in the notes (including, without limitation, adjustments in respect of certain distributions to our common stockholders) do not qualify as being made pursuant to a bona fide reasonable adjustment formula. If such adjustments are made, you will be required to include such amount in income, as a dividend or capital gain (depending upon the amount of our current and accumulated earnings and profits) for U.S. federal income tax purposes, notwithstanding that no cash distribution is made in respect of such adjustment. In certain circumstances, the failure to make an adjustment to the conversion rate may also result in a taxable distribution to a holder of notes, if as a result of such failure, the proportional interest of the noteholders in our assets or earnings and profits is increased.

***Medicare 3.8% Net investment Income Tax.*** Certain individuals, trusts and estates whose income exceeds certain thresholds are subject to a 3.8% Medicare tax on some or all of their net investment income, which generally will include interest and OID, if any, realized with respect to the notes, and any net gain recognized upon a sale or other taxable disposition of a note. Prospective purchasers should consult their tax advisors regarding the applicability of this tax in respect of their ownership of notes.

***Backup Withholding and Information Reporting.*** Backup withholding at the applicable statutory rate (28%) may apply when U.S. Holders receive interest payments or constructive distributions on a note or proceeds from the sale or

other disposition of a note. Certain holders including, among others, corporations, financial

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institutions and certain tax-exempt organizations, are generally not subject to backup withholding. In addition, backup withholding will not apply to any U.S. Holder that provides a social security or other taxpayer identification number in the prescribed manner unless:

the IRS notifies us or our paying agent that the taxpayer identification number provided is incorrect;

the U.S. Holder fails to report interest and dividend payments received on the holder's tax return and the IRS notifies us or our paying agent that backup withholding is required; or

the U.S. Holder fails to certify under penalty of perjury that backup withholding does not apply to the holder. A U.S. Holder of notes who does not provide us or our paying agent with his or her correct taxpayer identification number may be subject to penalties imposed by the IRS. If backup withholding does apply to any U.S. Holder, that holder may request a refund of the amounts withheld or use the amounts withheld as a credit against the holder's U.S. federal income tax liability as long as the U.S. Holder provides the required information to the IRS. U.S. Holders should consult their tax advisors as to their qualification for exemption from backup withholding and the procedures for obtaining the exemption.

We will be required annually to furnish the IRS and U.S. Holders of notes information relating to the amount of interest paid and any constructive distributions on the notes, and that information reporting may also apply to payments of proceeds from the sale of the notes to those U.S. Holders. Some U.S. Holders, including corporations, financial institutions and certain tax-exempt organizations, are generally not subject to information reporting.

### *Non-U.S. Holders*

The term "non-U.S. Holder" means a beneficial owner of a note or our common stock (other than a partnership or entity that is treated as a partnership for U.S. federal income tax purposes or a tax-exempt entity) that is not a U.S. Holder.

Special rules may apply to certain non-U.S. Holders such as "controlled foreign corporations" and "passive foreign investment companies." **Non-U.S. Holders are urged to consult their tax advisors to determine the U.S. federal, state, local and other tax consequences that may be relevant to them.**

**Interest and OID.** Subject to the discussion of FATCA withholding below, interest or OID, if any, paid to a non-U.S. Holder will not be subject to U.S. federal income or withholding tax if the interest or OID is not effectively connected with the non-U.S. Holder's conduct of a trade or business within the United States, and the non-U.S. Holder:

does not actually or constructively own 10% or more of the total combined voting power of all our voting stock;

is not a "controlled foreign corporation" with respect to which we are a "related person" within the meaning of Section 864(d)(4) of the Code;

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is not a bank that received such notes on an extension of credit made pursuant to a loan agreement entered into in the ordinary course of a trade or business; and

provides the appropriate certification as to the non-U.S. Holder's foreign status.

This certification requirement generally can be met by providing a properly executed IRS Form W-8BEN, IRS Form W-8BEN-E or appropriate substitute form to us or our paying agent at the time of the initial purchase and at all subsequent times required by the Treasury regulations. If the notes are held through a financial institution or other agent acting on behalf of the non-U.S. Holder, such holder may be required to provide

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appropriate documentation to his or her agent. The agent will then generally be required to provide appropriate certifications to us or our paying agent, either directly or through other intermediaries. Special certification rules apply to foreign partnerships, estates and trusts, and in certain circumstances certifications as to foreign status of partners, trust owners or beneficiaries may have to be provided to us or our paying agent.

If the non-U.S. Holder does not qualify for an exemption under these rules, interest income and OID, if any, from the notes may be subject to withholding tax at the rate of 30% (or lower applicable treaty rate) at the time such interest or OID is paid. The payment of interest or OID that is effectively connected with a U.S. trade or business (and, if required by an applicable tax treaty, is attributable to a U.S. permanent establishment or fixed base maintained by the non-U.S. Holder), however, would not be subject to a 30% withholding tax so long as the non-U.S. Holder provides us or our paying agent an adequate certification (currently on IRS Form W-8ECI), but such interest or OID would be subject to U.S. federal income tax on a net basis at the rates applicable to U.S. persons generally. In addition, if the non-U.S. Holder is a foreign corporation and the interest or OID is effectively connected with the conduct of a U.S. trade or business, the non-U.S. Holder may also be subject to a 30% (or lower applicable treaty rate) branch profits tax. To claim the benefit of a tax treaty, the non-U.S. Holder must provide a properly executed IRS Form W-8BEN or IRS Form W-8BEN-E before the payment of interest or OID and the non-U.S. Holder may be required to obtain a U.S. taxpayer identification number and provide documentary evidence issued by foreign governmental authorities to prove residence in the foreign country.

***Additional Interest.*** Absent further relevant guidance from the IRS, we intend to treat payments of additional amounts, if any, made to non-U.S. Holders (as described above under Description of Notes Events of Default ) as subject to U.S. federal withholding tax. Therefore, we intend to withhold on such payments at a rate of 30% unless we or our paying agent receive a properly executed and updated IRS Form W-8BEN, IRS Form W-8BEN-E or an IRS Form W-8ECI from such non-U.S. Holder claiming, respectively, that such payments are subject to reduction or elimination of withholding under applicable treaty or that such payments are effectively connected with such non-U.S. Holder's conduct of a U.S. trade or business. If we withhold tax from any payment of additional interest made to a non-U.S. Holder and such payments were determined not to be subject to U.S. federal income tax, such holder generally would be entitled to a refund from the IRS on any tax withheld.

***Sale, Exchange or Other Taxable Disposition of Notes.*** Subject to the discussion of FATCA withholding below, a non-U.S. Holder generally will not be subject to U.S. federal income and withholding taxes on any amount that constitutes capital gain upon a sale, exchange, redemption, retirement or other taxable disposition of a note (including a conversion of a note for cash or cash and our common stock), unless any of the following is true:

the investment in the notes is effectively connected with the non-U.S. Holder's conduct of a U.S. trade or business (and, if required by an applicable tax treaty, is attributable to a U.S. permanent establishment or fixed base maintained by the non-U.S. Holder);

the non-U.S. Holder (i) is a nonresident alien individual holding the notes as a capital asset, (ii) is present in the United States for 183 or more days in the taxable year within which the sale, exchange or other taxable disposition takes place, and (iii) certain other requirements are met;

the non-U.S. Holder is subject to provisions of U.S. tax laws applicable to certain U.S. expatriates; or

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the note constitutes a United States real property interest, or USRPI, within the meaning of the Foreign Investment in Real Property Tax Act of 1980, or FIRPTA.

If you are a non-U.S. Holder described in the first bullet point above, the net gain derived from the retirement or disposition of your notes generally would be subject to U.S. federal income tax at the rate applicable to U.S. persons generally (or lower applicable treaty rate). In addition, foreign corporations may be subject to a 30% (or lower applicable treaty rate) branch profits tax if the investment in the note is effectively connected with the foreign corporation's conduct of a U.S. trade or business. If you are a non-U.S. Holder described in the second bullet point above, you will be subject to a flat 30% U.S. federal income tax (or lower

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rate under an applicable treaty) on the gain derived from the retirement or disposition of your notes, which may be offset by U.S. source capital losses, even though you are not considered a resident of the United States. If you are a non-U.S. Holder described in the third bullet point above, we encourage you to consult your tax advisor to determine the U.S. federal, state, local and other tax consequences that may be relevant to you.

The notes will not constitute USRPIs at the time of any sale, exchange, redemption, retirement or other taxable disposition of a note (including a conversion of a note for cash or cash and our common stock) if we: (i) are not a United States real property holding corporation during a specified testing period; (ii) are a domestically controlled qualified investment entity; or (iii) our common stock is part of a class of shares that is regularly traded on an established securities market and the applicable non-U.S. Holder has not, at the time it acquires the notes and at certain other times described in the applicable Treasury regulation, directly or indirectly held notes (and in certain cases other direct or indirect interests in our common stock) that had a fair market value in excess of 10% of the fair market value of all outstanding shares of our common stock. A corporation is a United States real property holding corporation if the fair market value of its USRPIs equals or exceeds 50% of the sum of the market value of its worldwide real estate interests plus its other assets used or held for use in a trade or business. Because mortgage loans and mortgage-backed securities are generally not treated as USRPIs, we believe that we currently are not a United States real property holding corporation. However, no assurance can be provided that we will not become a United States real property holding corporation in the future. Even if we become a United States real property holding corporation, the notes will not constitute USRPIs if we are a domestically controlled qualified investment entity or our common stock is regularly traded on an established securities market, the applicable non-U.S. Holder does not exceed the ownership limits described above and, if requested by us, such holder provides certification to this effect. We will be a domestically controlled qualified investment entity if at all times during a specified testing period we are a REIT and less than 50% in value of our stock is held directly or indirectly by non-U.S. persons. We believe that we currently are a domestically controlled qualified investment entity, but because our common stock, Series A Preferred Stock and Series B Preferred Stock are publicly traded, we cannot assure you that we are or will be a domestically controlled qualified investment entity in the future. Furthermore, while our common stock is currently regularly traded on an established securities market, there can be no assurance that it will continue to be so traded in the future. If we become a United States real property holding corporation and we cannot determine whether: (i) we are a domestically controlled qualified investment entity; or (ii) the holder meets the requirements for the regularly traded exception described above, we intend to withhold 15% of any amounts payable on the redemption, retirement or exchange by us of a note (including a conversion of a note for cash or cash and our common stock). In addition, in such a case, we may withhold U.S. federal income tax at a rate of 15% on interest and other amounts paid to non-U.S. Holders if adjustments made to the conversion rate of the notes cause non-U.S. Holders to be treated as recognizing capital gain. Moreover, under FIRPTA, in the event that the notes were to be treated as USRPIs, then a non-U.S. Holder generally would need to comply with certain reporting and other requirements in order not to be subject to tax as a result of a conversion of the notes even in situations where the conversion would otherwise be subject to non-recognition for U.S. Holders (such as a conversion solely for common stock), and no assurance can be given that a non-U.S. Holder would be able to satisfy such requirements if they were to apply.

You are urged to consult your tax advisor as to whether the sale, exchange, redemption, retirement or other taxable disposition of a note (including a conversion of a note into cash or cash and our common stock) is exempt from U.S. federal income tax under FIRPTA. If a sale, exchange, redemption, retirement or other taxable disposition of a note (including a conversion of a note into cash or cash and our common stock) is exempt from U.S. federal income tax under FIRPTA, any amounts withheld under FIRPTA from payments to a non-U.S. Holder may be refunded or credited against such holder's U.S. federal income tax liability, *provided* that the required information is provided to the IRS.



***Adjustments to Conversion Rate.*** The conversion rate is subject to adjustment in certain circumstances. Under section 305 of the Code, any such adjustment could, in certain circumstances, give rise to a deemed distribution to non-U.S. Holders of the notes, even though such holder has not received any cash or property as a

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result of such adjustments. If the conversion rate is adjusted in a manner that causes a deemed dividend under section 305 of the Code, you will be required to include such amount in income, as a dividend or capital gain (depending upon the amount of our current and accumulated earnings and profits) for U.S. federal income tax purposes, notwithstanding that no cash distribution is made in respect of such adjustment. In this regard, we intend to withhold U.S. federal income tax (at a rate of 30%, or a lower applicable treaty rate) on interest and other amounts paid to non-U.S. Holders (including cash or common stock payable upon a conversion of the notes) to the extent such holders are deemed to have received a dividend as a result of an adjustment to the conversion rate. In addition, in such a case, we may withhold U.S. federal income tax at a rate of 15% on interest and other amounts paid to non-U.S. Holders as a result of adjustments made to the exchange rate of the notes as a result of certain distributions on our common stock that are treated as capital gain to non-U.S. Holders in the event we determine that FIPRTA does or may apply to the notes, as described above.

**FATCA Withholding.** Legislation known as FATCA and Treasury regulations and other IRS guidance thereunder impose U.S. withholding tax on interest and OID payments on the notes and, after December 31, 2018, gross proceeds (including payments of principal) from the disposition of the notes payable to certain foreign financial institutions and non-financial foreign entities (or U.S. Holders holding through foreign accounts or foreign intermediaries) if certain disclosure and other requirements related to U.S. accounts or ownership are not satisfied. We will not pay any additional amounts in respect of amounts withheld.

