

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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FORM 8-K

CURRENT REPORT  
PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934

November 3, 1999  
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Date of Report (Date of earliest event reported)

STARWOOD FINANCIAL INC.  
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(Exact Name of Registrant as Specified in its Charter)

MARYLAND -----	1 - 10150 -----	APPLIED FOR -----
(State of Organization)	(Commission File Number)	(IRS Employer Identification No.)

1114 AVENUE OF THE AMERICAS, 27TH FLOOR  
NEW YORK, NY 10036  
(Address of Registrant's Principal Executive Office) (Zip Code)

(212) 930-9494  
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(Registrant's telephone number, including area code)

Item 2. ACQUISITION OR DISPOSITION OF ASSETS.

On November 3, 1999, Starwood Financial Trust, a Maryland real estate investment trust ("SFT") was merged with and into Starwood Financial Inc., a Maryland corporation ("SFI"). The purpose of the merger was to change SFT's form from a trust to a corporation and to eliminate SFT's dual share structure. In this merger, each issued and outstanding SFT Class A share of beneficial interest was converted into one share of SFI common stock. Each issued and outstanding SFT Class B share of beneficial interest was converted into one forty-ninth of one share of SFI common stock. Each issued and outstanding 9.5% Series A Preferred Share of SFT was converted into one share of 9.5% Series A Preferred Stock of SFI. The terms of the SFI 9.5% Series A Preferred Stock are substantially the same as the terms of the SFT 9.5% Series A Preferred Shares. SFI intends to continue to elect to be taxed as a real estate investment trust.

On November 4, 1999, ST Merger Sub, Inc., a Maryland corporation ("STM") wholly owned by SFI, was merged with and into TriNet Corporate Realty Trust, Inc., a Maryland corporation ("TriNet"). In the merger, each issued and outstanding share of common stock of TriNet was converted into 1.15 shares of common stock of SFI. Each issued and outstanding share of 9.375% Series A Preferred Stock of TriNet was converted into one share of 9.375% Series B Preferred Stock of SFI. Each issued and outstanding share of 9.2% Series B Preferred Stock of TriNet was converted into one share of 9.2% Series C Preferred Stock of SFI. Each issued and outstanding share of 8.0% Series C Preferred Stock of TriNet was converted into one share of 8.0% Series D Preferred Stock of SFI. The terms of the SFI Series B, C and D Preferred Stock are substantially the same as the terms of the TriNet Series A, B and C Preferred Stock, respectively, except that each share of SFI Series B, C and D Preferred Stock will be entitled to twenty-five one hundredths of one vote on all matters submitted to the holders of SFI common stock, voting with the common stock as a single class.

Simultaneously with the merger described in the preceding paragraph, SA Merger Sub, Inc., a Delaware corporation ("SAM") wholly owned by SFI, was merged with and into STW Holdings I, Inc., a Delaware corporation ("STW"). The purpose of this merger was to internalize SFI's outside advisor. In this merger, each issued and outstanding share of common stock of STW was converted into 2661.3 shares of common stock of SFI. As a result of this merger, SFI will become a completely self-managed and self-advised company.

Item 5. OTHER EVENTS.

As previously announced, SFI's Board of Directors has authorized the company to purchase up to five million shares of its common stock from time to time in the open market or through negotiated transactions.

Item 7. FINANCIAL STATEMENTS, PRO FORMA FINANCIAL INFORMATION AND EXHIBITS.

(a) FINANCIAL STATEMENTS.

The audited financial statements of SFT for the year ended December 31, 1998 are incorporated by reference to SFT's Annual Report on Form 10-K for that year. The unaudited financial statements for the three months ended March 31, 1999 and the six months ended June 30, 1999 are incorporated by reference to SFT's Form 10-Q filed on May 14, 1999 and August 11, 1999, respectively.

The audited financial statements of TriNet for the year ended December 31, 1998 are incorporated by reference to TriNet's Annual Report on Form 10-K for that year. The unaudited financial statements for the three months ended March 31, 1999 and the six months ended June 30, 1999 are incorporated by reference to TriNet's Form 10-Q filed on May 17, 1999 and August 13, 1999, respectively.

(b) PRO FORMA FINANCIAL INFORMATION.

The Pro Forma Consolidating Balance Sheets as of June 30, 1999, the Pro Forma Consolidating Statements of Operations for the six months ended June 30, 1999 and for the year ended December 31, 1998, and the Notes and Management's Assumptions to Unaudited Pro Forma

Consolidating Financial Statements of SFT, reflecting post-proxy transactions are incorporated by reference to SFT's Form S-4, as amended, filed August 25, 1999.

The Pro Forma Consolidating Statements of Operations for the year ended December 31, 1998, and the Notes and Management's Assumptions to Unaudited Pro Forma Consolidating Financial Statements of SFT, reflecting pre-proxy transactions are incorporated by reference to SFT's Form S-4, as amended, filed August 25, 1999.

The Pro Forma Consolidating Statements of Operations for the year ended December 31, 1998, and the Notes and Management's

Assumptions to Unaudited Pro Forma Consolidating Financial Statements of TRI, reflecting pre-proxy transactions are incorporated by reference to SFT's Form S-4, as amended, filed August 25, 1999.

(c) EXHIBITS.

- 2.1 Agreement and Plan of Merger, dated as of June 15, 1999, by and between Starwood Financial Trust, ST Merger Sub, Inc. and TriNet Corporate Realty Trust, Inc. (incorporated by reference to exhibit 10.1 of Starwood Financial Trust's Form 8-K, dated June 22, 1999).
- 2.2 Agreement and Plan of Merger, dated as of June 15, 1999, by and between Starwood Financial Trust, Starwood Financial Inc. and, to the extent described therein, TriNet Corporate Realty Trust, Inc. (incorporated by reference to exhibit 10.2 of Starwood Financial Trust's Form 8-K, dated June 22, 1999).
- 2.3 Agreement and Plan of Merger and Interest Contribution Agreement, dated as of June 15, 1999, by and between Starwood Financial Trust, SA Merger Sub, Inc., STW Holdings I, Inc., certain stockholder named therein, Starwood Capital Group, LLC and, to the extent described therein, TriNet Corporate Realty Trust, Inc. (incorporated by reference to exhibit 10.3 of Starwood Financial Trust's Form 8-K, dated June 22, 1999).
- 2.4 First Amendment to the Agreement and Plan of Merger, dated as of September 15, 1999, by and between Starwood Financial Trust, ST Merger Sub, Inc. and TriNet Corporate Realty Trust, Inc.
- 2.5 Second Amendment to the Agreement and Plan of Merger, dated as of October \_\_, 1999, by and between Starwood Financial Trust, ST Merger Sub, Inc. and TriNet Corporate Realty Trust, Inc.
- 4.1 Amended and Restated Charter of Starwood Financial Inc.
- 4.2 Amended and Restated By-Laws of Starwood Financial Inc.
- 23.1 Consent of PricewaterhouseCoopers LLP (New York).
- 23.2 Consent of PricewaterhouseCoopers LLP (San Francisco).
- 99.1 Press Release re: stock repurchase program described in Item 5 above.
- 99.2 Press Release re: shareholder approvals of the transactions described in Item 2 above.
- 99.3 Press Release re: closing of the transactions described in Item 2 above.

SIGNATURES

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

STARWOOD FINANCIAL INC.

By: /s/ Spencer B. Haber

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Name: Spencer B. Haber  
Title: Executive Vice President-Finance and  
Chief Financial Officer

Date: November 9, 1999

EXHIBIT INDEX

EXHIBIT NO.	EXHIBIT
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99.1	Press Release re: stock repurchase program described in Item 5 above.
99.2	Press Release re: shareholder approvals of the transactions described in Item 2 above.
99.3	Press Release re: closing of the transactions described in

Item 2 above.

AMENDMENT NO. 1  
TO  
AGREEMENT AND PLAN OF MERGER

AMENDMENT NO. 1, dated as of September \_\_, 1999 (the "AMENDMENT"), by and among STARWOOD FINANCIAL TRUST, a Maryland real estate investment trust ("STARWOOD"), ST MERGER SUB, INC., a Delaware corporation ("STARWOOD SUB") and TRINET CORPORATE REALTY TRUST, INC., a Maryland corporation ("TRINET").

RECITALS

A. Starwood, Starwood Sub, and TriNet are parties (the "PARTIES") to that certain Agreement and Plan of Merger dated as of June 15, 1999 (the "ORIGINAL AGREEMENT").