**Backup Withholding and Information Reporting.** Information reporting requirements and backup withholding generally will not apply to payments on a note to a non-U.S. Holder if the certification described under Non-U.S. Holders Interest and OID is duly provided by such holder, provided that the withholding agent does not have actual knowledge or reason to know that the holder is a U.S. person. Information reporting requirements and backup withholding will not apply to any payment of the proceeds of the sale of a note effected outside the United States by a foreign office of a broker (as defined in applicable Treasury regulations), unless such broker: (i) is a U.S. person; (ii) derives 50% or more of its gross income for certain periods from the conduct of a trade or business in the United States; (iii) is a controlled foreign corporation within the meaning of the Code; or (iv) is a U.S. branch of a foreign bank or a foreign insurance company. Payment of the proceeds of any such sale effected outside the United States by a foreign office of any broker that is described in (i), (ii) or (iii) of the preceding sentence will not be subject to backup withholding, but will be subject to the information reporting requirements unless such broker has documentary evidence in its records that the beneficial owner is a non-U.S. Holder and certain other conditions are met, or the beneficial owner otherwise establishes an exemption. Payment of the proceeds of any such sale to or through the U.S. office of a broker is subject to information reporting and backup withholding requirements, unless the beneficial owner of the note provides the statement described above under Non-U.S. Holders Interest or otherwise establishes an exemption.

Backup withholding is not an additional tax. Any amounts withheld from a payment to a holder of a note under the backup withholding rules will be refunded or credited against the non-U.S. Holder's U.S. federal income tax liability if certain required information is furnished to the IRS. Non-U.S. Holders should consult their tax advisors regarding application of backup withholding in their particular circumstances and the availability of and procedure for obtaining an exemption from backup withholding under current Treasury regulations.

**Taxation of Holders of Our Common Stock**

The following is a discussion of the U.S. federal income tax consequences of the ownership and disposition of shares of our common stock acquired as a result of converting the notes.

**Taxation of Taxable U.S. Stockholders**

The term "U.S. stockholder" means a holder of our capital stock that, for federal income tax purposes, is:

a citizen or resident (as defined in Section 7701(b) of the Code) of the United States;

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a corporation (including an entity treated as a corporation for federal income tax purposes) created or organized under the laws of the United States, any of its States, or the District of Columbia;

an estate whose income is subject to federal income taxation regardless of its source; or

any trust if (i) a U.S. court is able to exercise primary supervision over the administration of such trust and one or more U.S. persons have the authority to control all substantial decisions of the trust or (ii) it has a valid election in place to be treated as a U.S. person.

If a partnership, entity or arrangement treated as a partnership for federal income tax purposes holds our capital stock, the federal income tax treatment of a partner in the partnership will generally depend on the status of the partner and the activities of the partnership. If you are a partner in a partnership holding our capital stock, you should consult your tax advisor regarding the consequences of the purchase, ownership and disposition of our capital stock by the partnership. A non-U.S. stockholder is a holder of our capital stock that is not a U.S. stockholder, a partnership or an entity classified as a partnership for U.S. federal income tax purposes.

As long as we qualify as a REIT, a taxable U.S. stockholder must generally take into account as ordinary income distributions made out of our current or accumulated earnings and profits that we do not designate as capital gain dividends or retained long-term capital gain. For purposes of determining whether a distribution is made out of our current or accumulated earnings and profits, our earnings and profits will be allocated first to our preferred stock, then to our common stock. A U.S. stockholder will not qualify for the dividends received deduction generally available to corporations. In addition, dividends paid to a U.S. stockholder generally will not qualify as qualified dividend income for the maximum tax rate accorded to capital gains. Qualified dividend income generally includes dividends paid to individuals, trusts and estates by domestic C corporations and certain qualified foreign corporations. Because we are not generally subject to federal income tax on the portion of our REIT taxable income distributed to our stockholders (see Taxation of Our Company above), our dividends generally will not be eligible for the maximum 20% rate on qualified dividend income. As a result, our ordinary REIT dividends will continue to be taxed at the higher tax rate applicable to ordinary income. Currently, the highest marginal individual income tax rate on ordinary income is 39.6%. However, the maximum 20% tax rate for qualified dividend income will apply to our ordinary REIT dividends attributable to dividends received by us from non-REIT corporations, such as our domestic TRSs (but generally not from our TRSs organized as Cayman organizations), and to the extent attributable to income upon which we have paid corporate income tax (e.g., to the extent that we distribute less than 100% of our taxable income). In general, to qualify for the reduced tax rate on qualified dividend income, a stockholder must hold our capital stock for more than 60 days during the 121-day period beginning on the date that is 60 days before the date on which our capital stock became ex-dividend. For 2013 and subsequent years, U.S. stockholders other than corporations will also be subject to a 3.8% Medicare surtax on investment income (including both qualified and nonqualified dividends) if certain thresholds of modified adjusted gross income are exceeded.

A U.S. stockholder generally will recognize distributions that we designate as capital gain dividends as long-term capital gain without regard to the period for which the U.S. stockholder has held our capital stock. A corporate U.S. stockholder, however, may be required to treat up to 20% of certain capital gain dividends as ordinary income.

The aggregate amount of dividends that we may designate as capital gain dividends or qualified dividend income with respect to any taxable year may not exceed the dividends paid by us with respect to such year, including dividends that are paid in the following year (if they are declared before we timely file our tax return for the year and if made with or before the first regular dividend payment after such declaration) are treated as paid with respect to such year.

A U.S. stockholder will not incur tax on a distribution in excess of our current and accumulated earnings and profits if the distribution does not exceed the adjusted basis of the U.S. stockholder's capital stock. Instead, the distribution will reduce the adjusted basis of such capital stock. A U.S. stockholder will recognize a

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distribution in excess of both our current and accumulated earnings and profits and the U.S. stockholder's adjusted basis in his or her capital stock as long-term capital gain, or short-term capital gain if the shares of capital stock have been held for one year or less, assuming the shares of capital stock are a capital asset in the hands of the U.S. stockholder. In addition, if we declare a distribution in October, November, or December of any year that is payable to a U.S. stockholder of record on a specified date in any such month, such distribution will be treated as both paid by us and received by the U.S. stockholder on December 31 of such year, provided that we actually pay the distribution during January of the following calendar year.

Stockholders may not include in their individual income tax returns any of our net operating losses or capital losses. Instead, these losses are generally carried over by us for potential offset against our future income. Taxable distributions from us and gain from the disposition of our capital stock will not be treated as passive activity income and, therefore, stockholders generally will not be able to apply any passive activity losses, such as losses from certain types of limited partnerships in which the stockholder is a limited partner, against such income. In addition, taxable distributions from us and gain from the disposition of our capital stock generally will be treated as investment income for purposes of the investment interest limitations. We will notify stockholders after the close of our taxable year as to the portions of the distributions attributable to that year that constitute ordinary income, return of capital and capital gain.

We may recognize taxable income in excess of our economic income, known as phantom income, in the first years that we hold certain investments, and experience an offsetting excess of economic income over our taxable income in later years. As a result, stockholders at times may be required to pay federal income tax on distributions that economically represent a return of capital rather than a dividend. These distributions would be offset in later years by distributions representing economic income that would be treated as returns of capital for federal income tax purposes. Taking into account the time value of money, this acceleration of federal income tax liabilities may reduce a stockholder's after-tax return on his or her investment to an amount less than the after-tax return on an investment with an identical before-tax rate of return that did not generate phantom income. For example, if an investor with a 30% tax rate purchases a taxable bond with an annual interest rate of 10% on its face value, the investor's before-tax return on the investment would be 10% and the investor's after-tax return would be 7%. However, if the same investor purchased our capital stock at a time when the before-tax rate of return was 10%, the investor's after-tax rate of return on such stock might be somewhat less than 7% as a result of our phantom income. In general, as the ratio of our phantom income to our total income increases, the after-tax rate of return received by a taxable stockholder will decrease. We will consider the potential effects of phantom income on our taxable stockholders in managing our investments.

Any excess inclusion income (See Requirements for Qualification Taxable Mortgage Pools for a definition of excess inclusion income) that we recognize generally will be allocated among our stockholders to the extent that it exceeds our undistributed REIT taxable income in a particular year. A stockholder's share of excess inclusion income would not be allowed to be offset by any net operating losses or other deductions otherwise available to the stockholder.

***Taxation of U.S. Stockholders on the Disposition of Capital Stock***

In general, a U.S. stockholder who is not a dealer in securities must treat any gain or loss realized upon a taxable disposition of our capital stock as long-term capital gain or loss if the U.S. stockholder has held the capital stock for more than one year and otherwise as short-term capital gain or loss. In general, a U.S. stockholder will realize gain or loss in an amount equal to the difference between (i) the sum of the fair market value of any property and the amount of cash received in such disposition and (ii) the U.S. stockholder's adjusted basis in the shares for tax purposes. Such adjusted tax basis will equal the U.S. stockholder's acquisition cost, increased by the excess of net capital gains deemed distributed to the U.S. stockholder (discussed above) less tax deemed paid on it and reduced by any returns of

capital. However, a U.S. stockholder must treat any loss upon a sale or exchange of capital stock held by such stockholder for six months or less as a long-term capital loss to the extent of capital gain dividends and any other actual or deemed distributions from us that such U.S. stockholder

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treats as long-term capital gain. All or a portion of any loss that a U.S. stockholder realizes upon a taxable disposition of our capital stock may be disallowed if the U.S. stockholder purchases other capital stock within 30 days before or after the disposition.

***Capital Gains and Losses***

A taxpayer generally must hold a capital asset for more than one year for gain or loss derived from its sale or exchange to be treated as long-term capital gain or loss. The highest marginal individual income tax rate is 39.6%. The maximum tax rate on long-term capital gain applicable to stockholders taxed at individual rates is 20% for sales and exchanges of assets held for more than one year. The maximum tax rate on long-term capital gain from the sale or exchange of section 1250 property, or depreciable real property, is 25% to the extent that such gain would have been treated as ordinary income if the property were section 1245 property. With respect to distributions that we designate as capital gain dividends and any retained capital gain that we are deemed to distribute, we generally may designate whether such a distribution is taxable to our stockholders taxed at individual rates at a maximum 20% or 25% rate. Thus, the tax rate differential between capital gain and ordinary income for those taxpayers may be significant. In addition, the characterization of income as capital gain or ordinary income may affect the deductibility of capital losses. A non-corporate taxpayer may deduct capital losses not offset by capital gains against its ordinary income only up to a maximum annual amount of \$3,000. A non-corporate taxpayer may carry forward unused capital losses indefinitely. A corporate taxpayer must pay tax on its net capital gain at ordinary corporate rates. A corporate taxpayer may deduct capital losses only to the extent of capital gains, with unused losses being carried back three years and forward five years. Capital gains (as well as other investment income taxed at ordinary rates) are also subject to the 3.8% Medicare surtax in the case of certain taxpayers whose modified adjusted gross income exceeds certain thresholds depending on filing status.

***Information Reporting Requirements and Backup Withholding***

We will report to our stockholders and to the IRS the amount of distributions we pay during each calendar year, and the amount of tax we withhold, if any. Under the backup withholding rules, a stockholder may be subject to backup withholding at a current rate of 28% with respect to distributions unless the holder:

is a corporation or comes within certain other exempt categories and, when required, demonstrates this fact;  
or

provides a taxpayer identification number, certifies as to no loss of exemption from backup withholding, and otherwise complies with the applicable requirements of the backup withholding rules.

A stockholder who does not provide us with its correct taxpayer identification number also may be subject to penalties imposed by the IRS. Any amount paid as backup withholding will be creditable against the stockholder's income tax liability. In addition, we may be required to withhold a portion of capital gain distributions to any stockholders who fail to certify their non-foreign status to us. For a discussion of the backup withholding rules as applied to non-U.S. stockholders. See Taxation of Non-U.S. Stockholders.

***Medicare Tax on Unearned Income***

As noted above, U.S. stockholders that are individuals, estates or trusts to pay an additional 3.8% tax on net investment income earned directly or indirectly by U.S. Holders that are individuals, trusts and estates whose income



exceeds certain thresholds. Among other items, net investment income generally includes interest on debt instruments and dividends on stock and net gain attributable to the disposition of such securities to the extent that such gain would be otherwise included in taxable income. U.S. stockholders should consult their tax advisors regarding the effect, if any, of this legislation on their ownership and disposition of our capital stock.