B. The Parties desire to enter into this Amendment for the purpose of amending certain provisions of the Original Agreement as set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the mutual covenants herein contained, the Parties hereby agree as follows:

1. AMENDMENT TO SECTION 5.11. Clause (x) of subparagraph (i) of Section 5.11(b) of the Original Agreement is hereby amended and restated in its entirety as follows:

"(x) the product of (A) the Market Price, (B) the number of shares of TriNet Common Stock subject to such TriNet Stock Options and (C) the Exchange Ratio. . . ."

2. AMENDMENT TO SECTION 9.2. The notice information for TriNet set forth in Section 9.2(b) of the Original Agreement is hereby amended and restated in its entirety as follows:

(b) if to TriNet, to

TriNet Corporate Realty Trust, Inc.  
One Embarcadero Center  
33rd Floor  
San Francisco, California 94111  
Attn: Geoff Dugan, Esq.  
Fax: (415) 391-3092

3. EXHIBITS. EXHIBITS J, K AND L of the Original Agreement are hereby amended and replaced in their entirety with EXHIBITS J, K AND L to this Amendment.

IN WITNESS WHEREOF, Starwood, Starwood Sub and TriNet have caused this Amendment to be signed by their respective officers thereunto duly authorized, all as of the date first written above.

STARWOOD FINANCIAL TRUST

By: /s/ Spencer B. Haber

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Name: Spencer B. Haber  
Title: Chief Financial Officer

ST MERGER SUB, INC.

By: /s/ Spencer B. Haber

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Name: Spencer B. Haber  
Title: Chief Financial Officer

TRINET CORPORATE REALTY TRUST, INC.

By: /s/ Elisa F. DiTomasso

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Name: Elisa F. DiTomasso  
Title: Chief Financial Officer

EXHIBIT J

FORM OF CHARTER OF NEW STARWOOD

EXHIBIT K

FORM OF BYLAWS OF NEW STARWOOD

EXHIBIT L

FORM OF ARTICLES SUPPLEMENTARY FOR EACH  
CLASS OF NEW STARWOOD PREFERRED STOCK

AMENDMENT NO. 2  
TO  
AGREEMENT AND PLAN OF MERGER

AMENDMENT NO. 2, dated as of October \_\_, 1999 (the "AMENDMENT"), by and among STARWOOD FINANCIAL TRUST, a Maryland real estate investment trust ("STARWOOD"), ST MERGER SUB, INC., a Maryland corporation ("STARWOOD Sub") and TRINET CORPORATE REALTY TRUST, INC., a Maryland corporation ("TRINET").

RECITALS

A. Starwood, Starwood Sub, and TriNet are parties (the "PARTIES") to that certain Agreement and Plan of Merger dated as of June 15, 1999, as amended through the date hereof (the "ORIGINAL AGREEMENT").

B. The Parties desire to enter into this Amendment for the purpose of amending certain provisions of the Original Agreement as set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the mutual covenants herein contained, the Parties hereby agree as follows:

1. EXHIBITS. EXHIBITS H AND I of the Original Agreement are hereby amended and replaced in their entirety with EXHIBITS H AND I to this Amendment, and SCHEDULE G of the Original Agreement is hereby amended and replaced in its entirety by SCHEDULE G to this Amendment.

IN WITNESS WHEREOF, Starwood, Starwood Sub and TriNet have caused this Amendment to be signed by their respective officers thereunto duly authorized, all as of the date first written above.

STARWOOD FINANCIAL TRUST

By: /s/ Jay Sugarman

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Name: Jay Sugarman  
Title: President and Chief Executive  
Officer

ST MERGER SUB, INC.

By: /s/ Jay Sugarman

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Name: Jay Sugarman  
Title: President and Chief Executive  
Officer

TRINET CORPORATE REALTY TRUST, INC.

By: /s/ Robert W. Holman, Jr.

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Name: Robert W. Holman, Jr.  
Title: Chief Executive Officer



EXHIBIT H

FORM OF CHARTER OF SURVIVING CORPORATION

EXHIBIT I

FORM OF BYLAWS OF SURVIVING CORPORATION

SCHEDULE G

DIRECTORS OF SURVIVING CORPORATION

Barry S. Sternlicht  
Jay Sugarman  
Spencer B. Haber  
Willis Andersen, Jr.  
Stephen B. Oresman  
George R. Puskar

Jeffrey G. Dishner  
Jonathan D. Eilian  
Madison F. Grose  
Robert W. Holman, Jr.  
Kneeland C. Youngblood

Robin Josephs  
Merrick R. Kleeman  
William M. Matthes  
John G. McDonald  
[special director]

STARWOOD FINANCIAL INC.

AMENDED AND RESTATED CHARTER

ARTICLE I

INCORPORATION

The undersigned, Michael E. McTiernan, whose address is c/o Rogers & Wells LLP, 200 Park Avenue, New York, New York 10166, being at least 18 years of age, does hereby form a corporation under the general laws of the State of Maryland.

ARTICLE II

NAME

The name of the corporation (the "Corporation") is: Starwood Financial Inc.

ARTICLE III

PURPOSE

(a) The purposes for which the Corporation is formed and the business and objects to be carried on and promoted by it are to engage in any lawful act or activity (including, without limitation or obligation, engaging in business as a REIT) for which corporations may be organized under the General Laws of the State of Maryland as now or hereafter in force. In addition, the Corporation shall have such further powers as are not inconsistent with, and are appropriate to promote and attain, the purposes of the Corporation as set forth in this Charter. For purposes of this Charter, "REIT" means a real estate investment trust under Sections 856 through 860 of the Code.

(b) The primary purposes of the Corporation include to acquire a diversified portfolio of debt and/or debt like interests in real estate and/or real estate related assets, including (i) originating mortgage loans and/or acquiring mortgage loans or acquiring securities collateralized, in whole or in part, by such mortgage loans, as well as making equity investments in real estate and real estate-related assets, (ii) acquiring direct or indirect interests in short term, medium and long-term real estate-related debt securities and mortgage interests, which may include warrants, equity participations or similar rights incidental to a debt investment by the Corporation, (iii) making, holding and disposing of purchase money loans with respect to assets sold by the Corporation, and (iv) acquiring positions in non-performing and sub-performing debt for the purpose of either restructuring it as performing debt or if such efforts are unsuccessful, of obtaining shortly thereafter primary management rights over or equity interests in the underlying assets securing such debt (the "Diversified Portfolio"). Such investments may incorporate a variety of real property equity and financing techniques, including, without limitation, partnerships, joint ventures, purchase and leasebacks, land purchase-leases, net lease financings, purchase and installment salebacks, and Mortgages. The Corporation's authority with respect to the Diversified Portfolio includes the power to acquire, hold, own, develop, redevelop, construct, improve, maintain, operate, manage, sell, lease, rent, transfer, encumber, mortgage, convey, exchange and otherwise dispose

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of all or part of the Diversified Portfolio and the Diversified Portfolio may be held by the Corporation directly or indirectly.

(c) Without the amendment, termination or waiver of provisions of certain non-competition agreements between Starwood Capital Group, L.P. and Starwood Hotels & Resorts, Inc., a publicly traded hotel corporation and Starwood Hotels & Resorts Worldwide, Inc., the Corporation is prohibited from: (i) making investments in loans collateralized by hotel assets where it is anticipated that the underlying equity will be acquired by the debt holder

within one (1) year from the acquisition of such debt, (ii) acquiring equity interests in hotels (other than acquisitions of warrants, equity participations or similar rights incidental to a debt investment by the Corporation or that are acquired as a result of the exercise of remedies in respect of a loan in which the Corporation has an interest) or (iii) selling or contributing to or acquiring any interests in Starwood Hotels & Resorts, Inc., including debt positions or equity interests obtained by the Corporation under, pursuant to or by reason of the holding of debt positions.

(d) The foregoing enumerated purposes and objects shall be in no way limited or restricted by reference to, or inference from, the terms of any other clause of this or any other Article of this Charter, and each shall be regarded as independent; and they are intended to be and shall be construed as powers as well as purposes and objects of the Corporation and shall be in addition to and not in limitation of the general powers of corporations under the General Laws of the State of Maryland.

#### ARTICLE IV

##### PRINCIPAL OFFICE IN STATE AND RESIDENT AGENT

The present address of the principal office of the Corporation in the State of Maryland is c/o The Corporation Trust Incorporated, 32 South Street, Baltimore, Maryland 21202. The name and present address of the resident agent of the Corporation in the State of Maryland are The Corporation Trust Incorporated, 32 South Street, Baltimore, Maryland 21202. The resident agent is a corporation of and resident of the State of Maryland. The Corporation may have such other offices or places of business within or without the State of Maryland as the Board may from time to time determine.

#### ARTICLE V

##### CAPITAL STOCK

(a) The total number of shares of stock of all classes which the Corporation has authority to issue is 230,000,000 shares of Capital Stock (par value \$0.001 per share), amounting in aggregate par value to \$230,000. Of these shares, 200,000,000 are initially classified as "Common Stock" and 30,000,000 are initially classified as "Preferred Stock." Of the shares of Preferred Stock, 4,400,000 shares are initially classified as 9.5% Series A Cumulative Redeemable Preferred Stock ("Series A Preferred Stock"), 2,300,000 shares are initially classified as 9 3/8% Series B Cumulative Redeemable Preferred Stock ("Series B Preferred Stock"), 1,495,000 shares are initially classified as 9.20% Series C Cumulative Redeemable Preferred Stock ("Series C Preferred Stock"), and 4,600,000 shares are initially classified as 8% Series D Cumulative Redeemable Preferred Stock ("Series D Preferred Stock"). Subject to the other provisions of this Article V, the Board may: (i) classify and reclassify any unissued shares of Capital Stock by setting or changing in any one or more respects the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends and other distributions, qualifications or

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terms or conditions of redemption of such shares of Capital Stock and (ii) to the extent permitted by Maryland law from time to time, without any action by the Stockholders, amend the Charter from time to time to increase or decrease the aggregate number of shares of Capital Stock or the number of shares of Capital Stock of any class or series that the Corporation has authority to issue.

(b) The following is a description of the preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends, qualifications and terms and conditions of redemption of the Common Stock of the Corporation:

(i) Each share of Common Stock shall have one vote, and, except as otherwise provided in respect of the Preferred Stock and in respect of any other class of stock hereafter classified or reclassified, the exclusive voting power for all purposes shall be vested in the holders of the Common Stock. Shares of Common Stock shall not have cumulative voting rights.

(ii) Subject to the provisions of law and any preferences of the Preferred Stock or any other class of stock hereafter classified or reclassified, dividends, including dividends payable in shares of another class of the Corporation's stock, may be paid ratably on the Common Stock at such time and in such amounts as the Board may deem advisable.

(iii) In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the holders of the Common Stock shall be entitled, together with the holders of any other class of stock hereafter classified or reclassified not having a preference on distributions in the liquidation, dissolution or winding up of the Corporation, to share ratably in the net assets of the Corporation remaining, after payment or provision for payment of the debts and other liabilities of the Corporation and the amount to which the holders of any class of stock hereafter classified or reclassified having a preference on distributions in the liquidation, dissolution or winding up of the Corporation shall be entitled.

(c) The description of the preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends, qualifications and terms and conditions of redemption of the Series A Preferred Stock, the Series B Preferred Stock, the Series C Preferred Stock and the Series D Preferred Stock of the Corporation are set forth in Annex A, Annex B, Annex C and Annex D to this Charter, respectively.

(d) Subject to the foregoing, the power of the Board to classify and reclassify any of the shares of Capital Stock shall include, without limitation, subject to the provisions of this Charter, authority to classify or reclassify any unissued shares of Capital Stock into a class or classes of preferred stock, preference stock, special stock or other stock, and to divide and classify shares of any class into one or more series of such class by determining, fixing, or altering one or more of the following:

(i) The distinctive designation of such class or series and the number of shares to constitute such class or series; provided that, unless otherwise prohibited by the terms of such or any other class or series, the number of shares of any class or series may be decreased by the Board in connection with any classification or reclassification of unissued shares and the number of shares of such class or series may be increased by the Board in connection with any such classification or reclassification, and any shares of any class or series which have been redeemed, purchased, otherwise acquired or converted into shares of Common Stock or any other class or series shall no longer be deemed to be outstanding and shall become part of the

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authorized Capital Stock and be subject to classification and reclassification as provided in this sub-paragraph.

(ii) Whether or not and, if so, the rates, amounts and times at which, and the terms and conditions under which, dividends shall be payable on shares of such class or series, whether any such dividends shall rank senior or junior to or on a parity with the dividends payable on any other class or series of stock, and the status of any such dividends as cumulative, cumulative to a limited extent or non-cumulative and as participating or non-participating.

(iii) Whether or not shares of such class or series shall have limitations on voting rights or voting rights in addition to any voting rights provided by law, and, if so, the terms of such voting rights.

(iv) Whether or not shares of such class or series shall have conversion or exchange privileges and, if so, the terms and conditions thereof, including provision for adjustment of the conversion or exchange rate in such events or at such times as the Board shall determine.

(v) Whether or not shares of such class or series shall be subject to redemption and, if so, the terms and conditions of such redemption, including the date or dates upon or after which they shall be redeemable and the amount per share payable in case of redemption,

which amount may vary under different conditions and at different redemption dates; and whether or not there shall be any sinking fund or purchase account in respect thereof, and if so, the terms thereof.

(vi) The rights of the holders of shares of such class or series upon the liquidation, dissolution or winding up of the affairs of, or upon any distribution of the assets of, the Corporation, which rights may vary depending upon whether such liquidation, dissolution or winding up is voluntary or involuntary and, if voluntary, may vary at different dates, and whether such rights shall rank senior or junior to or on a parity with such rights of any other class or series of stock.

(vii) Whether or not there shall be any limitations applicable, while shares of such class or series are outstanding, upon the payment of dividends or making of distributions on, or the acquisition of, or the use of moneys for purchase or redemption of, any stock of the Corporation, or upon any other action of the Corporation, including action under this sub-paragraph, and, if so, the terms and conditions thereof.

(viii) Any other preferences, rights, restrictions, including restrictions on transferability, and qualifications of shares of such class or series, not inconsistent with law and the Charter.

(e) For the purposes hereof and of any articles supplementary to the Charter providing for the classification or reclassification of any shares of Capital Stock or of any other Charter document of the Corporation (unless otherwise provided in any such articles or document), any class or series of stock of the Corporation shall be deemed to rank:

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(i) prior to another class or series either as to dividends or upon liquidation, if the holders of such class or series shall be entitled to the receipt of dividends or of amounts distributable on liquidation, dissolution or winding up, as the case may be, in preference or priority to holders of such other class or series;

(ii) on a parity with another class or series either as to dividends or upon liquidation, whether or not the dividend rates, dividend payment dates or redemption or liquidation price per share thereof be different from those of such others, if the holders of such class or series of stock shall be entitled to receipt of dividends or amounts distributable upon liquidation, dissolution or winding up, as the case may be, in proportion to their respective dividend rates or redemption or liquidation prices, without preference or priority over the holders of such other class or series; and

(iii) junior to another class or series either as to dividends or upon liquidation, if the rights of the holders of such class or series shall be subject or subordinate to the rights of the holders of such other class or series in respect of the receipt of dividends or the amounts distributable upon liquidation, dissolution or winding up, as the case may be.

(f) All persons who shall acquire stock in the Corporation shall acquire such stock subject to the provisions of this Charter and the Bylaws of the Corporation. The Directors shall have the exclusive power to make, adopt, amend, or repeal the Bylaws of the Corporation to the extent not inconsistent with law or with this Charter.

#### ARTICLE VI

##### BOARD OF DIRECTORS

(a) The initial number of Directors of the Corporation shall be 10, which number may be increased or decreased, from time to time, by resolution of the Board approved by at least a majority of the Directors then in office pursuant to the Bylaws of the Corporation, or by the affirmative vote of the holders of a majority of the combined voting power of all shares of Capital Stock entitled to vote thereon, voting together as a single class, provided that the number of Directors so fixed shall not be less than seven nor more than 18, and shall never be less than the minimum number permitted by the MGCL now or

hereafter in force.

(b) Subject to the rights of the holders of any class separately entitled to elect one or more Directors, newly created Directorships resulting from any increase in the authorized number of Directors or any vacancies on the Board resulting from death, resignation, retirement, disqualification, removal from office, or other cause shall be filled by resolution of the Board approved by at least a majority of the Directors then in office, pursuant to the Bylaws or by the affirmative vote of the holders of a majority of the votes cast at a meeting at which a quorum is present. A Director so elected by the stockholders shall hold office for the balance of the term then remaining. No decrease in the number of Directors shall affect the tenure of office of any Director. Until vacancies are filled, the remaining Directors (even though less than seven) may exercise the powers of the Board hereunder.

(c) Whenever the holders of any one or more series of Capital Stock of the Corporation shall have the right, voting separately as a class, to elect one or more Directors of the Corporation, the Board shall consist of said Directors so elected in addition to the number of Directors fixed as provided in paragraph (a) of this Article VI. Notwithstanding the foregoing, and except as

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otherwise may be required by law or by this Charter, whenever the holders of any one or more series of Capital Stock of the Corporation shall have the right, voting separately as a series, to elect one or more Directors of the Corporation, the terms of the Director or Directors elected by such holders shall expire at the next succeeding annual meeting of Stockholders.