***Taxation of Tax-Exempt Stockholders***

Tax-exempt entities, including qualified employee pension and profit sharing trusts and individual retirement accounts, generally are exempt from federal income taxation. However, they are subject to taxation on

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their unrelated business taxable income, or UBTI. While many investments in real estate generate UBTI, the IRS has issued a ruling that dividend distributions from a REIT to an exempt employee pension trust do not constitute UBTI so long as the exempt employee pension trust does not otherwise use the shares of the REIT in an unrelated trade or business of the pension trust. Based on that ruling, amounts that we distribute to tax-exempt stockholders generally should not constitute UBTI. However, if a tax-exempt stockholder were to finance its acquisition of capital stock with debt, a portion of the income that it receives from us would constitute UBTI pursuant to the debt-financed property rules. Moreover, social clubs, voluntary employee benefit associations, supplemental unemployment benefit trusts and qualified group legal services plans that are exempt from taxation under special provisions of the federal income tax laws are subject to different UBTI rules, which generally will require them to characterize distributions that they receive from us as UBTI. Furthermore, a tax-exempt stockholder's share of any excess inclusion income that we recognize would be subject to tax as UBTI. Finally, in certain circumstances, a qualified employee pension or profit sharing trust that owns more than 10% of our stock must treat a percentage of the dividends that it receives from us as UBTI. Such percentage is equal to the gross income we derive from an unrelated trade or business, determined as if we were a pension trust, divided by our total gross income for the year in which we pay the dividends. That rule applies to a pension trust holding more than 10% of our stock only if:

the percentage of our dividends that the tax-exempt trust must treat as UBTI is at least 5%;

we qualify as a REIT by reason of the modification of the rule requiring that no more than 50% of our stock be owned by five or fewer individuals that allows the beneficiaries of the pension trust to be treated as holding our stock in proportion to their actuarial interests in the pension trust; and

either:

one pension trust owns more than 25% of the value of our stock; or

a group of pension trusts individually holding more than 10% of the value of our stock collectively owns more than 50% of the value of our stock.

***Taxation of Non-U.S. Stockholders***

The rules governing federal income taxation of nonresident alien individuals, foreign corporations, foreign partnerships, and other foreign stockholders are complex. This section is only a summary of such rules. **We urge non-U.S. stockholders to consult their own tax advisors to determine the impact of federal, state, and local income tax laws on ownership of our capital stock, including any reporting requirements.**

*Ordinary Dividends.* A non-U.S. stockholder that receives a distribution that is not attributable to gain from our sale or exchange of United States real property interests, as defined below, and that we do not designate as a capital gain dividend or retained capital gain will recognize ordinary income to the extent that we pay the distribution out of our current or accumulated earnings and profits. A withholding tax equal to 30% of the gross amount of the distribution ordinarily will apply unless an applicable tax treaty reduces or eliminates the tax. However, if a distribution is treated as effectively connected with the non-U.S. stockholder's conduct of a U.S. trade or business, the non-U.S. stockholder generally will be subject to federal income tax on the distribution at graduated rates, in the same manner as U.S. stockholders are taxed on distributions and also may be subject to the 30% branch profits tax in the case of a corporate

non-U.S. stockholder. We plan to withhold federal income tax at the rate of 30% on the gross amount of any distribution paid to a non-U.S. stockholder unless either:

a lower treaty rate applies and the non-U.S. stockholder files an IRS Form W-8BEN evidencing eligibility for that reduced rate with us, or

the non-U.S. stockholder files an IRS Form W-8ECI with us claiming that the distribution is effectively connected income.

However, reduced treaty rates are not available to the extent that the income allocated to the non-U.S. stockholder is excess inclusion income. Our excess inclusion income generally will be allocated among our stockholders to the extent that it exceeds our undistributed REIT taxable income in a particular year.

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*Non-Dividend Distributions.* A non-U.S. stockholder will not incur tax on a distribution in excess of our current and accumulated earnings and profits if the excess portion of the distribution does not exceed the adjusted basis of its capital stock. Instead, the excess portion of the distribution will reduce the adjusted basis of that capital stock. A non-U.S. stockholder will be subject to tax on a distribution that exceeds both our current and accumulated earnings and profits and the adjusted basis of the capital stock if the non-U.S. stockholder otherwise would be subject to tax on gain from the sale or exchange of its capital stock, as described below. Because we generally cannot determine at the time we make a distribution whether the distribution will exceed our current and accumulated earnings and profits, we normally will withhold tax on the entire amount of any distribution at the same rate as we would withhold on a dividend. However, a non-U.S. stockholder may obtain a refund from the IRS of amounts that we withhold if we later determine that a distribution in fact exceeded our current and accumulated earnings and profits.

*Capital Gain Dividends.* A non-U.S. stockholder will incur tax on distributions that are attributable to gain from our sale or exchange of United States real property interests under the Foreign Investment in Real Property Act of 1980 ( FIRPTA ). The term United States real property interests includes interests in real property, other than interests in real property solely in a capacity as a creditor, and shares in corporations at least 50% of whose assets consist of interests in real property. As a result, we do not anticipate that we will generate material amounts of gain that would be subject to FIRPTA. Nonetheless, we cannot exclude the possibility, for example, if we are able to resell a foreclosure property for an amount higher than the fair market value of such property at the time of foreclosure. Under the FIRPTA rules, a non-U.S. stockholder is taxed on distributions attributable to gain from sales of United States real property interests as if the gain were effectively connected with a U.S. business of the non-U.S. stockholder. A non-U.S. stockholder thus would be taxed on such a distribution at the normal capital gain rates applicable to U.S. stockholders, subject to applicable alternative minimum tax. A non-U.S. corporate stockholder not entitled to treaty relief or exemption also may be subject to the 30% branch profits tax on such a distribution. We must withhold 35% of any such distribution that we could designate as a capital gain dividend. A non-U.S. stockholder may receive a credit against our tax liability for the amount we withhold. However, a non-U.S. stockholder that owns, actually or constructively, no more than 10% of our capital stock at all times during the one-year period ending on the date of the distribution will not be subject to the 35% FIRPTA withholding tax with respect to distributions that are attributable to gain from our sale or exchange of United States real property interests, provided our capital stock is regularly traded on an established securities market. Instead, non-U.S. stockholders generally would be subject to withholding tax on such capital gain distributions in the same manner as they are subject to withholding tax on ordinary dividends.

*Sale of Capital Stock.* In the unlikely event that our capital stock constituted a United States real property interest (which generally requires that at least 50% of our assets consist of United States real property interests), gains from the sale of our capital stock by a non-U.S. stockholder could be subject to a FIRPTA tax. However, even if that event were to occur, a non-U.S. stockholder generally would not incur tax under FIRPTA on gain from the sale of our capital stock if we were a domestically controlled qualified investment entity. We will be a domestically controlled qualified investment entity if, at all times during a specified testing period, we are a REIT and less than 50% in value of our stock is held directly or indirectly by non-U.S. stockholders. Because our capital stock is publicly traded, no assurance can be given that we will continue to be a domestically controlled qualified investment entity.

Even if we are a domestically controlled qualified investment entity, upon disposition of our capital stock, a non-U.S. stockholder may be treated as having gain from the sale or exchange of a United States real property interest if the non-U.S. stockholder disposes of an interest in our stock and directly or indirectly acquires, enters into a contract or option to acquire or is deemed to acquire, other shares of our stock within a specified period. This rule does not apply if the exception discussed below for distributions to 10% or smaller stockholder of regularly traded classes of stock is satisfied

Even if we do not qualify as a domestically controlled qualified investment entity at the time the non-U.S. stockholder sells or exchanges our capital stock, the gain from such a sale or exchange will not be subject to tax

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under FIRPTA as a sale of United States real property interests if our capital stock is regularly traded, as defined by the applicable Treasury regulations, on an established securities market, and such non-U.S. stockholder owned, actually or constructively, 10% or less of our capital stock at all times throughout the five-year period ending on the date of the sale or exchange.

If the gain on the sale of the capital stock were taxed under FIRPTA, a non-U.S. stockholder would be taxed on that gain in the same manner as a taxable U.S. stockholder, subject to applicable alternative minimum tax, and the purchaser of the stock could be required to withhold 15% of the purchase price and remit such amount to the IRS. Furthermore, a non-U.S. stockholder generally will incur tax on gain not subject to FIRPTA if:

the gain is effectively connected with the non-U.S. stockholder's U.S. trade or business, in which case the non-U.S. stockholder will be subject to the same treatment as U.S. stockholders with respect to such gain, or

the non-U.S. stockholder is a nonresident alien individual who is present in the U.S. for 183 days or more during the taxable year and certain other conditions are met, in which case the non-U.S. stockholder will incur a 30% tax on his or her capital gains.

Recent legislation provides for additional exemptions from provisions relating to ownership of interests in U.S. real estate by non-U.S. persons applicable to qualified shareholders and qualified foreign pension plans, as further described below.

Subject to the exception discussed below, any distribution to a qualified shareholder who holds REIT stock directly or indirectly (through one or more partnerships) will not be subject to U.S. tax as income effectively connected with a U.S. trade or business and thus will not be subject to special withholding rules under FIRPTA. While a qualified shareholder will not be subject to FIRPTA withholding on REIT distributions, certain investors of a qualified shareholder (i.e., non-U.S. persons who hold interests in the qualified shareholder (other than interests solely as a creditor), and hold more than 10% of the stock of such REIT (whether or not by reason of the investor's ownership in the qualified Shareholder )) may be subject to FIRPTA withholding.

In addition, a sale of our stock by a qualified shareholder who holds such stock directly or indirectly (through one or more partnerships) will not be subject to U.S. federal income taxation under FIRPTA. As with distributions, certain investors of a qualified shareholder (i.e., non-U.S. persons who hold interests in the qualified shareholder (other than interests solely as a creditor), and hold more than 10% of the stock of such REIT (whether or not by reason of the investor's ownership in the qualified shareholder)) may be subject to FIRPTA withholding on a sale of our stock.

A qualified shareholder is a foreign person that (i) either is eligible for the benefits of a comprehensive income tax treaty which includes an exchange of information program and whose principal class of interests is listed and regularly traded on one or more recognized stock exchanges (as defined in such comprehensive income tax treaty), or is a foreign partnership that is created or organized under foreign law as a limited partnership in a jurisdiction that has an agreement for the exchange of information with respect to taxes with the United States and has a class of limited partnership units representing greater than 50% of the value of all the partnership units that is regularly traded on the NYSE or NASDAQ markets, (ii) is a qualified collective investment vehicle (defined below), and (iii) maintains records on the identity of each person who, at any time during the foreign person's taxable year, is the direct owner of 5% or more of the class of interests or units (as applicable) described in (1), above.

A qualified collective investment vehicle is a foreign person that (i) would be eligible for a reduced rate of withholding under the comprehensive income tax treaty described above, even if such entity holds more than 10% of the stock of such REIT, (ii) is publicly traded, is treated as a partnership under the Code, is a withholding foreign partnership, and would be treated as a United States real property holding corporation if it were a

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domestic corporation, or (iii) is designated as such by the Secretary of the Treasury and is either (a) fiscally transparent within the meaning of section 894, or (b) required to include dividends in its gross income, but is entitled to a deduction for distributions to its investors.

*Qualified Foreign Pension Funds.* Any distribution to a qualified foreign pension fund (or an entity all of the interests of which are held by a qualified foreign pension fund) who holds REIT stock directly or indirectly (through one or more partnerships) will not be subject to U.S. tax as income effectively connected with a U.S. trade or business and thus will not be subject to special withholding rules under FIRPTA. In addition, a sale of our stock by a qualified foreign pension fund that holds such stock directly or indirectly (through one or more partnerships) will not be subject to U.S. federal income taxation under FIRPTA.

A qualified foreign pension fund is any trust, corporation or other organization or arrangement (i) which is created or organized under the law of a country other than the United States, (ii) which is established to provide retirement or pension benefits to participants or beneficiaries that are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered (iii) which does not have a single participant or beneficiary with a right to more than 5% of its assets or income, (iv) which is subject to government regulation and provides annual information reporting about its beneficiaries to the relevant tax authorities in the country in which it is established or operates, and (v) with respect to which, under the laws of the country in which it is established or operates, (a) contributions to such organization or arrangement that would otherwise be subject to tax under such laws are deductible or excluded from the gross income of such entity or taxed at a reduced rate, or (b) taxation of any investment income of such organization or arrangement is deferred or such income is taxed at a reduced rate.

The tax provisions relating to qualified shareholders and qualified foreign pension funds are complex. Stockholders should consult their tax advisors with respect to the impact of those provisions on them.

***Legislation Relating to Foreign Accounts***

FATCA imposes withholding taxes on certain types of payments made to foreign financial institutions and certain other non-U.S. entities. Under this legislation, the failure to comply with additional certification, information reporting and other specified requirements could result in withholding tax being imposed on payments of dividends and sales proceeds to U.S. stockholders (as defined above) who own shares of our capital stock through foreign accounts or foreign intermediaries and certain non-U.S. stockholders. The legislation imposes a 30% withholding tax on dividends on, and gross proceeds from the sale or other disposition of, our capital stock paid to a foreign financial institution or to a foreign entity other than a financial institution, unless (i) the foreign financial institution undertakes certain diligence and reporting obligations or (ii) the foreign entity that is not a financial institution either certifies it does not have any substantial United States owners or furnishes identifying information regarding each substantial United States owner. If the payee is a foreign financial institution, it must enter into an agreement with the U.S. Treasury Department requiring, among other things, that it undertake to identify accounts held by certain United States persons or United States-owned foreign entities, annually report certain information about such accounts, and withhold 30% on payments to account holders whose actions prevent it from complying with these reporting and other requirements. The IRS has required withholding under FATCA with respect to dividends paid after June 30, 2014 (subject to a transition period applicable through the end of 2015 with respect to which the IRS will take into account certain good faith compliance efforts) and is expected to begin to require withholding under FATCA with respect to gross proceeds of a disposition of our capital stock paid after December 31, 2018. In addition, the IRS and the Treasury Department have begun collaborating with foreign governments under bilateral intergovernmental agreements to implement the policy objectives of FATCA. Prospective investors should consult their tax advisors regarding this legislation.