(d) Subject to the rights of the holders of any series separately entitled to elect one or more Directors, any Director, or the entire Board of Directors, may be removed from office at any time, with or without cause, at a special meeting of the Stockholders by the affirmative vote of a majority of the holders of the combined voting power of all classes of shares of Capital Stock entitled to vote in the election for Directors voting together as a single class. For purposes of the foregoing, "cause" shall mean a Director's willful violations of this Charter or the Bylaws which violations are materially adverse to the interests of the Stockholders, or gross negligence in the performance of his or her duties.

(e) The Directors shall be divided into two classes as follows:

(i) the term of office of Class I Directors shall be until the annual meeting of Stockholders held in the year 2000 and until their successors shall be elected and have qualified and thereafter shall be for two years and until their successors shall be elected and have qualified; and

(ii) the term of office of Class II Directors shall be until the annual meeting of Stockholders held in the year 2001 and until their successors shall be elected and have qualified and thereafter shall be for two years and until their successors shall be elected, and have qualified.

If the number of Directors is changed, any increase or decrease shall be apportioned among the classes so as to maintain or attain, if possible, the equality of the number of Directors in each class.

(f) The names of the individuals who now serve as Directors of the Corporation and until their successors are elected and qualify are as follows:

(i) The following person shall serve as Class I Directors:

Jeffrey G. Dishner

Jonathan Eilian

Robin Josephs

Merrick R. Kleeman

Madison F. Grose

(ii) The following persons shall serve as Class II Directors:

Barry S. Sternlicht

Jay Sugarman

William M. Mathes

Kneeland C. Youngblood

Spencer B. Haber

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(g) A minimum of the greater of (i) 33-1/3% of the total number of Directors or (ii) three (3) members of the Board and the Executive Committee (as established in the Bylaws) of the Board shall be Persons who are not Affiliates of Starwood Capital Group, L.L.C.; provided, however, that if at any time the number of Directors or members of the Executive Committee who are not Affiliates of such Person becomes less than the minimum number set forth above, whether because of the death, resignation, removal, or change in affiliation of one or more Directors or members of the Executive Committee or otherwise, then such requirement shall not be applicable for a period of ninety (90) days after such event occurs, during which period the continuing Directors or Director then in office shall appoint, pursuant to paragraph (b) of Article VI, a sufficient number of other individuals as Directors or as members of the Executive Committee so that again a minimum of the greater of (i) 33-1/3% of the total number of Directors or (ii) three (3) members of the Board and the Executive Committee then in office are not Affiliates of such Person. The Directors shall at all times endeavor to comply with the requirement of this paragraph (i) of Article VII as to independence, but failure so to comply with such requirement shall not affect the validity or effectiveness of any action of the Directors or of the Executive Committee.

#### ARTICLE VII

##### PROVISIONS FOR DEFINING, LIMITING AND REGULATING CERTAIN POWERS OF THE CORPORATION AND OF THE STOCKHOLDERS AND DIRECTORS

(a) The Board is empowered to authorize the issuance from time to time of shares of Capital Stock of the Corporation of any class or series, whether now or hereafter authorized, or Securities or rights convertible into shares of its stock of any class or series, whether now or hereafter authorized, for such consideration as the Board may deem advisable and without any action by the Stockholders.

(b) No holder of any stock or any other Securities of the Corporation, whether now or hereafter authorized, shall have any preemptive right to subscribe for or purchase any stock or any other Securities of the Corporation other than such, if any, as the Board, in its sole discretion, may determine and at such price or prices and upon such other terms as the Board, in its sole discretion, may fix; and any stock or other Securities which the Board may determine to offer for subscription may, as the Board in its sole discretion shall determine, be offered to the holders of any class or series of stock or other Securities at the time outstanding to the exclusion of the holders of any or all other classes or series of stock or other securities at the time outstanding.

(c) The Corporation shall indemnify (i) its Directors and officers, whether serving the Corporation or, at its request, any other entity, to the full extent required or permitted by the General Laws of the State of Maryland now or hereafter in force, including the advance or reimbursement of reasonable expenses as incurred (including reasonable attorneys fees) under the procedures and to the full extent permitted by law and (ii) other employees and agents to such extent as shall be authorized by the Board or the Corporation's Bylaws and be permitted by law. The foregoing rights of indemnification shall not be exclusive of any other rights to which those seeking indemnification may be entitled. The Board may take such action as is necessary to carry out these indemnification provisions and is expressly empowered to adopt, approve and amend from time to time such Bylaws, resolutions or contracts implementing such provisions or such further indemnification arrangements as may be permitted by law. No amendment of the Charter or repeal of any of its provisions shall limit

or eliminate the right to indemnification provided hereunder with respect to acts or omissions occurring prior to such amendment or repeal.

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(d) To the fullest extent permitted by Maryland statutory or decisional law, as amended or interpreted, no Director or officer of the Corporation shall be personally liable to the Corporation or its Stockholders for money damages. No amendment of the Charter of the Corporation or repeal of any of its provisions shall limit or eliminate the limitation on liability provided to Directors and officers hereunder with respect to any act or omission occurring prior to such amendment or repeal. In addition to any Maryland statute limiting the liability of directors or officers of a Maryland corporation, no Director or officer of the Corporation shall be liable to the Corporation or to any Director for any act or omission of any other Director, Stockholder, officer, or agent of the Corporation or be held to any personal liability whatsoever in tort, contract, or otherwise in connection with the affairs of this Corporation except only that arising from his own willful violation of the provisions of this Charter or of the Bylaws which violation is materially against the interests of the Stockholders and results in material harm to such interests, or gross negligence in the performance of his or her duties.

(e) The determination as to any of the following matters, made in good faith by or pursuant to the direction of the Board consistent with the Charter and the Bylaws and in the absence of actual receipt of an improper benefit in money, property or services or active and deliberate dishonesty established by a court, shall be final and conclusive and shall be binding upon the Corporation and every holder of shares of its Capital Stock: the amount of the net income of the Corporation for any period and the amount of assets at any time legally available for the payment of dividends, redemption of its Capital Stock or the payment of other distributions on its Capital Stock; the amount of paid-in surplus, net assets, other surplus, annual or other net profit, net assets in excess of capital, undivided profits or excess of profits over losses on sales of assets; the amount, purpose, time of creation, increase or decrease, alteration or cancellation of any reserves or charges and the propriety thereof (whether or not any obligation or liability for which such reserves or charges shall have been created shall have been paid or discharged); the fair value, or any sale, bid or asked price to be applied in determining the fair value, of any asset owned or held by the Corporation; any matters relating to the acquisition, holding and disposition of any assets by the Corporation; and to determine whether and to what extent and at what times and places and under what conditions and regulations the books, accounts and documents of the Corporation, or any of them, shall be open to the inspection of stockholders, except as otherwise provided by the MGCL or by the Bylaws, and, except as so provided, no stockholder shall have any right to inspect any book, account or document of the Corporation unless authorized to do so by resolution of the Board.

(f) The Board shall use its reasonable best efforts to take such actions as are necessary or appropriate to preserve the status of the Corporation as a REIT; however, if the Board determines that it is no longer in the best interests of the Corporation to continue to be qualified as a REIT, the Board may revoke or otherwise terminate the Corporation's REIT election pursuant to Section 856(g) of the Code.

(g) The Board shall, in connection with the exercise of its business judgment involving a Business Combination (as defined in Section 3-601 of the MGCL) or any actual or proposed transaction which would or may involve a change in control of the Corporation (whether by purchases of shares of stock or any other Securities of the Corporation in the open market, or otherwise, tender offer, merger, consolidation, dissolution, liquidation, sale of all or substantially all of the assets of the Corporation, proxy solicitation or otherwise) in determining what is in the best interest of the Corporation and its Stockholders and in making any recommendation to its Stockholders, give due consideration to all relevant factors, including, but not limited to (i) the economic effect, both immediate and long-term, upon the Corporation's Stockholders, including Stockholders, if any, who do not participate in the transaction; (ii) whether the proposal is acceptable based on the historical and current operating results or financial condition of the Corporation; (iii) whether a more favorable price could be obtained for the Corporation's stock or other Securities in the future; (iv) the reputation and business practices of the offeror and its



management and affiliates as they would affect the employees of the Corporation and its subsidiaries; (v) the future value of the stock or any other Securities of the Corporation; (vi) any antitrust or other legal and regulatory issues that are raised by the proposal; and (vii) the business and financial condition and earnings prospects of the acquiring person or entity, including, but not limited to, debt service and other existing financial obligations, financial obligations to be incurred in connection with the acquisition, and other likely financial obligations of the acquiring person or entity. If the Board determines that any proposed Business Combination (as defined in Section 3-601 of the MGCL) or actual or proposed transaction which would or may involve a change in control of the Corporation should be rejected, it may take any lawful action to defeat such transaction, including, but not limited to, any or all of the following: advising Stockholders not to accept the proposal; instituting litigation against the party making the proposal; filing complaints with governmental and regulatory authorities; acquiring the stock or any of the Securities of the Corporation; selling or otherwise issuing authorized but unissued stock, other Securities, or granting options or rights with respect thereto; acquiring a Corporation to create an antitrust or other regulatory problem for the party making the proposal; and obtaining a more favorable offer from another individual or entity. Nothing in this section shall preclude the Board of Directors from specifically or generally approving or exempting business combinations with the Corporation.

(h) Notwithstanding any provision of law permitting or requiring any action to be taken or approved by the affirmative vote of the holders of shares of Capital Stock entitled to cast a greater number of votes, any such action shall be effective and valid if taken or approved by the affirmative vote of holders of shares of Capital Stock entitled to cast a majority of all the votes entitled to be cast on the matter, except as otherwise specifically provided in the Charter.

(i) The Bylaws of the Corporation may be altered, amended or repealed, and new Bylaws may be adopted, at any meeting of the Board by a majority vote of the Directors.

(j) In the event that any provision or portion of a provision of this Article VII is determined to be in conflict with any applicable statute, such provision or portion thereof shall be inapplicable to the extent of such conflict. In the event that any provision or portion of a provision of this Article VII is determined to be invalid, void, illegal or unenforceable, the remainder of the provisions of this Article VII shall continue to be valid and enforceable and shall in no way be affected, impaired or invalidated. Nothing in this Article VII shall be construed to diminish, limit or impair any rights or defenses afforded to officers or Directors by common law, statute, other provisions of this Charter, the Bylaws or otherwise, and the provisions of this Article VII shall be deemed to be cumulative thereto. References in this Article VII to Directors or officers shall be deemed to refer to any person who is or was a Director or officer of the Corporation and any person who, while a Director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise.

## ARTICLE VIII

### INVESTMENT POLICY

(a) GENERAL STATEMENT OF POLICY. While the Directors are authorized, pursuant to Article VI, to invest the Corporation Assets in a wide variety of investments, it is the present intention of the Corporation that it shall be a principal investment objective and policy of the Corporation to invest the Corporation Assets in the Diversified Portfolio.

Investments of the Corporation may be made in various combinations and may involve participations with other Persons, including Affiliates of the Directors. Such investments may incorporate a variety of real property equity and financing techniques, including, without limitation, partnerships, joint

ventures, purchase and leasebacks, land purchase-leases, net lease financings, purchase and installment salebacks, and Mortgages, and include investments through subsidiary corporations and other entities.

The general purpose of the Corporation is to seek qualifying real estate investment trust gross income as defined in the REIT Provisions of the Code consistent with the investment objective and policy of the Corporation as set forth above. The Directors intend to make investments in such a manner as to comply with the requirements of the REIT Provisions of the Code with respect to the composition of the Corporation's investments and the derivation of its income; provided, however, that no Director, officer, employee, or agent of the Corporation shall be liable to any Person, including any Stockholder, for any act or omission resulting in the loss of tax benefits, or in the incurrence of tax detriments, under the Code or for the Corporation not being treated for tax purposes as a "real estate investment trust" under the REIT Provisions of the Code. Subject to paragraph (c) of this Article VIII hereof and subject to such restrictions as may be necessary to qualify the Corporation as a "real estate investment trust" as defined in the REIT Provisions of the Code, the Directors may alter the above-declared investment policy in light of changes in economic circumstances and other relevant factors, and the methods of implementing the Corporation's investment policies may change, in the discretion of the Directors as economic and other conditions change.

(b) OTHER PERMISSIBLE INVESTMENTS. To the extent that the Corporation has assets not invested in accordance with paragraph (a) of this Article VIII, the Corporation may invest them in, subject to such restrictions as may be necessary to qualify the Corporation as a "real estate investment trust" as defined in the REIT Provisions of the Code:

(i) Obligations of, or guaranteed or insured by, the United States Government or any agency or political subdivision thereof;

(ii) Obligations of, or guarantees by, any state, territory, or possession of the United States of America or any agency or political subdivision thereof;

(iii) Evidences of deposits in, or obligations of, banking institutions, savings and loan associations, and savings institutions;

(iv) Real and personal property and interests therein; and

(v) Other Securities, liquid short-term investments, and property.

(c) PROHIBITED INVESTMENTS AND ACTIVITIES. The Corporation shall not invest in commodities, foreign currencies, or bullion except in connection with investments in other property.

## ARTICLE IX

### RESTRICTION ON TRANSFER, ACQUISITION AND REDEMPTION OF SHARES OF CAPITAL STOCK

#### (a) OWNERSHIP LIMITATION.

(i) Except as provided in paragraphs (k) and (u) of Article IX, and subject to sub-paragraph (iv) of this paragraph (a) of Article IX, from the Restriction Commencement Date until the Restriction Termination Date, no Person (other than an Excepted Holder) shall Beneficially or Constructively Own shares of Capital Stock in excess of the Ownership Limit and no Excepted Holder shall Beneficially or Constructively Own shares of Capital Stock in excess of the Excepted Holder Limit for such Excepted Holder.

(ii) Subject to sub-paragraph (iv) of this paragraph (a) of Article IX, from the Restriction Commencement Date until the Restriction Termination Date, any Transfer that, if effective, would result in (1) the Corporation being "closely held" within the meaning of Section 856(h) of the Code (without regard to whether the ownership interest is held during the last half of a taxable year), or (2) the Corporation otherwise failing to qualify as a REIT (including, but not

limited to, Beneficial or Constructive Ownership that would result in the Corporation owning (actually or Constructively) an interest in a tenant that is described in Section 856(d)(2)(B) of the Code if the income derived by the Corporation from such tenant would cause the Corporation to fail to satisfy any of the gross income requirements of Section 856(c) of the Code) shall be void and the intended transferee shall acquire no rights in such shares of Capital Stock.

(iii) Subject to sub-paragraph (iv) of this paragraph (a) of Article IX, from the Restriction Commencement Date until the Restriction Termination Date, any Transfer that, if effective, would result in the shares of Capital Stock being beneficially owned by less than 100 Persons (determined without reference to any rules of attribution) shall be void AB INITIO as to the Transfer of shares of Capital Stock which would be otherwise beneficially owned (as provided in Section 856(a) of the Code) by the transferee and the intended transferee shall acquire no rights in such shares of Capital Stock.

(iv) Nothing contained in this Article IX shall preclude the settlement of any transaction entered into through the facilities of the principal securities exchange on which the shares of Capital Stock are currently traded. The fact that the settlement of any transaction is permitted shall not negate the effect of any other provision of this Article IX and any transferee in such a transaction shall be subject to all of the provisions and limitations set forth in this Article IX.

(b) TRANSFER IN TRUST. If, notwithstanding the other provisions contained in this Article IX, at any time from the Restriction Commencement Date until the Restriction Termination Date, there is a purported Transfer such that any Person would Beneficially or Constructively Own shares of Capital Stock in violation of sub-paragraph (a)(i) or (ii),

(i) then that number of shares of Capital Stock the Beneficial or Constructive Ownership of which otherwise would cause such Person to violate paragraph (a)(i) or (ii) (rounded to the higher whole share) shall be automatically transferred to a Charitable Trust for the benefit of a Charitable Beneficiary, as described in paragraph (n), effective as of the close

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of business on the Business Day prior to the date of such Transfer, and such Person shall acquire no rights in such shares of Capital Stock; or

(ii) if the transfer to the Charitable Trust described in clause (i) of this sentence would not be effective for any reason to prevent the violation of paragraph (a)(i) or (ii), then the Transfer of that number of shares of Capital Stock that otherwise would cause any Person to violate paragraph (a)(i) or (ii) shall be void AB INITIO, and the intended transferee shall acquire no rights in such shares of Capital Stock.