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***Legislative or Other Actions Affecting REITs***

The rules dealing with federal income taxation are constantly under review by persons involved in the legislative process by the IRS and the U.S. Treasury Department. No assurance can be given as to whether, when, or in what form, federal income tax laws applicable to us or our stockholders may be enacted, possibly with retroactive effect. This is particularly possible because the new Trump administration is considering significant changes in U.S. federal income taxation. Changes to the federal income tax laws and interpretations of federal income tax laws could adversely affect an investment in our shares of capital stock.

***State and Local Taxes***

We and/or our stockholders may be subject to taxation by various states and localities, including those in which we or a stockholder transacts business, owns property or resides. The state and local tax treatment may differ from the federal income tax treatment described above. Consequently, stockholders should consult their own tax advisors regarding the effect of state and local tax laws upon an investment in our capital stock.

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Table of Contents**UNDERWRITING**

Under the terms and subject to the conditions contained in an underwriting agreement dated \_\_\_\_\_, we have agreed to sell to the underwriters named below (the "underwriters"), for whom Credit Suisse Securities (USA) LLC is acting as representative, the following respective principal amount of notes:

<u>Underwriter</u>	Aggregate Principal
Credit Suisse Securities (USA) LLC	\$
JMP Securities LLC	\$
<b>Total</b>	<b>\$ 125,000,000</b>

The underwriting agreement provides that the underwriters are obligated to purchase all of the notes in the offering if any are purchased, other than those notes covered by the over-allotment option described below.

We have agreed to indemnify the underwriters and certain of their controlling persons against certain liabilities, including liabilities under the Securities Act, and to contribute to payments that the underwriters may be required to make in respect of those liabilities.

We have granted to the underwriters a 30-day option to purchase on a pro rata basis up to an additional \$18,750,000 aggregate principal amount of notes at the initial public offering price less the underwriting discounts and commissions. The option may be exercised only to cover any over-allotments.

The underwriters propose to offer the notes initially at the public offering price on the cover page of this prospectus supplement and to selling group members at that price less a selling concession of \$ \_\_\_\_\_ per \$1,000 principal amount of the notes. After the initial public offering, the underwriters may change the public offering price and concession. The offering of the notes by the underwriters is subject to receipt and acceptance and subject to the underwriters' right to reject any order in whole or in part.

The following table summarizes the compensation we will pay:

	Per Note	No Exercise	Full Exercise
Underwriting Discounts and Commissions paid by us	%	\$	\$

The expenses of the offering, payable by us, excluding the underwriter discounts and commissions, are estimated to be approximately \$ \_\_\_\_\_.

We have also agreed to reimburse the underwriters for their FINRA counsel fee if any. In accordance with FINRA Rule 5110, this reimbursed fee is deemed underwriting compensation for this offering.

We have agreed that we will not offer, sell, contract to sell, pledge or otherwise dispose of (or enter into any transaction which is designed to, or might reasonably be expected to, result in the disposition (whether by actual disposition or effective economic disposition due to cash settlement or otherwise) by us or any of our affiliates or any person in privity with us), directly or indirectly, including the filing (or participation in the filing) of a registration

statement with the Securities and Exchange Commission in respect of, or establish or increase a put equivalent position or liquidate or decrease a call equivalent position within the meaning of Section 16 of the Exchange Act, any shares of our common stock, or any securities convertible into, or exercisable, or exchangeable for our common stock, or publicly announce an intention to effect such transaction, without the prior written consent of Credit Suisse Securities (USA) LLC, for a period of 60 days after the date of the underwriting agreement (the **Lock-Up Period**); provided that we may issue and sell (i) the notes to be sold hereunder and the common stock underlying the notes, or (ii) shares of our common stock pursuant to any of our employee stock option plan, stock ownership plan or dividend reinvestment plan in effect as of the date of the underwriting agreement and we may issue shares of our common stock upon the conversion of securities or the exercise of warrants or options outstanding as of the date of the underwriting agreement.

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Each of our directors and executive officers and the Manager have agreed that they will not, without the prior written consent of Credit Suisse Securities (USA) LLC, offer, sell, contract to sell, pledge or otherwise dispose of (or enter into any transaction which is designed to, or might reasonably be expected to, result in the disposition (whether by actual disposition or effective economic disposition due to cash settlement or otherwise) by them or any of their affiliates or any person in privity with them or any of their affiliates), directly or indirectly, including the filing (or participation in the filing) of a registration statement with the Securities and Exchange Commission in respect of, or establish or increase a put equivalent position or liquidate or decrease a call equivalent position within the meaning of Section 16 of the Exchange Act, and the rules and regulations of the Securities and Exchange Commission promulgated thereunder with respect to any shares of our common stock or any securities convertible into, or exercisable or exchangeable for shares of our common stock, or publicly announce an intention to effect any such transaction, for the Lock-Up Period. However, each of our directors and executive officers may transfer or dispose of our shares during the Lock-up Period to a family member of such person or a trust, provided that (i) the transferee agrees to be bound in writing by the restrictions set forth in this paragraph for the remainder of the Lock-up Period prior to such transfer, and (ii) no filing by any party (donor, donee, transferor or transferee) under the Exchange Act will be required or be voluntarily made in connection with such transfer (other than a filing on a Form 5 made after the expiration of the Lock-up Period).

We do not intend to apply for listing of the notes on any national securities exchange or automated dealer system. The underwriters have advised us that they may make a market in the notes after completion of the offering, but will not be obligated to do so and may discontinue any market-making activities at any time without notice. No assurance can be given as to the liquidity of the trading market for the notes or that an active public market for the notes will exist or develop. If an active public trading market for the notes does not exist or develop, the market price and liquidity of the notes may be adversely affected.

Our common stock is listed on the New York Stock Exchange under the symbol RSO.

In connection with the offering the underwriters may engage in stabilizing transactions, over-allotment transactions, syndicate covering transactions, and penalty bids in accordance with Regulation M under the Exchange Act.

Stabilizing transactions permit bids to purchase the underlying security so long as the stabilizing bids do not exceed a specified maximum.

Over-allotment involves sales by the underwriters of notes in excess of the aggregate principal amount of the notes the underwriters are obligated to purchase, which creates a syndicate short position. The short position may be either a covered short position or a naked short position. In a covered short position, the aggregate principal amount of the notes over-allotted by the underwriters is not greater than the aggregate principal amount of the notes that it may purchase in the over-allotment option. In a naked short position, the aggregate principal amount of the notes involved is greater than the aggregate principal amount of the notes in the over-allotment option. The underwriters may close out any short position by either exercising its over-allotment option and/or purchasing notes in the open market.

Syndicate covering transactions involve purchases of the notes in the open market after the distribution has been completed in order to cover syndicate short positions. In determining the source of notes to close out the short position, the underwriters will consider, among other things, the price of notes available for

purchase in the open market as compared to the price at which they may purchase notes through the over-allotment option. If the underwriters sell more notes than could be covered by the over-allotment option (a naked short position), that position can only be closed out by buying notes in the open market. A naked short position is more likely to be created if the underwriters are concerned that there could be downward pressure on the price of the notes in the open market after pricing that could adversely affect investors who purchase in the offering.

Penalty bids permit the underwriters to reclaim a selling concession from a syndicate member when the notes originally sold by the syndicate member are purchased in a stabilizing or syndicate covering transaction to cover syndicate short positions.

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These stabilizing transactions, syndicate covering transactions and penalty bids may have the effect of raising or maintaining the market price of the notes or preventing or retarding a decline in the market price of the notes. As a result the price of the notes may be higher than the price that might otherwise exist in the open market. These transactions may be effected on the New York Stock Exchange or otherwise and, if commenced, may be discontinued at any time.

The underwriters and their respective affiliates are full service financial institutions engaged in various activities, which may include sales and trading, commercial and investment banking, advisory, investment management, investment research, principal investment, hedging, market making, financing and brokerage and other financial and non-financial activities and services. Certain of the underwriters and their respective affiliates have provided, and may in the future provide, a variety of these services to us and to persons and entities with relationships with us, for which they received or will receive customary fees and expenses. In addition, in the ordinary course of their business activities, the underwriters and their affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and financial instruments (including bank loans) for their own account and for the accounts of their customers. These investments and securities activities may involve securities and/or instruments of ours or our affiliates. The underwriters and their affiliates may also make investment recommendations and/or publish or express independent research views in respect of such securities or financial instruments and may hold, or recommend to clients that they acquire, long and/or short positions in such securities and instruments.

We have from time to time entered into master repurchase agreements, master securities forward transaction agreements, international swaps and derivative agreements and other similar agreements with Credit Suisse Securities (USA) LLC or its affiliates for the financing of our target assets.

A prospectus supplement in electronic format may be made available on the web sites maintained by the underwriters, or selling group members, if any, participating in the offering, and the underwriters may distribute prospectus supplements electronically. The underwriters may agree to allocate securities to selling group members for sale to their online brokerage account holders. Internet distributions will be allocated by the underwriter and selling group members that will make internet distributions on the same basis as other allocations.

## **Selling Restrictions**

### **Notice to Prospective Investors in Hong Kong**

The securities may not be offered or sold in Hong Kong by means of any document other than (i) to professional investors as defined in the Securities and Futures Ordinance (Cap.571) of Hong Kong and any rules made under that Ordinance, or (ii) in other circumstances which do not result in the document being a prospectus as defined in the Companies Ordinance (Cap.32) of Hong Kong or which do not constitute an offer to the public within the meaning of that Ordinance. No advertisement, invitation or document relating to the depositary securities may be issued or may be in the possession of any person for the purpose of issue, whether in Hong Kong or elsewhere, which is directed at, or the contents of which are likely to be accessed or read by, the public of Hong Kong (except if permitted to do so under the securities laws of Hong Kong) other than with respect to depositary securities which are or are intended to be disposed of only to persons outside Hong Kong or only to professional investors as defined in the Securities and Futures Ordinance and any rules made under that Ordinance.

### **Notice to Prospective Investors in Switzerland**

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This document is not intended to constitute an offer or solicitation to purchase or invest in the securities described herein. The securities may not be publicly offered, sold or advertised, directly or indirectly, in, into or from Switzerland and will not be listed on the SIX Swiss Exchange or on any other exchange or regulated trading

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facility in Switzerland. Neither this document nor any other offering or marketing material relating to the securities constitutes a prospectus as such term is understood pursuant to article 652a or article 1156 of the Swiss Code of Obligations or a listing prospectus within the meaning of the listing rules of the SIX Swiss Exchange or any other regulated trading facility in Switzerland, and neither this document nor any other offering or marketing material relating to the securities may be publicly distributed or otherwise made publicly available in Switzerland.

Neither this document nor any other offering or marketing material relating to the offering, nor the Company nor the securities have been or will be filed with or approved by any Swiss regulatory authority. The securities are not subject to the supervision by any Swiss regulatory authority, e.g., the Swiss Financial Markets Supervisory Authority FINMA (FINMA), and investors in the securities will not benefit from protection or supervision by such authority.

**Notice to Prospective Investors in the Cayman Islands**

This prospectus does not constitute an invitation or offer to the public in the Cayman Islands of the securities, whether by way of sale or subscription.

**Notice to Prospective Investors in the Marshall Islands**

The securities have not been offered or sold and will not be offered or sold, directly or indirectly, to the public in the Republic of the Marshall Islands.

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**LEGAL MATTERS**

Certain legal matters in connection with this offering will be passed on for us by Ledgewood, P.C. Morrison & Foerster LLP will pass upon the validity of the securities being offered hereby and certain other matters under Maryland law for us. Skadden, Arps, Slate, Meagher & Flom LLP, New York, New York, has acted as counsel to the underwriters in connection with certain legal matters related to this offering.

**EXPERTS**

The financial statements, schedules and management's assessment of the internal control over financial reporting incorporated by reference in this prospectus supplement and the accompanying prospectus have been so incorporated by reference in reliance upon the reports of Grant Thornton LLP, independent registered public accountants, upon the authority of said firm as experts in accounting and auditing.

**WHERE YOU CAN FIND MORE INFORMATION**

This prospectus supplement constitutes a part of a registration statement on Form S-3 filed by us with the SEC under the Securities Act with respect to the notes offered by this prospectus supplement. This prospectus supplement does not contain all of the information included in the registration statement, certain parts of which are omitted in accordance with the rules and regulations of the SEC. For further information with respect to us and the securities offered by this prospectus supplement, reference is made to the registration statement. Statements contained or incorporated by reference in this prospectus supplement concerning the provisions of certain documents are necessarily summaries of such documents, and each such statement is qualified in its entirety by reference to the copy of the applicable document filed with the SEC.