(c) REMEDIES FOR BREACH. If the Board or its designee shall at any time determine in good faith that a Transfer has taken place in violation of paragraph (a) of Article IX or that a Person intends to acquire or has attempted to acquire Beneficial or Constructive Ownership of any shares of Capital Stock in violation of paragraph (a) of Article IX, the Board or its designee shall take such action as it deems advisable to refuse to give effect to or to prevent such transfer, including, but not limited to, refusing to give effect to such Transfer on the books of the Corporation or instituting proceedings to enjoin such Transfer; PROVIDED, HOWEVER, that any Transfers or attempted Transfers in violation of paragraph (a) of Article IX shall automatically result in the transfer to the Charitable Trust described above and, where applicable, such Transfer (or other event) shall be void AB INITIO as provided above irrespective of any action (or non-action) by the Board.

(d) NOTICE TO TRUST. Any Person who acquires or attempts to acquire Beneficial or Constructive Ownership of Capital Stock in violation of paragraph (a) of Article IX, or any Person who would be a transferee of such Capital Stock but for the Transfer to the Charitable Trust under paragraph (b) of Article IX, shall immediately give written notice or, in the event of a proposed or attempted Transfer, shall give at least fifteen (15) days prior written notice to the Corporation of such event and shall provide to the Corporation such other

information as the Corporation may request in order to determine the effect, if any, of such Transfer or attempted Transfer on the Corporation's status as a REIT.

(e) INFORMATION FOR CORPORATION. From the Restriction Commencement Date and until the Restriction Termination Date:

(i) every owner of more than 5% (or such other percentage, between 1/2 of 1% and 5%, as provided under the REIT Provisions of the Code) of the number or value of outstanding shares of Capital Stock of the Corporation shall upon the Corporation's written request, within thirty (30) days after January 1 of each year, give written notice to the Corporation stating the name and address of such owner, the number of shares of Capital Stock Beneficially or Constructively Owned, and a description of how such shares of Capital Stock are held. Each such Beneficial Owner shall provide to the Corporation such additional information as the Corporation may reasonably request in order to determine the effect, if any, of such Beneficial or Constructive Ownership on the Corporation's status as a REIT.

(ii) each Person who is a Beneficial or Constructive Owner of shares of Capital Stock and each Person (including the stockholder of record) who is holding shares of Capital Stock for a Beneficial or Constructive Owner shall provide to the Corporation in writing such information with respect to direct, indirect and constructive ownership of shares of Capital Stock as the Board deems reasonably necessary to comply with the provisions of the Code applicable to a REIT, to determine the Corporation's status as a REIT, to comply with the

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requirements of any taxing authority or governmental agency or to determine any such compliance.

(f) OTHER ACTION BY BOARD. Subject to sub-paragraph (iv) of paragraph (a) of Article IX, nothing contained in this Article IX shall limit the authority of the Board to take such other action as it deems necessary or advisable to protect the Corporation and the interests of its Stockholders by preservation of the Corporation's status as a REIT.

(g) AMBIGUITIES. In the case of an ambiguity in the application of any of the provisions of this Article IX, including any definition contained in Article XI, the Board shall have the power to determine the application of the provisions of this Article IX with respect to any situation based on the facts known to it and the Board's determination shall be conclusive for all purposes.

(h) MODIFICATION OF EXCEPTED HOLDER AND EXISTING HOLDER LIMITS. The Excepted Holder and Existing Holder Limits may be modified as follows:

(i) Subject to the limitations provided in paragraph (j) of Article IX, the Board may grant options which result in Beneficial or Constructive Ownership of shares of Capital Stock by an Existing Holder pursuant to an option plan approved by the Board and/or the Stockholders. Any such grant shall increase the Existing Holder Limit for the affected Existing Holder to the maximum extent possible under paragraph (j) of Article IX to permit the Beneficial or Constructive Ownership of the shares of Capital Stock issuable upon the exercise of such option.

(ii) Subject to the limitations provided in paragraph (j) of Article IX, an Existing Holder may elect to participate in a dividend reinvestment plan approved by the Board which results in Beneficial or Constructive Ownership of shares of Capital Stock by such participating Existing Holder. Any such participation shall increase the Existing Holder Limit for the affected Existing Holder to the maximum extent possible under paragraph (j) of Article IX to permit Beneficial or Constructive Ownership of the shares of Capital Stock acquired as a result of such participation.

(iii) The Board shall reduce the Excepted Holder Limit for any Excepted Holder after any Transfer permitted in this Article IX by such Excepted Holder by the percentage of the outstanding shares of Capital Stock so Transferred or after the lapse (without exercise) of an option

described in sub-paragraph (i) of this paragraph (h) of Article IX by the percentage of the shares of Capital Stock that the option, if exercised, would have represented, but in either case no Excepted Holder Limit shall be reduced to a percentage which is less than the Ownership Limit.

(iv) Subject to the limitations provided in paragraph (j) of Article IX, the Board may otherwise modify an Excepted Holder Limit from time to time.

(i) INCREASE OR DECREASE IN OWNERSHIP LIMIT. Subject to the limitations provided in paragraph (j) of Article IX, the Board may from time to time increase or decrease the Ownership Limit; PROVIDED, HOWEVER, that any decrease may only be made prospectively as to subsequent holders (other than a decrease as a result of a retroactive change in existing law that would require a decrease to retain REIT status, in which case such decrease shall be effective immediately).

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(j) LIMITATIONS ON CHANGES IN EXCEPTED HOLDER AND OWNERSHIP LIMITS.

(i) Neither the Ownership Limit nor any Excepted Holder Limit may be increased (nor may any additional Excepted Holder Limit be created) if, after giving effect to such increase (or creation), five Beneficial Owners of shares of Capital Stock (including all of the then Excepted Holders) could Beneficially Own, in the aggregate, more than 49.9% in number or value of the outstanding shares of Capital Stock.

(ii) Prior to the modification of any Excepted Holder Limit or Ownership Limit pursuant to paragraphs (h) or (i) of Article IX, the Board may require (but shall not be obligated to obtain) such opinions of counsel, affidavits, undertakings or agreements as it may deem necessary or advisable in order to determine or ensure the Corporation's status as a REIT.

(iii) The Board may only reduce the Excepted Holder Limit for an Excepted Holder: (1) with the written consent of such Excepted Holder at any time, or (2) pursuant to the terms and conditions of the agreements and undertakings entered into with such Excepted Holder in connection with the establishment of the Excepted Holder Limit for that Excepted Holder. No Excepted Holder Limit shall be reduced to a percentage which is less than the Ownership Limit.

(k) EXCEPTIONS BY BOARD.

(i) The Board, upon receipt of a ruling from the Internal Revenue Service or an opinion of counsel or other evidence satisfactory to the Board and upon at least fifteen (15) days written notice from a transferee prior to the proposed Transfer which, if consummated, would result in the intended transferee owning shares of Capital Stock in excess of the Ownership Limit or the Excepted Holder Limit, as the case may be, and upon such other conditions as the Board may direct, may grant an exception to the Ownership Limit or the Excepted Holder Limit, as the case may be, with respect to such transferee.

(ii) In addition to exceptions permitted under sub-paragraph (i) above, the Board may grant an exception to the Ownership Limit with respect to a Person if: (a) such Person submits to the Board information satisfactory to the Board, in its reasonable discretion, demonstrating that such Person is not an individual for purposes of Section 542(a)(2) of the Code (determined taking into account Section 856(h)(3)(A) of the Code); (b) such Person submits to the Board information satisfactory to the Board, in its reasonable discretion, demonstrating that no Person who is an individual for purposes of Section 542(a)(2) of the Code (determined taking into account Section 856(h)(3)(A) of the Code) would be considered to Beneficially Own shares of Capital Stock in excess of the Ownership Limit by reason of the ownership of shares of Capital Stock in excess of the Ownership Limit by the Person receiving the exception granted under this sub-paragraph (ii); (c) such Person submits to the Board information satisfactory to the Board, in its reasonable discretion, demonstrating that the ownership of shares of Capital Stock in excess of the

Ownership Limit by the Person receiving the exception granted under this sub-paragraph (ii) will not result in the Corporation failing to qualify as a REIT; and (d) such Person provides to the Board such representations and undertakings, if any, as the Board may, in its reasonable discretion, require to ensure that the conditions in clauses (a), (b) and (c) above are satisfied and will continue to be satisfied throughout the period during which such Person owns shares of Capital Stock in excess of the Ownership Limit pursuant to any exception granted under this sub-paragraph (ii), and such Person agrees that any violation of such representations and undertakings

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or any attempted violation thereof will result in the application of the remedies set forth in paragraph (c) of Article IX with respect to shares of Capital Stock held in excess of the Ownership Limit by such Person (determined without regard to the exception granted such Person under this sub-paragraph (ii)).

(l) LEGEND. Each certificate for shares of Capital Stock shall bear substantially the following legend:

The securities represented by this certificate are subject to restrictions on Beneficial and Constructive Ownership and Transfer for the purpose of the Corporation's maintenance of its status as a REIT under the Internal Revenue Code of 1986, as amended. Except as otherwise provided pursuant to the Charter, (i) no Person may Beneficially or Constructively Own shares of Capital Stock in excess of 9.8% (or such greater percentage as may be determined by the Board of Directors of the Corporation) of the number or value of the outstanding shares of Capital Stock of the Corporation unless such Person is an Excepted Holder (in which case the Excepted Holder Limit shall be applicable), (ii) no Person may Beneficially or Constructively Own shares of Capital Stock that would result in the Corporation being "closely held" under Section 856(h) of the Code or otherwise cause the Corporation to fail to qualify as a REIT; and (iii) no Person may Transfer shares of Capital Stock if such Transfer would result in Capital Stock of the Corporation being owned by fewer than 100 Persons. Any Person who attempts or proposes to Beneficially or Constructively Own shares of Capital Stock in excess of the above limitations must notify the Corporation in writing at least 15 days prior to such proposed or attempted Transfer. If the restrictions on transfer are violated, the securities represented hereby will be automatically transferred to a Charitable Trustee of a Charitable Trust for the benefit of one or more Charitable Beneficiaries. In addition, upon the occurrence of certain events, attempted Transfers in violation of the restrictions described above may be void AB INITIO. A Person who attempts to Beneficially or Constructively Own Capital Stock in violation of the ownership limitations described above shall have no claim, cause of action, or any recourse whatsoever against a transferor of such Capital Stock. All capitalized terms in this legend have the meanings defined in the Charter, a copy of which, including the restrictions on transfer, will be sent without charge to each Stockholder who so requests.

Instead of the foregoing legend, the certificate may state that the Corporation will furnish a full statement about certain restrictions on transferability to a Stockholder on request and without charge.

(m) SEVERABILITY. If any provision of this Article IX or any application of any such provision is determined to be void, invalid or unenforceable by any court having jurisdiction over the issue, the validity and enforceability of the remaining provisions shall be affected only to the extent necessary to comply with the determination of such court.

(n) TRUST FOR SHARES TRANSFERRED TO CHARITABLE TRUST. Upon any purported Transfer or other event that would result in a transfer of Capital Stock to a Charitable Trust pursuant to paragraph (b) of Article IX, such Capital Stock shall be deemed to have been transferred to the Charitable Trustee as trustee of a Charitable Trust for the exclusive benefit of the Charitable Beneficiary. Such transfer to the Charitable Trustee shall be deemed to be effective as of the close of business on the Business Day prior to the purported

Transfer or other event that results in the transfer to the Charitable Trust pursuant to paragraph (b). The Charitable Trustee shall be appointed by the Corporation and shall be a Person unaffiliated with the Corporation and any Purported Beneficial Transferee. Each Charitable Beneficiary shall be designated by the Corporation as provided in paragraph (t). Such Capital Stock so held in trust shall be issued and outstanding shares of Capital Stock of the

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Corporation. The Purported Beneficial Transferee shall have no rights in such Capital Stock held by the Charitable Trustee except as provided in paragraph (b) of Article IX. The Purported Beneficial Transferee shall not benefit economically from ownership of any Capital Stock held in trust by the Charitable Trustee, shall have no rights to dividends or other distributions and shall not possess any rights to vote or other rights attributable to the Capital Stock held in the Charitable Trust. The Purported Beneficial Transferee shall have no claim, cause of action, or any other recourse whatsoever against the purported transferor of such Capital Stock.

(o) DISTRIBUTIONS ON SHARES HELD BY CHARITABLE TRUST. Any distributions (whether as dividends, distributions upon liquidation, dissolution or winding up or otherwise) on Capital Stock held by the Charitable Trustee shall be paid to the Charitable Trust for the benefit of the Charitable Beneficiary. Upon liquidation, dissolution or winding up, the Purported Record Transferee shall receive the lesser of (i) the amount of any distribution made upon liquidation, dissolution or winding up or (ii) the price paid by the Purported Record Transferee for the shares of Capital Stock, or if the Purported Record Transferee did not give value for the shares of Capital Stock, the Market Price of the shares of Capital Stock on the day of the event causing the shares of Capital Stock to be held in trust. Any such dividend paid or distribution paid to the Purported Record Transferee in excess of the amount provided in the preceding sentence prior to the discovery by the Corporation that the Capital Stock with respect to which the dividend or distribution was made had been transferred to the Charitable Trust pursuant to paragraph (b) shall be repaid to the Charitable Trust for the benefit of the Charitable Beneficiary.

(p) VOTING OF SHARES HELD BY CHARITABLE TRUST. The Charitable Trustee shall be entitled to all voting rights with respect to the Capital Stock held in the Charitable Trust for the benefit of the Charitable Beneficiary on any matter. Any vote taken by a Purported Record Transferee prior to the discovery by the Corporation that the shares of Capital Stock were held in trust shall, subject to Maryland Law, be rescinded and recast in accordance with the desires of the Charitable Trustee acting for the benefit of the Charitable Beneficiary; PROVIDED, HOWEVER, that if the Corporation has already taken irreversible action, then the Charitable Trustee shall not have the power to rescind and recast such vote. The owner of the Capital Stock held by the Charitable Trustee shall be deemed to have given an irrevocable proxy to the Charitable Trustee to vote the Capital Stock held by the Charitable Trustee for the benefit of the Charitable Beneficiary.

(q) SALE OF SHARES HELD BY CHARITABLE TRUST. Shares held by the Charitable Trust shall be transferable only as provided in this paragraph (q) of Article IX. At the direction of the Corporation, the Charitable Trustee shall sell the shares of Capital Stock held in the Charitable Trust to a person whose ownership of the shares of Capital Stock will not violate paragraph (a). Such transfer shall be made within 60 days after the latest of (i) the date of the Transfer which resulted in such Transfer to the Charitable Trust and (ii) the date the Board determines in good faith that a Transfer resulting in the Transfer to the Charitable Trust has occurred, if the Corporation does not receive a notice of such Transfer pursuant to paragraph (d) of Article IX. If such a transfer is made, the interest of the Charitable Beneficiary shall terminate and proceeds of the sale shall be payable to the Purported Record Transferee and to the Charitable Beneficiary. The Purported Record Transferee shall receive the lesser of (x) the price paid by the Purported Record Transferee for the shares of Capital Stock or, if the Purported Record Transferee did not give value for the shares of Capital Stock, the Market Price of the shares of Capital Stock on the day of the event causing the shares of Capital Stock to be held in the Charitable Trust, and (y) the price received by the Charitable Trust from the sale or other disposition of the shares of Capital Stock. Any proceeds in excess of the amount payable to the Purported Record Transferee shall be paid to the Charitable Beneficiary. Prior to any transfer of any shares of Capital Stock held by the Charitable Trust by the Charitable Trustee, the Corporation must have waived in writing its

purchase rights under paragraph (r) of Article IX. It is expressly understood that the Purported Record Transferee may enforce the provisions of this paragraph (q) of Article IX against the Charitable Beneficiary.

(r) If any of the foregoing restrictions on transfer of shares held by the Charitable Trust is determined to be void, invalid or unenforceable by any court of competent jurisdiction, then the Purported Record Transferee may be deemed, at the option of the Corporation, to have acted as an agent of the Corporation in acquiring such shares and to hold such shares on behalf of the Corporation.

(s) CALL BY CORPORATION ON SHARES HELD BY THE CHARITABLE TRUST. Shares of Capital Stock held by the Charitable Trust shall be deemed to have been offered for sale to the Corporation, or its designee, at a price per share equal to the lesser of (i) the price per share in the transaction that created such shares held by the Charitable Trust (or, in the case of a devise, gift or other transaction in which no value was given for such shares held by the Charitable Trust, the Market Price at the time of such devise, gift or other transaction) and (ii) the Market Price of the shares of Capital Stock to which such shares held by the Charitable Trust relates on the date the Corporation, or its designee, accepts such offer (the "Redemption Price"). The Corporation shall have the right to accept such offer until the Charitable Trustee has sold the shares of Capital Stock held in the Charitable Trust pursuant to paragraph (q). Upon such a sale to the Corporation, the interest of the Charitable Beneficiary in the shares of Capital Stock sold shall terminate and the Charitable Trustee shall distribute the net proceeds of the sale to the Purported Record Transferee.

(t) DESIGNATION OF CHARITABLE BENEFICIARIES. By written notice to the Charitable Trustee, the Corporation shall designate one or more nonprofit organizations to be the Charitable Beneficiary of the interest in the Charitable Trust such that (i) Capital Stock held in the Charitable Trust would not violate the restrictions set forth in paragraph (a) in the hands of such Charitable Beneficiary and (ii) each such organization must be described in Section 501(c)(3), 170(b)(1)(A) or 170(c)(2) of the Code.