We file annual, quarterly and current reports, proxy statements and other information with the SEC. We also make available free of charge through our website at [www.resourcecapitalcorp.com](http://www.resourcecapitalcorp.com), our annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, or the Exchange Act, as soon as reasonably practicable after they are filed electronically with the SEC. You may read and copy any reports, statements or other information that we have filed with the SEC at the SEC's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. You may request copies of these documents, upon payment of a copying fee, by writing to the SEC. Please call the SEC at 1-800-SEC-0330 for information on the operation of the Public Reference Room. Our SEC filings are also available to the public on the SEC internet site at <http://www.sec.gov>. Unless specifically listed under "Incorporation of Documents by Reference" below, the information contained on our website or the SEC website is not intended to be incorporated by reference in this prospectus supplement and you should not consider that information a part of this prospectus supplement.

**INCORPORATION OF DOCUMENTS BY REFERENCE**

We are incorporating by reference into this prospectus supplement and the accompanying prospectus certain information we file with the SEC, which means that we are disclosing important information to you by referring you to those documents. The information incorporated by reference is deemed to be part of this prospectus supplement and the accompanying prospectus, except as described below. This prospectus supplement incorporates by reference the documents listed below that we have previously filed with the SEC, other than any portions of such documents that are not deemed filed under the Exchange Act, in accordance with the Exchange Act and applicable SEC rules:



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our Quarterly Reports on Form 10-Q for the quarters ended March 31, 2017 and June 30, 2017;

our Current Reports on Form 8-K filed with the SEC on March 8, 2017, May 10, 2017 (Item 5.02 only), June 6, 2017, June 8, 2017, July 19, 2017 and August 2, 2017; and

the description of our common stock contained in our Registration Statement on Form 8-A filed with the SEC on January 25, 2006, including any amendment or report filed with the SEC for the purpose of updating such description.

All documents that we file with the SEC pursuant to Section 13(a), 13(c), 14, or 15(d) of the Exchange Act from the date of this prospectus supplement to the end of the offering of the securities offered hereby pursuant to this prospectus supplement and the accompanying prospectus shall also be deemed to be incorporated herein by reference (other than any portions of any such documents that are not deemed filed under the Exchange Act in accordance with the Exchange Act and applicable SEC rules) and will automatically update information in this prospectus supplement and the accompanying prospectus.

Any statements made in this prospectus supplement and the accompanying prospectus or in a document incorporated or deemed to be incorporated by reference into this prospectus supplement and the accompanying prospectus will be deemed to be modified or superseded for purposes of this prospectus supplement and the accompanying prospectus to the extent that a statement contained in this prospectus supplement and the accompanying prospectus or in any other subsequently filed document that is also incorporated or deemed to be incorporated by reference into this prospectus supplement and the accompanying prospectus modifies or supersedes the statement. Any statement so modified or superseded will not be deemed, except as so modified or superseded, to constitute a part of this prospectus supplement or the accompanying prospectus.

You may request a copy of these filings, at no cost, by writing or telephoning us at the following address:

Resource Capital Corp.

Attention: Purvi Kamdar

712 Fifth Avenue

12<sup>th</sup> Floor

New York, New York 10019

(212) 506-3893

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**PROSPECTUS**

**COMMON STOCK**

**PREFERRED STOCK**

**DEBT SECURITIES**

**WARRANTS**

**UNITS**

This prospectus is part of a registration statement that we filed with the Securities and Exchange Commission, or the SEC, utilizing a shelf registration process. Under this registration process, we may sell from time to time any combination of our:

common stock;

preferred stock, which may be convertible into our common stock;

senior or subordinated debt securities, which may be convertible into our common stock or preferred stock;

warrants to purchase common stock, preferred stock or debt securities;

units to purchase one or more debt securities, common stock, preferred stock or warrants or any combination of such securities

in one or more offerings. The terms of these offerings will be determined at the time of sale. We refer to the common stock, preferred stock, warrants, debt securities and the units collectively as the securities in this prospectus. For more information on how our securities may be sold, please read the section of the prospectus entitled Plan of Distribution.

We will provide the specific terms of these securities in one or more supplements to this prospectus or in other offering materials. You should read this prospectus, any prospectus supplement and any other offering materials carefully before you invest. No securities may be sold without delivery of a prospectus supplement or other offering materials describing the method and terms of the offering of those securities.

**An investment in these securities entails material risks and uncertainties. See Risk Factors on page 4 of this prospectus.**

Our common stock is listed on the New York Stock Exchange under the trading symbol RSO. On May 4, 2017, the last reported sale price of our common stock was \$9.49 per share. Each prospectus supplement will indicate if the securities offered thereby will be listed on any securities exchange.

**NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES COMMISSION HAS APPROVED OR DISAPPROVED OF THESE SECURITIES OR PASSED UPON THE ADEQUACY OR ACCURACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.**

**The date of this prospectus is June 15, 2017**

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**ABOUT THIS PROSPECTUS**

This prospectus is part of a registration statement that we filed with the Securities and Exchange Commission, or the SEC, using a shelf registration process. Under this registration process, over the next three years (or such longer period as may be permitted under SEC rules), we may sell any combination of our common stock, preferred stock, debt securities, warrants or units. The terms of these offerings will be determined at the time of sale. For more information on how our securities may be sold, please read the section of the prospectus entitled Plan of Distribution.

The specific terms of the securities we offer and the terms of their sale will be set forth in an accompanying supplement to this prospectus or other offering materials. This prospectus describes some of the general terms that may apply to these securities. The prospectus supplement or other offering materials may also add, update or change information contained in this prospectus. You should read this prospectus, any prospectus supplement and any other offering materials together with the additional information described in the section of the prospectus entitled Where You Can Find More Information.

No person has been authorized to provide you with different information from the information contained or incorporated by reference in this prospectus and in any prospectus supplement or in any free writing prospectus that we may provide you. You should not assume that the information contained in this prospectus, any prospectus supplement or in any free writing prospectus or any document incorporated by reference is accurate as of any date, other than the date mentioned on the cover page of these documents. We are not making offers to sell the securities in any jurisdiction in which an offer or solicitation is not authorized or in which the person making such offer or solicitation is not qualified to do so or to anyone to whom it is unlawful to make an offer or solicitation.

As used in this prospectus, unless the context suggests otherwise, the terms we, us and our refer to Resource Capital Corp. and its subsidiaries, Manager refers to Resource Capital Manager, Inc., our external manager, and Resource America refers to Resource America, Inc. and its affiliated companies, including the Manager. Our address is 712

Fifth Avenue, 12<sup>th</sup> Floor, New York, NY 10019. Our telephone number is (212) 506-3870.



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**SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS**

Some of the statements contained or incorporated by reference in this prospectus or which may be contained or incorporated by reference in a prospectus supplement constitute forward-looking statements. Forward-looking statements relate to expectations, beliefs, projections, future plans and strategies, anticipated events or trends and similar expressions concerning matters that are not historical facts. In some cases, you can identify forward-looking statements by terms such as anticipate, believe, could, estimate, expects, intend, may, plan, potential, will and would or the negative of these terms or other comparable terminology.

Forward-looking statements contained or incorporated by reference in this prospectus or which may be contained or incorporated by reference in a prospectus supplement are based on our beliefs, assumptions and expectations regarding our future performance, taking into account all information currently available to us. These beliefs, assumptions and expectations can change as a result of many possible events or factors, not all of which are known to us or are within our control. If a change occurs, our business, financial condition, liquidity and results of operations may vary materially from those expressed in our forward-looking statements. Forward-looking statements we make in this report are subject to various risks and uncertainties that could cause actual results to vary from our forward-looking statements, including:

the risk factors described or incorporated by reference in this prospectus;

changes in our industry, interest rates, the debt securities markets, real estate markets or the general economy;

increased rates of default and/or decreased recovery rates on our investments;

availability, terms and deployment of capital;

availability of qualified personnel;

changes in governmental regulations, tax rates and similar matters;

changes in our business strategy;

availability of investment opportunities in commercial real estate-related assets;

the degree and nature of our competition;

the adequacy of our cash reserves and working capital; and

the timing of cash flows, if any, from our investments.

We caution you not to place undue reliance on these forward-looking statements, which speak only as of the date of this prospectus or the date of any document incorporated by reference in this prospectus. All subsequent written and oral forward-looking statements attributable to us or any person acting on our behalf are expressly qualified in their entirety by the cautionary statements contained or referred to in this section. Except to the extent required by applicable law or regulation, we undertake no obligation to update these forward-looking statements to reflect events or circumstances after the date of this filing or to reflect the occurrence of unanticipated events.

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**WHERE YOU CAN FIND MORE INFORMATION**

This prospectus does not contain all the information set forth in the registration statement, certain parts of which are omitted in accordance with the rules and regulations of the SEC. For further information with respect to us and the securities offered by this prospectus, reference is made to the registration statement. Statements contained in this prospectus concerning the provisions of such documents are necessarily summaries of such documents, and each such statement is qualified in its entirety by reference to the copy of the applicable document filed with the SEC.

We file annual, quarterly and current reports, proxy statements and other information with the SEC. We also make available free of charge through our website at [www.resourcecapitalcorp.com](http://www.resourcecapitalcorp.com), our annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, or the Exchange Act, as soon as reasonably practicable after they are filed electronically with the SEC. You may read and copy any reports, statements or other information that we have filed with the SEC at the SEC's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. You may request copies of these documents, upon payment of a copying fee, by writing to the SEC. Please call the SEC at 1-800-SEC-0330 for information on the operation of the Public Reference Room. Our SEC filings are also available to the public on the SEC internet site at <http://www.sec.gov>. Unless specifically listed under "Incorporation of Certain Documents by Reference" below, the information contained on our website or the SEC website is not intended to be incorporated by reference in this prospectus and you should not consider that information a part of this prospectus.

**INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE**

The SEC allows us to incorporate by reference the information we file with it, which means that we can disclose important information to you by referring you to documents we have filed with the SEC but that we do not include in this prospectus. Any statement contained in a document incorporated or deemed to be incorporated by reference into this prospectus will be deemed to be modified or superseded for purposes of this prospectus to the extent that a statement contained in this prospectus or any other subsequently filed document that is deemed to be incorporated by reference into this prospectus modifies or supersedes such statement. Any statement so modified or superseded will not be deemed, except as so modified or superseded, to constitute a part of this prospectus. We incorporate by reference the documents listed below that we have filed with the SEC:

Our Annual Report on Form 10-K for the year ended December 31, 2016;

Our Current Report on Form 8-K filed March 3, 2017;

The description of our common stock contained in our Registration Statement on Form 8-A filed on January 25, 2006, including any amendment or report filed for the purpose of updating such description;

The description of our Series A preferred stock contained in our Registration Statement on Form 8-A filed on June 8, 2012, including any amendment or report filed for the purpose of updating such description;

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The description of our Series B preferred stock contained in our Registration Statement on Form 8-A filed on September 28, 2012, including any amendment or report filed for the purpose of updating such description; and

The description of our Series C preferred stock contained in our Registration Statement on Form 8-A filed on June 9, 2014, including any amendment or report filed for the purpose of updating such description.

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We also incorporate by reference into this prospectus all documents (other than current reports furnished under Items 2.02 or Item 7.01 of Form 8-K and exhibits filed on such form that are related to such items) that are filed by us with the SEC pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act (i) after the date of the initial filing of the registration statement of which this prospectus is a part and prior to the effectiveness of the registration statement, or (ii) after the date of this prospectus until we sell all of the securities covered by this prospectus or the sale of securities by us pursuant to this prospectus is terminated.

A statement contained in a document incorporated by reference into this prospectus shall be deemed to be modified or superseded for purposes of this prospectus to the extent that a statement contained in this prospectus, any prospectus supplement or in any other subsequently filed document that is also incorporated in this prospectus modifies or replaces such statement. Any statements so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this prospectus. You should not assume that the information in this prospectus or in the documents incorporated by reference is accurate as of any other than the date on the front of this prospectus or those documents.

You may request a copy of these filings, at no cost, by writing or telephoning us at the following address and telephone number:

Resource Capital Corp.

Attention: Purvi Kamdar

712 Fifth Avenue

12<sup>th</sup> Floor

New York, New York 10019

(212) 506-3893

You should rely only on the information incorporated by reference or provided in this prospectus, any supplement to this prospectus or any other offering materials we may use. We have not authorized any person to provide information other than that provided in this prospectus, any supplement to this prospectus or any other offering materials we may use. You should assume that the information in this prospectus, any prospectus supplement and any other offering materials we may use is accurate only as of the date on their respective cover pages and that any information in a document we have incorporated by reference is accurate only as of the date of the document incorporated by reference.

The statements that we make in this prospectus or in any document incorporated by reference in this prospectus about the contents of any other documents are not necessarily complete and are qualified in their entirety by referring you to copies of those documents that are filed as exhibits to the registration statement, of which this prospectus forms a part, or as an exhibit to the documents incorporated by reference. You can obtain copies of these documents from the SEC or from us, as described above.

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**THE COMPANY**

We are a real estate finance company that is organized and conducts its operations to qualify as a real estate investment trust, or REIT, for federal income tax purposes under Subchapter M of the Internal Revenue Code of 1986, as amended. Our investment strategy focuses primarily on originating, holding and managing commercial mortgage loans and other commercial real estate-related debt investments. We have historically made other residential real estate and commercial finance investments.

Our investment strategy targets the following core commercial real estate-related assets:

first mortgage loans, which we refer to as whole loans;

first priority interests in first mortgage loans, which we refer to as A notes;

subordinated interests in first mortgage loans, which we refer to as B notes;

mezzanine debt that is senior to the borrower's equity position but subordinated to other third-party debt; and

commercial mortgage-backed securities, which we refer to as CMBS.

Our objective is to provide our stockholders with total returns over time, including quarterly distributions and capital appreciation, while seeking to manage the risks associated with our investment strategies. We have financed a substantial portion of our portfolio investments through borrowing strategies seeking to match the maturities and repricing dates of our financings with the maturities and repricing dates of those investments, and we have sought to mitigate interest rate and foreign currency risk through derivative investments.

We are externally managed by Resource Capital Manager, Inc., or our Manager, which is an indirect wholly-owned subsidiary of Resource America, Inc. (formerly traded on NASDAQ: REXI), or Resource America. On September 8, 2016, Resource America was acquired by C-III Capital Partners LLC, or C-III, a leading commercial real estate services company engaged in a broad range of activities, including primary and special loan servicing, loan origination, fund management, CDO management, principal investment, investment sales and multifamily property management. Our Manager now draws upon C-III's and Resource America's management teams and their collective investment experience to provide its services.

Our principal office is located at 712 Fifth Avenue, 12<sup>th</sup> Floor, New York, New York 10019, and our telephone number is (212) 506-3870. Our website is located at [www.resourcecapitalcorp.com](http://www.resourcecapitalcorp.com). The information found on, or otherwise accessible through, our website is not incorporated into, and does not form a part of, this prospectus or any other report or document we file with or furnish to the SEC.

**Table of Contents****RISK FACTORS**

Investment in our securities involves a high degree of risk. Before making an investment decision, you should carefully consider the risks incorporated by reference from our most recent Annual Report on Form 10-K, the risk factors described under the caption "Risk Factors" in any applicable prospectus supplement and any risk factors set forth in our other filings with the SEC pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act. See "Where You Can Find More Information" and "Incorporation of Certain Documents by Reference." Our business, prospects, financial condition or operating results could be materially harmed by any of these risks, as well as other risks not currently known to us or that we currently consider immaterial. The trading prices of our securities could decline due to any of these risks, and, as a result, you may lose all or part of your investment. The risks and uncertainties are not limited to those set forth in the risk factors described in these documents. Additional risks and uncertainties not presently known to us or that we currently believe to be less significant than the risk factors incorporated by reference herein may also adversely affect our business. When we offer and sell any securities pursuant to a prospectus supplement, we may include additional risk factors relevant to such securities in the applicable prospectus supplement. In addition, past financial performance may not be a reliable indicator of future performance and historical trends should not be used to anticipate results or trends in future periods.

**USE OF PROCEEDS**

Unless otherwise set forth in a prospectus supplement, we intend to use the net proceeds of any offering of securities for general corporate purposes, which may include, but not be limited to, refinancing or repayment of indebtedness, capital expenditures and working capital. Pending any of these uses, the net proceeds of a sale will be held in bank accounts or invested in marketable securities.

**RATIOS OF EARNINGS TO FIXED CHARGES AND TO COMBINED FIXED CHARGES AND PREFERRED STOCK DIVIDENDS**

Our ratios of earnings to fixed charges and of earnings to combined fixed charges and preferred stock dividends for the periods indicated are set forth below. For purposes of calculating the ratios set forth below, earnings represent pretax income from continuing operations, as adjusted for fixed charges; and fixed charges represent interest expensed and capitalized, amortized premiums, discounts and capitalized expenses related to indebtedness and an estimate of the interest within rental expense.

		<b>Year Ended December 31,</b>				
	<b>2016</b>	<b>2015</b>	<b>2014</b>	<b>2013</b>	<b>2012</b>	
		<i>Audited</i>				
Ratio of Earnings to Fixed Charges	(2)	1.35	2.27	1.73	3.11	
Ratio of Earnings to Combined Fixed Charges and Preferred Stock Dividends (1)	(3)	(3)	1.62	1.55	3.02	

- (1) We did not have any shares of preferred stock outstanding until June 2012 and paid our first preferred stock dividend in July 2012.
- (2) The dollar amount of the deficiency for the year ended December 31, 2016 was \$4.7 million.
- (3) The dollar amounts of the deficiencies for the years ended December 31, 2016 and 2015 were \$28.8 million and \$4.8 million, respectively.





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**DESCRIPTION OF COMMON STOCK AND PREFERRED STOCK**

The following is a summary description of our capital stock. Copies of our charter and bylaws are available upon request. See [Where You Can Find More Information](#).

**General**

Our charter provides that we may issue up to 125,000,000 shares of common stock and 100,000,000 shares of preferred stock, both having par value \$0.001 per share. As of May 1, 2017, we had 31,393,013 shares of common stock outstanding, 1,069,016 shares of our Series A preferred stock outstanding, 5,544,579 shares of our Series B preferred stock outstanding and 4,800,000 shares of our Series C preferred stock outstanding. Under Maryland law, our stockholders are not personally liable for our debts and obligations solely as a result of their status as stockholders.

**Common Stock**

All shares of our common stock have equal rights as to earnings, assets, distributions and voting and, when issued and paid for, will be duly authorized, validly issued, fully paid and nonassessable. Distributions may be paid to the holders of our common stock if, as and when authorized by our board of directors and declared by us out of funds legally available therefor. Shares of our common stock have no preemptive, appraisal, preferential exchange, conversion or redemption rights and are freely transferable, except where their transfer is restricted by federal and state securities laws, by contract or by the restrictions in our charter. In the event of our liquidation, dissolution or winding up, each share of our common stock will be entitled to share ratably in all of our assets that are legally available for distribution after payment of or adequate provision for all of our known debts and other liabilities and subject to any preferential rights of holders of our preferred stock, if any preferred stock is outstanding at such time. Subject to our charter restrictions on the transfer and ownership of our stock and except as may be specified otherwise in the terms of any class or series of our common stock, each share of our common stock entitles the holder to one vote on all matters submitted to a vote of stockholders, including the election of directors. Except as provided with respect to any other class or series of stock, the holders of our common stock will possess exclusive voting power. There is no cumulative voting in the election of directors. In an uncontested election, each director will be elected by the affirmative vote of a majority of votes cast with respect to the election of that candidate.

**Preferred Stock**

The following description sets forth general terms and provisions of our authorized preferred stock. Any preferred stock issued under this prospectus will be issued as one or more new series of preferred stock, the rights, preferences, privileges and restrictions of which will be fixed by articles supplementary relating to each series. A prospectus supplement relating to each series will specify the terms of the preferred stock, including:

the maximum number of shares in the series and the designation of the series;

the terms on which dividends, if any, will be paid;

the terms on which the shares may be redeemed, if at all;

the liquidation preference, if any;

the terms of any retirement or sinking fund for the purchase or redemption of the shares of the series;

the terms and conditions, if any, on which the shares of the series will be convertible into, or exchangeable for, shares of any other class or classes of securities;

the voting rights, if any, of the shares of the series; and

any or all other preferences and relative, participating, operational or other special rights or qualifications, limitations or restrictions of the shares.

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The description of preferred stock above is not complete. You should refer to the articles supplementary with respect to any series of preferred stock we have issued or may issue for complete information concerning the terms of that series. A copy of the articles supplementary for each series of preferred stock will be or has been filed with the SEC as an exhibit to the registration statement of which this prospectus is a part or as an exhibit to a filing incorporated by reference in that registration statement.

Our board of directors may authorize the issuance of series of preferred stock with voting or conversion rights that could adversely affect the voting power or other rights of common stockholders. The issuance of preferred stock could have the effect of delaying or preventing a change in control, and may cause the market price of our common stock to decline or impair the voting and other rights of the holders of our common stock.

### **Power to Reclassify Unissued Shares of Our Capital Stock**

Our charter authorizes our board of directors to classify and reclassify any unissued shares of stock into other classes or series of stock, including preferred stock. Before issuance of shares of each class or series, the board of directors is required by Maryland law and by our charter to set, subject to our charter restrictions on the transfer and ownership of our stock, the terms, preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications and terms or conditions of redemption for each class or series. Thus, the board of directors could authorize the issuance of shares of common stock or preferred stock with terms and conditions that could have the effect of delaying, deferring or preventing a transaction or a change in control that might involve a premium price for holders of our common stock or otherwise be in their best interests.

### **Power to Issue Additional Shares of Common Stock and Preferred Stock**

We believe that the power of our board of directors to amend the charter without stockholder approval to increase the total number of authorized shares of our stock or any class or series of our stock, to issue additional authorized but unissued shares of our common stock or preferred stock and to classify or reclassify unissued shares of our common stock or preferred stock and thereafter to cause us to issue such classified or reclassified shares of stock will provide us with increased flexibility in structuring possible future financings and acquisitions and in meeting other needs that might arise. The additional classes or series, as well as our common stock, will be available for issuance without further action by our stockholders, unless stockholder action is required by applicable law or the rules of any stock exchange or automated quotation system on which our securities may be listed or traded. Although our board of directors has no intention at the present time of doing so, it could authorize us to issue a class or series that could, depending upon the terms of such class or series, delay, defer or prevent a transaction or a change in control of us that might involve a premium price for holders of our common stock or otherwise be in their best interests.

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

In order to qualify as a REIT under the Internal Revenue Code, our shares of capital stock must be beneficially owned by 100 or more persons during at least 335 days of a taxable year of 12 months or during a proportionate part of a shorter taxable year. Also, no more than 50% of the value of our outstanding shares of capital stock may be owned, directly or constructively, by five or fewer individuals (as defined in the Internal Revenue Code to include certain entities) at any time during the second half of any calendar year.

Our charter, subject to certain exceptions, contains restrictions on the number of shares of our capital stock that a person may own and may prohibit certain entities from owning our shares. Our charter provides that (subject to certain exceptions described below) no person may own, or be deemed to own by virtue of the attribution provisions of the Internal Revenue Code, more than 9.8% in value or in number of shares, whichever is more restrictive, of any class or

series of our capital stock. Our board may, in its sole discretion, waive the 9.8% ownership limit with respect to a particular stockholder if it is presented with evidence satisfactory to it that

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such ownership will not then or in the future jeopardize our qualification as a REIT. Our board has waived the ownership limit for Resource America and set its ownership limit at 15% of our outstanding capital stock. Our board may reduce this ownership limit at its discretion, although any such reduction will not be effective as to shares then owned by Resource America in excess of the reduced limit.

Our charter also prohibits any person from:

beneficially or constructively owning shares of our capital stock that would result in our being closely held under Section 856(h) of the Internal Revenue Code or otherwise cause us to fail to qualify as a REIT; or

transferring shares of our capital stock if such transfer would result in our capital stock being owned by fewer than 100 persons.

Any person who acquires or attempts or intends to acquire beneficial or constructive ownership of shares of our capital stock that will or may violate any of the foregoing restrictions on transferability and ownership, or who is the intended transferee of shares of our stock that are transferred to a trust (as described below), will be required to give notice immediately to us and provide us with such other information as we may request in order to determine the effect of such transfer on our qualification as a REIT. The foregoing restrictions on transferability and ownership will not apply if our board of directors determines that it is no longer in our best interests to attempt to qualify, or to continue to qualify, as a REIT.

Our board of directors, in its sole discretion, may exempt a person from the foregoing restrictions. The person seeking an exemption must provide to our board of directors such representations, covenants and undertakings as our board of directors may deem appropriate in order to conclude that granting the exemption will not cause us to lose our qualification as a REIT. Our board of directors may also require a ruling from the Internal Revenue Service or an opinion of counsel in order to determine or ensure our qualification as a REIT.

Any attempted transfer of our stock that, if effective, would result in a violation of the foregoing restrictions will cause the number of shares causing the violation (rounded up to the nearest whole share) to be automatically transferred to a trust for the exclusive benefit of one or more charitable beneficiaries, and the proposed transferee will not acquire any rights in such shares. The automatic transfer will be deemed to be effective as of the close of business on the business day (as defined in our charter) before the date of the transfer.

If, for any reason, the transfer to a trust does not occur, our charter provides that the purported transfer in violation of the restrictions will be void *ab initio*. Shares of our stock held in a trust will be issued and outstanding shares. The proposed transferee will not benefit economically from ownership of any shares of stock held in a trust and will have no rights to distributions and no rights to vote or other rights attributable to the shares of stock held in a trust. The trustee of the trust will have all voting rights and rights to distributions with respect to shares held in a trust. These rights will be exercised for the exclusive benefit of the charitable beneficiary.

Any distribution paid before our discovery that shares of stock have been transferred to a trust will be paid by the recipient to the trustee upon demand. Any distribution authorized but unpaid will be paid when due to the trustee. Any distribution paid to the trustee will be held in trust for the charitable beneficiary. Subject to Maryland law, the trustee will have the authority to rescind as void any vote cast by the proposed transferee before our discovery that the shares have been transferred to a trust and to recast the vote in accordance with the desires of the trustee acting for the benefit of the charitable beneficiary. However, if we have already taken irreversible corporate action, then the trustee will not

have the authority to rescind and recast the vote.

Within 20 days of receiving notice from us that shares of our stock have been transferred to a trust, the trustee will sell the shares to a person designated by the trustee whose ownership of the shares will not violate the above ownership limitations. Upon such sale, the interest of the charitable beneficiary in the shares sold will

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terminate and the trustee will distribute the net proceeds of the sale to the proposed transferee and to the charitable beneficiary as follows. The proposed transferee will receive the lesser of:

the price paid by the proposed transferee for the shares or, if the proposed transferee did not give value for the shares in connection with the event causing the shares to be held in a trust (e.g., a gift, devise or other similar transaction), the market price (as defined in our charter) of the shares on the day of the event causing the shares to be held in the trust; and

the price received by the trustee from the sale or other disposition of the shares.

Any net sale proceeds in excess of the amount payable to the proposed transferee will be paid immediately to the charitable beneficiary. If, before our discovery that shares of our stock have been transferred to a trust, the shares are sold by the proposed transferee, then the shares shall be deemed to have been sold on behalf of such trust and, to the extent that the proposed transferee received an amount for the shares that exceeds the amount the proposed transferee was entitled to receive, the excess must be paid to the trustee upon demand.

In addition, shares of our stock held in a trust will be deemed to have been offered for sale to us, or our designee, at a price per share equal to the lesser of:

the price per share in the transaction that resulted in the transfer to the trust (or, in the case of a devise or gift, the market price at the time of the devise or gift); and

the market price on the date we, or our designee, accept the offer.

We will have the right to accept the offer until the trustee has sold the shares. Upon a sale to us, the interest of the charitable beneficiary in the shares sold will terminate and the trustee will distribute the net proceeds of the sale to the proposed transferee. All certificates representing shares of our capital stock will bear a legend referring to the restrictions described above.

Every owner of more than 5% (or such lower percentage as required by the Internal Revenue Code or the regulations promulgated thereunder) of all classes or series of our stock, including shares of common stock, in value or number, within 30 days after the end of each taxable year, will be required to give written notice to us stating the name and address of such owner, the number of shares of each class and series of shares of our stock that the owner beneficially owns and a description of the manner in which the shares are held. Each owner must provide us such additional information as we may request in order to determine the effect, if any, of such beneficial ownership on our qualification as a REIT and to ensure compliance with the ownership limitations. In addition, each such owner must, upon demand, provide to us such information as we may request, in good faith, in order to determine our qualification as a REIT and to comply with the requirements of any taxing authority or governmental authority or to determine such compliance.

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

## **Registration Rights**

In connection with our March 2005 private offering, we granted the Manager both piggyback registration rights and the right to demand that we register shares of restricted common stock and shares of common stock underlying the options issued to the Manager upon completion of the private offering and shares of common stock issued to the Manager as incentive compensation under our management agreement. As of the date of this prospectus, the Manager has not exercised its piggyback or demand registration rights.

### **Transfer Agent and Registrar**

The transfer agent and registrar for our common stock, Series A preferred stock, Series B preferred stock and Series C preferred stock is American Stock Transfer & Trust Company. We expect that American Stock Transfer & Trust Company will act as the transfer agent for any equity securities we may offer pursuant to a supplement to this prospectus.



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**DESCRIPTION OF DEBT SECURITIES**

**General**

The debt securities will be:

our direct general obligations;

either senior debt securities or subordinated debt securities; and

issued under separate indentures among us and a trustee that will be named in a prospectus supplement and a supplemental indenture.

We may issue debt securities in one or more series.

If we offer senior debt securities, we will issue them under a senior indenture. If we issue subordinated debt securities, we will issue them under a subordinated indenture. A form of each indenture is filed as an exhibit to the registration statement of which this prospectus is a part. We have not restated either indenture in its entirety in this description. Investors in any debt securities we may issue should read the relevant indenture because it, and not this description, will control their rights as holders of the debt securities. Capitalized terms used in this summary have the meanings specified in the indentures.

**Specific Terms of Each Series of Debt Securities in the Prospectus Supplement**

A prospectus supplement and relating to any series of debt securities being offered will describe the specific terms of the debt securities being offered. These terms will include some or all of the following, as applicable:

the issuer of the debt securities;

the co-issuer(s) of the debt securities, if any;

the guarantor(s) of the debt securities, if any;

whether the debt securities are senior or subordinated debt securities;

the title of the debt securities;

the total principal amount of the debt securities;

the process to authenticate and deliver the debt securities and the application of the proceeds thereof;

the assets, if any, that are pledged as security for the payment of the debt securities;

the terms of any release, or the release and substitution of, any assets pledged as security for the payment of the debt securities;

whether we will issue the debt securities in individual certificates to each holder in registered form, or in the form of temporary or permanent global securities held by a depository on behalf of holders;

the price(s) at which we will issue the debt securities;

the portion of the principal amount that will be payable if the maturity of the debt securities is accelerated;

the currency or currency unit in which the debt securities will be payable, if not U.S. dollars;

the dates on which the principal of the debt securities will be payable;

the interest rate that the debt securities will bear and the interest payment dates for the debt securities;

any conversion or exchange provisions;

any optional redemption provisions;

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any sinking fund or other provisions that would obligate us to repurchase or otherwise redeem the debt securities;

any changes to or additional events of default or covenants; and

any other terms of the debt securities.

We may offer and sell debt securities, including original issue discount debt securities, at a substantial discount below their principal amount. The relevant prospectus supplement will describe special U.S. federal income tax and any other considerations applicable to those securities. In addition, the prospectus supplement may describe certain special U.S. federal income tax or other considerations applicable to any debt securities that are denominated in a currency other than U.S. dollars.

## **Payment of Interest and Exchange**

Each debt security will be represented by either one or more global securities registered in the name of The Depository Trust Company, as Depository, or a nominee of the Depository (we will refer to any debt security represented by a global debt security as a book-entry debt security), or a certificate issued in definitive registered form (we will refer to any debt security represented by a certificated security as a certificated debt security), as described in the applicable prospectus supplement.

## **Certificated Debt Securities**

You may transfer or exchange certificated debt securities at the trustee's designated offices or paying agencies in accordance with the terms of the indenture. No service charge will be made for any transfer or exchange of certificated debt securities, but we may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection with a transfer or exchange.

You may transfer certificated debt securities and the right to receive the principal of, premium and interest on certificated debt securities only by surrendering the old certificate representing those certificated debt securities, and either we or the trustee will reissue the old certificate to the new holder or we or the trustee will issue a new certificate to the new holder.

## **Book-Entry Debt Securities**

We may issue the debt securities of a series in the form of one or more book-entry debt securities that would be deposited with a depository or its nominee identified in the prospectus supplement. We may issue book-entry debt securities in either temporary or permanent form. We will describe in the prospectus supplement the terms of any depository arrangement and the rights and limitations of owners of beneficial interests in any book-entry debt securities.

## **Provisions Relating only to Senior Debt Securities**

Senior debt securities will rank equally in right of payment with all of our other senior and unsubordinated debt. Senior debt securities will be effectively subordinated, however, to all of our secured debt to the extent of the value of the collateral for that debt. We will disclose the amount of our secured debt in the prospectus supplement.

**Provisions Relating only to Subordinated Debt Securities**

*Subordinated Debt Securities Subordinated to Senior Indebtedness.* Subordinated debt securities will rank junior in right of payment to all of our Senior Indebtedness. Senior Indebtedness will be defined in a

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supplemental indenture or authorizing resolutions respecting any issuance of a series of subordinated debt securities, and the definition will be set forth in the prospectus supplement.

*Payment Blockages.* Subordinated indenture will provide that no payment of principal, interest and any premium on the subordinated debt securities may be made if:

we or our property is involved in any voluntary or involuntary liquidation or bankruptcy;

we fail to pay the principal, interest, any premium or any other amounts on any Senior Indebtedness within any applicable grace period or the maturity of such Senior Indebtedness is accelerated following any other default, subject to certain limited exceptions set forth in the subordinated indenture; or

any other default on any Senior Indebtedness occurs that permits immediate acceleration of its maturity, in which case a payment blockage on the subordinated debt securities will be imposed.

*No Limitation on Amount of Senior Debt.* The subordinated indenture will not limit the amount of Senior Indebtedness that we may incur, unless otherwise indicated in the prospectus supplement.

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**DESCRIPTION OF WARRANTS**

The following describes some of the general terms and provisions of warrants we may issue. Warrants may be issued independently or together with any other securities offered by any prospectus supplement or any other offering materials and may be attached to or separate from those securities. Warrants may be issued under warrant agreements to be entered into between us and a warrant agent or may be represented by individual warrant certificates, all as specified in the applicable prospectus supplement or any other offering materials. The warrant agent, if any, for any series of warrants will act solely as our agent and will not assume any obligation or relationship of agency or trust for or with any holders or beneficial owners of warrants. As of the date of this prospectus, there are no outstanding warrants to purchase shares of our common stock or preferred stock.

Reference is made to each prospectus supplement or any other offering materials for the specific terms of the warrants offered thereby. These terms may include the following, as applicable:

the title and aggregate number of the warrants;

the price(s) at which the warrants will be issued;

the title, amount and terms of the securities purchasable upon exercise of the warrants;

the title, amount and terms of the securities offered with the warrants and the number of warrants issued with each such security;

the date, if any, on and after which the warrants and the related securities will be separately transferable;

the price at which the related securities may be purchased upon exercise of the warrants;

the exercise period for the warrants;

the minimum or maximum number of warrants that may be exercised at any one time;

any applicable anti-dilution, redemption or call provisions;

any applicable book-entry provisions;

a discussion of federal income tax considerations, if any; and

any other terms of the warrants.

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**DESCRIPTION OF UNITS**

As specified in the applicable prospectus supplement, we may issue units consisting of one or more debt securities, shares of common stock, shares of preferred stock or warrants or any combination of such securities.

A prospectus supplement and any other offering materials relating to any units issued under the registration statement of which this prospectus is a part will specify the terms of the units, including:

the terms of the units and of any of the debt securities, common stock, preferred stock and warrants comprising the units, including whether and under what circumstances the securities comprising the units may be traded separately;

a description of the terms of any unit agreement governing the units;

a description of the provisions for the payment, settlement, transfer or exchange of the units; and

any other terms of the units.



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**CERTAIN PROVISIONS OF THE MARYLAND GENERAL CORPORATION LAW**

**AND OUR CHARTER AND BYLAWS**

*The following summarizes material provisions of Maryland law and our charter and bylaws. Copies of our charter and bylaws are filed as exhibits to the registration statement of which this prospectus is a part. See [Where You Can Find More Information](#).*

The Maryland General Corporation Law, or MGCL, and our charter and bylaws contain provisions that could make it more difficult for a potential acquirer to acquire us by means of a tender offer, proxy contest or otherwise. We expect that these provisions may discourage certain coercive takeover practices and inadequate takeover bids and may encourage persons seeking to acquire control of us to negotiate first with our board of directors. We believe that the benefits of these provisions outweigh the potential disadvantages of discouraging any such acquisition proposals because, among other things, the negotiation of such proposals may improve their terms.

**Number of Directors; Vacancies; Removal**

Our charter provides that the number of directors will be set only by the board of directors in accordance with our bylaws. Our bylaws provide that a majority of our entire board of directors may at any time increase or decrease the number of directors. However, unless our bylaws are amended, the number of directors may never be less than two nor more than 15. Our bylaws currently provide that any vacancy may be filled by a majority of the remaining directors, except a vacancy resulting from an increase in the number of directors must be filled by a majority of the entire board of directors. Any individual elected to fill such vacancy will serve until the next annual meeting of stockholders and until a successor is duly elected and qualifies.

Our charter provides that a director may be removed only for cause, as defined in our charter, and then only by the affirmative vote of at least two-thirds of the votes entitled to be cast in the election of directors.

**Action by Stockholders**

Under the MGCL, stockholder action can be taken only at an annual or special meeting of stockholders or by unanimous written consent in lieu of a meeting (unless the charter provides for a lesser percentage, which our charter does not). These provisions, combined with the requirements of our bylaws regarding the calling of a stockholder-requested special meeting of stockholders discussed below, may have the effect of delaying consideration of a stockholder proposal until the next annual meeting.

**Advance Notice Provisions for Stockholder Nominations and Stockholder Proposals**

Our bylaws provide that with respect to an annual meeting of stockholders, nominations of individuals for election to the board of directors and the proposal of business to be considered by stockholders may be made only:

pursuant to our notice of the meeting;

by the board of directors; or

by a stockholder who was a stockholder of record both at the time of giving of notice by such stockholder as provided for in our bylaws and at the time of the annual meeting and who is entitled to vote at the meeting and who has complied with the advance notice procedures of the bylaws.

With respect to special meetings of stockholders, only the business specified in our notice of the meeting may be brought before the meeting. Nominations of individuals for election to the board of directors at a special meeting of stockholders at which directors are to be elected may be made only:

pursuant to our notice of the meeting;

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by the board of directors; or

provided that the board of directors has determined that directors will be elected at the meeting, by a stockholder who was a stockholder of record both at the time of giving of notice by such stockholder as provided for in our bylaws and at the time of the annual meeting and who is entitled to vote at the meeting and who has complied with the advance notice provisions of the bylaws.

The purpose of requiring stockholders to give us advance notice of nominations and other business is to afford our board of directors a meaningful opportunity to consider the qualifications of the proposed nominees and the advisability of any other proposed business and, to the extent deemed necessary or desirable by our board of directors, to inform stockholders and make recommendations about such qualifications or business, as well as to provide a more orderly procedure for conducting meetings of stockholders. Although our bylaws do not give our board of directors any power to disapprove stockholder nominations for the election of directors or proposals recommending certain action, they may have the effect of precluding a contest for the election of directors or the consideration of stockholder proposals if proper procedures are not followed and of discouraging or deterring a third party from conducting a solicitation of proxies to elect its own slate of directors or to approve its own proposal without regard to whether consideration of such nominees or proposals might be harmful or beneficial to us and our stockholders.

## **Calling of Special Meetings of Stockholders**

Our bylaws provide that special meetings of stockholders may be called by our board of directors and certain of our officers. Additionally, our bylaws provide that, subject to the satisfaction of certain procedural and informational requirements by the stockholders requesting the meeting, a special meeting of stockholders shall be called by our secretary upon the written request of stockholders entitled to cast not less than a majority of all the votes entitled to be cast at such meeting.

## **Approval of Extraordinary Corporate Action; Amendment of Charter and Bylaws**

Under Maryland law, a Maryland corporation generally cannot dissolve, amend its charter, merge, sell all or substantially all of its assets, engage in a share exchange or engage in similar transactions outside the ordinary course of business unless approved by the affirmative vote of stockholders entitled to cast at least two-thirds of the votes entitled to be cast on the matter. However, a Maryland corporation may provide in its charter for approval of these matters by a lesser percentage, but not less than a majority of all of the votes entitled to be cast on the matter. Our charter generally provides for approval of charter amendments (not including certain amendments relating to director removal, classification of preferred stock and transfer and ownership limitations, which still require the statutory two-thirds vote referred to above) and extraordinary transactions, which have been first declared advisable by our board of directors, by the stockholders entitled to cast at least a majority of the votes entitled to be cast on the matter.

Our bylaws provide that the board of directors will have the exclusive power to adopt, alter or repeal any provision of our bylaws and to make new bylaws.

## **No Appraisal Rights**

As permitted by the MGCL, our charter provides that stockholders will not be entitled to exercise appraisal rights, unless the board of directors determines that such rights will apply.

## **Control Share Acquisitions**

The Maryland Control Share Acquisition Act provides that control shares of a Maryland corporation acquired in a control share acquisition have no voting rights except to the extent approved by a vote of two-thirds of the votes entitled to be cast on the matter. Shares owned by the acquirer, by officers of the corporation or by directors who are employees of the corporation are excluded from shares entitled to vote on the matter.

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Control shares are voting shares of stock which, if aggregated with all other shares of stock owned by the acquirer or in respect of which the acquirer is able to exercise or direct the exercise of voting power (except solely by virtue of a revocable proxy), would entitle the acquirer to exercise voting power in electing directors within one of the following ranges of voting power:

one-tenth or more but less than one-third;

one-third or more but less than a majority; or

a majority or more of all voting power.

Control shares do not include shares the acquiring person is then entitled to vote as a result of having previously obtained stockholder approval. A control share acquisition means the acquisition of control shares, but does not include the acquisition of shares (i) under the laws of descent and distribution, (ii) under the satisfaction of a pledge or other security interest created in good faith and not for the purpose of circumventing this subtitle or (iii) pursuant to a merger, consolidation or share exchange effected under Subtitle 1 of the Control Share Acquisition Act if the corporation is a party to the merger, consolidation or share exchange.

A person who has made or proposes to make a control share acquisition may compel the board of directors of the corporation to call a special meeting of stockholders to be held within 50 days of demand to consider the voting rights of the shares. The right to compel the calling of a special meeting is subject to the satisfaction of certain conditions, including an undertaking to pay the expenses of the meeting. If no request for a meeting is made, the corporation may itself present the question at any stockholders meeting.

If voting rights are not approved at the meeting or if the acquiring person does not deliver an acquiring person statement as required by the statute, then the corporation may repurchase for fair value any or all of the control shares, except those for which voting rights have previously been approved. The right of the corporation to repurchase control shares is subject to certain conditions and limitations. Fair value is determined, without regard to the absence of voting rights for the control shares, as of the date of the last control share acquisition by the acquirer or of any meeting of stockholders at which the voting rights of the shares are considered and not approved. If voting rights for control shares are approved at a stockholders meeting and the acquirer becomes entitled to vote a majority of the shares entitled to vote, all other stockholders may exercise appraisal rights. The fair value of the shares as determined for purposes of appraisal rights may not be less than the highest price per share paid by the acquirer in the control share acquisition.

The Control Share Acquisition Act does not apply to shares acquired in a merger, consolidation or share exchange if the corporation is a party to the transaction or to acquisitions approved or exempted by the charter or bylaws of the corporation.

Our bylaws contain a provision exempting from the Control Share Acquisition Act any and all acquisitions by any person of our shares of stock. There can be no assurance that such provision will not be amended or eliminated at any time in the future. However, we will amend our bylaws to be subject to the Control Share Acquisition Act only if the board of directors determines that it would be in our best interests.

## **Business Combinations**

## Edgar Filing: Resource Capital Corp. - Form 424B5

Under Maryland law, business combinations between a Maryland corporation and an interested stockholder or an affiliate of an interested stockholder are prohibited for five years after the most recent date on which the interested stockholder becomes an interested stockholder. These business combinations include a merger, consolidation, share exchange or, in circumstances specified in the statute, an asset transfer or issuance or reclassification of equity securities. An interested stockholder is defined as:

any person who beneficially owns 10% or more of the voting power of the corporation's shares; or

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an affiliate or associate of the corporation who, at any time within the two-year period before the date in question, was the beneficial owner of 10% or more of the voting power of the then outstanding voting stock of the corporation.

A person is not an interested stockholder under the statute if the board of directors approved in advance the transaction by which he or she otherwise would have become an interested stockholder. However, in approving a transaction, the board of directors may provide that its approval is subject to compliance, at or after the time of approval, with any terms and conditions determined by the board.

After the five-year prohibition, any business combination between the corporation and an interested stockholder generally must be recommended by the board of directors of the corporation and approved by the affirmative vote of at least:

80% of the votes entitled to be cast by holders of outstanding shares of voting stock of the corporation; and

two-thirds of the votes entitled to be cast by holders of voting stock of the corporation, excluding shares held by the interested stockholder with whom or with whose affiliate the business combination is to be effected or held by an affiliate or associate of the interested stockholder.

These super-majority vote requirements do not apply if the corporation's common stockholders receive a minimum price, as defined under Maryland law, for their shares in the form of cash or other consideration in the same form as previously paid by the interested stockholder for its shares.

The statute permits various exemptions from its provisions, including business combinations that are exempted by the board of directors before the time that the interested stockholder becomes an interested stockholder.

## **Subtitle 8**

Subtitle 8 of Title 3 of the MGCL permits a Maryland corporation with a class of equity securities registered under the Exchange Act and at least three independent directors to elect to be subject, by provision in its charter or bylaws or a resolution of its board of directors and notwithstanding any contrary provision in the charter or bylaws, to any or all of five provisions:

a classified board;

a two-thirds stockholder vote requirement for removing a director;

a requirement that the number of directors be fixed only by vote of the directors;

a requirement that a vacancy on the board be filled only by the remaining directors and for the remainder of the full term of the class of directors in which the vacancy occurred; and

a majority requirement for the calling of a special meeting of stockholders.

Through provisions in our charter and bylaws unrelated to Subtitle 8, we already (a) require a two-thirds stockholder vote for the removal of any director from the board, as well as require such removal be for cause (as defined in our charter), (b) unless called by our chairman of the board, our president, our chief executive officer or the board, require the request of holders of a majority of outstanding shares to call a special meeting and (c) vest in the board the exclusive power to fix the number of directorships. Our bylaws currently provide that any vacancy may be filled by a majority of the remaining directors, except a vacancy resulting from an increase in the number of directors must be filled by a majority of the entire board of directors. Any individual elected to fill such vacancy will serve until the next annual meeting of stockholders and until a successor is duly elected and qualified. However, our board of directors may elect by resolution to be subject to any or all provisions, in whole or in part, of Subtitle 8 that are not yet already applicable to us so long as we have at least three directors who, at the time of any such election, are not officers or employees of the company, are not acquiring persons, are not directors, officers, affiliates or associates of an acquiring person and were not nominated or designated as directors by an acquiring person.



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**TAX CONSIDERATIONS**

For a summary of the material federal income tax considerations that a stockholder may consider relevant, see Exhibit 99.7 to our Annual Report on Form 10-K for the year ended December 31, 2016, which is incorporated by reference into this prospectus.

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**PLAN OF DISTRIBUTION**

We may distribute our securities from time to time in one or more transactions at a fixed price or prices. We may change these prices from time to time. We may also distribute our securities at market prices prevailing at the time of sale, at prices related to prevailing market prices or at negotiated prices, including, in the case of our equity securities, sales deemed to be an at the market offering as defined in Rule 415(a)(4) under the Securities Act of 1933, as amended, or the Securities Act, to or through a market maker or directly into an existing trading market, on an exchange or otherwise, for shares.

We may sell our securities in any of the following ways:

through underwriters or dealers;

through agents who may be deemed to be underwriters as defined in the Securities Act;

directly to one or more purchasers; and

directly to holders of warrants exercisable for our securities upon the exercise of their warrants.

The prospectus supplement or any other offering materials we may use for a particular offering will set forth the terms of the securities we offer, the terms of the offering, purchase price, the proceeds we will receive from the offering, any delayed delivery arrangements, any underwriting arrangements, including underwriting discounts and other items constituting underwriters compensation, and any discounts or concessions allowed or reallocated or paid to dealers. We may have agreements with the underwriters, dealers and agents who participate in the distribution to indemnify them against certain civil liabilities, including liabilities under the Securities Act, or to contribute to payments which they may be required to make.

If we use underwriters in the sale, the securities we offer will be acquired by the underwriters for their own account and may be resold from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale. Our securities may be offered to the public either through underwriting syndicates represented by one or more managing underwriters or directly by one or more firms acting as underwriters. The underwriter or underwriters with respect to a particular underwritten offering of our securities will be named in the prospectus supplement or any other offering materials relating to that offering, and if an underwriting syndicate is used, the managing underwriter or underwriters will be set forth on the cover of that prospectus supplement or in the other offering materials.

If we use dealers in an offering of our securities, we will sell the shares to the dealers as principals. The dealers may then resell the shares to the public at varying prices to be determined by those dealers at the time of resale. The names of the dealers and the terms of the transaction will be set forth in a prospectus supplement or other offering materials. Any initial public offering price and any discounts or concessions allowed or reallocated or paid to dealers may be changed from time to time.

We may also offer our securities directly, or through agents we designate, from time to time at fixed prices, which we may change, or at varying prices determined at the time of sale. We will name any agent we use and describe the

terms of the agency, including any commission payable by us to the agent, in a prospectus supplement or other offering materials. Unless otherwise indicated in the prospectus supplement or any other offering materials, any agent we use will act on a reasonable best efforts basis for the period of its appointment.

In certain states, our securities may be sold only through registered or licensed brokers or dealers. In addition, in certain states, our securities may not be sold unless they have been registered or qualified for sale in that state or an exemption from registration or qualification is available and is complied with.

Any common stock sold pursuant to a prospectus supplement or any other offering materials will be listed on the New York Stock Exchange or other national securities exchange. Preferred stock and warrants may or may not be listed on a national securities exchange.

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**LEGAL MATTERS**

The legality of the securities has been passed upon for us by Morrison & Foerster LLP. In addition, certain legal matters will be passed upon for us by Ledgewood, a professional corporation. The description of the federal income tax consequences appearing in and incorporated by reference in this prospectus supplement and in the accompanying prospectus is based on the opinion of Ledgewood.

**EXPERTS**

The financial statements, schedules and management's assessment of the effectiveness of internal control over financial reporting incorporated by reference in this prospectus and elsewhere in the registration statement have been so incorporated by reference in reliance upon the reports of Grant Thornton LLP, independent registered public accountants, upon the authority of said firm as experts in accounting and auditing.

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**\$125,000,000**

**% Convertible Senior Notes due 2022**

*Bookrunner*

**Credit Suisse**

*Co-Manager*

**JMP Securities**