(u) UNDERWRITTEN OFFERINGS. The Ownership Limit shall not apply to the acquisition of shares of Capital Stock or rights, options or warrants for, or securities convertible into, shares of Capital Stock by an underwriter in a public offering, provided that the underwriter makes a timely distribution of such shares of Capital Stock or rights, options or warrants for, or securities convertible into, shares of Capital Stock.

## ARTICLE X

### AMENDMENTS

The Corporation reserves the right from time to time to make any amendments of the Charter which may now or hereafter be authorized by law, including any amendments changing the terms or contract rights, as expressly set forth in the Charter, of any of its outstanding stock by classification, reclassification or otherwise. Except as otherwise provided in the Charter, any amendment to the Charter shall be valid only if approved by the affirmative vote of a majority of all the votes entitled to be cast on the matter.

## ARTICLE XI

### DEFINITIONS

(a) The following terms shall, whenever used in this Charter, unless the context otherwise requires, have the meanings specified in this Article XI. The singular shall refer to the plural, and the masculine gender shall be deemed to refer to the feminine and neuter, and vice versa, as the context requires.

"AFFILIATE" shall mean with respect to a Stockholder or Director (i) any Person directly or indirectly owning, controlling, or holding, with power to



vote, 20% or more of the outstanding voting securities of such Stockholder, (ii) any Person 20% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held, with power to vote, by such Director, or such Stockholder, and (iii) any officer, director, or partner of such Stockholder.

"BENEFICIAL OWNERSHIP" shall mean ownership of shares of Capital Stock by a Person who would be treated as an owner of such shares of Capital Stock either directly or constructively through the application of Section 544 of the Code, as modified by Section 856(h) of the Code. The terms "BENEFICIAL OWNER," "BENEFICIALLY OWNS," "BENEFICIALLY OWN" and "BENEFICIALLY OWNED" shall have correlative meanings.

"BOARD" shall mean the Board of Directors of the Corporation.

"BUSINESS DAY" shall mean any day, other than a Saturday or Sunday, that is neither a legal holiday nor a day on which banking institutions in New York City are authorized or required by law, regulation or executive order to close.

"BYLAWS" shall mean the Bylaws of the Corporation and all amendments thereto.

"CAPITAL STOCK" shall mean all classes and series of stock which the Corporation shall have authority to issue. The term "CAPITAL STOCK" shall include Common Stock, preferred stock, preference stock, special stock or other stock.

"CHARITABLE BENEFICIARY" shall mean one or more beneficiaries of the Charitable Trust as determined pursuant to paragraph (t) of Article IX, provided that each such organization must be described in Sections 501(c)(3), 170(b)(1)(A) and 170(c)(2) of the Code.

"CHARITABLE TRUST" shall mean any trust provided for in paragraph (b)(i) and paragraph (n) of Article IX.

"CHARITABLE TRUSTEE" shall mean the Person unaffiliated with the Corporation and a Purported Beneficial Transferee, that is appointed by the Corporation to serve as trustee of the Charitable Trust.

"CHARTER" shall mean these Articles of Amendment and Restatement of the Corporation, as amended, supplemented or modified from time to time. References in this Charter to "herein" and "hereunder" shall be deemed to refer to this Charter in its entirety and shall not be limited to the particular text, article, or section in which such words appear.

"CODE" shall mean the Internal Revenue Code of 1986, as amended from time to time, including successor statutes thereto.

"CONSTRUCTIVE OWNERSHIP" shall mean ownership of Capital Stock by a Person, whether the interest in Capital Stock is held directly or indirectly (including by a nominee), and shall include interests that would be treated as owned through the application of Section 318(a) of the Code, as modified by

Section 856(d)(5) of the Code. The terms "CONSTRUCTIVE OWNER," "CONSTRUCTIVELY OWNS" and "CONSTRUCTIVELY OWNED" shall have the correlative meanings.

"CORPORATION ASSETS" shall mean, as of any particular time, any and all property, real, personal, or otherwise, tangible or intangible, which is held, transferred, conveyed, or paid to the Corporation and all rents, income, profits, and gains therefrom.

"DEBT" shall mean indebtedness of the Corporation.

"DIRECTOR" shall mean the Person that is elected pursuant to Article VI to serve as Director of the Corporation, and any successor thereto.

"EXCEPTED HOLDER" shall mean (i) a stockholder of the Corporation for whom an Excepted Holder Limit is created by the Board pursuant to paragraph (k) of Article IX and (ii) an Existing Holder.

"EXCEPTED HOLDER LIMIT" shall mean (i) provided that the affected Excepted Holder agrees to comply with the requirements established by the Board pursuant to paragraph (k) of Article IX and subject to adjustment pursuant to paragraph (h) of Article IX, the percentage limit established by the Board for such Excepted Holder pursuant to paragraph (k) of Article IX and (ii) with respect to an Existing Holder, the Existing Holder Limit.

"EXISTING HOLDER" shall mean (i) any Person who is, or would be upon the exchange of Debt or any Security of the Corporation, the Beneficial or Constructive Owner of shares of Capital Stock in excess of the Ownership Limit immediately after the Restriction Commencement Date, so long as, but only so long as, such Person Beneficially or Constructively Owns or would, upon exchange of Debt or any Security of the Corporation, Beneficially or Constructively Own shares of Capital Stock in excess of the Ownership Limit and (ii) any Person to whom an Existing Holder Transfers, subject to the limitations provided in this Article IX, Beneficial or Constructive Ownership of shares causing such transferee to Beneficially or Constructively Own shares of Capital Stock in excess of the Ownership Limit.

"EXISTING HOLDER LIMIT" (i) for any Existing Holder who is an Existing Holder by virtue of clause (i) of the definition thereof, shall mean, initially, the percentage of the outstanding shares of Capital Stock Beneficially or Constructively Owned (with such percentage for each class determined separately) or which would be Beneficially or Constructively Owned upon the exchange of Debt or any Security of the Corporation, by such Existing Holder upon and immediately after the Restriction Commencement Date, and, after any adjustment pursuant to paragraph (h) of Article IX, shall mean such percentage of the outstanding shares of Capital Stock as so adjusted, and (ii) for any Existing Holder who becomes an Existing Holder by virtue of clause (ii) of the definition thereof, shall mean, initially, the percentage of the outstanding shares of Capital Stock Beneficially or Constructively Owned (with such percentage for each class determined separately) by such Existing Holder at the time that such Existing Holder becomes an Existing Holder, but in no event shall such percentage be greater than the lesser of (a) the Existing Holder Limit for the Existing Holder who Transferred Beneficial or Constructive Ownership of such shares of Capital Stock or, in the case of more than one transferor, in no event shall such percentage be greater than the smallest Existing Holder Limit of any transferring Existing Holder, or (b) the Ownership Limit if the Existing Holder is a person other than a trust qualified under Section 401(a) of the Code and exempt from tax under Section 501(a) of the Code, and, after any adjustment pursuant to paragraph (h) of Article IX, shall mean such percentage of the outstanding shares of Capital Stock as so adjusted. From the Restriction Commencement Date until the Restriction Termination Date, the Corporation shall maintain and, upon request, make available to each Existing Holder, a schedule which sets forth the then current Existing Holder Limit for each Existing Holder.

"MARKET PRICE" shall mean the last reported sales price reported on the NYSE for a particular class of shares of Capital Stock on the trading day immediately preceding the relevant date, or if not then traded on such exchange, the last reported sales price for such class of shares of Capital Stock on the

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trading day immediately preceding the relevant date as reported on any exchange or quotation system over or through which such class of shares of Capital Stock may be traded, or if not then traded over or through any exchange or quotation system, then the market price of such class of shares of Capital Stock on the relevant date as determined in good faith by the Board.

"MGCL" shall mean the Maryland General Corporation Law, as amended from time to time, including successor statutes thereto.

"MORTGAGES" shall mean mortgages, deeds of trust, or other security instruments on real property or rights or interests in real property or entities owning or controlling real property.

"OWNERSHIP LIMIT" shall initially mean 9.8%, in number of shares of Capital Stock, or value of the aggregate outstanding shares of Capital Stock, whichever is more restrictive, of the Corporation, and after any adjustment as set forth in paragraph (i) of Article IX, shall mean such percentage in number of shares of Capital Stock, or value of the aggregate outstanding shares of Capital Stock, as so adjusted. Such number and/or value shall be determined by

the Board in good faith, which determination shall be conclusive for all purposes hereof.

"PERSON" shall mean an individual, corporation, partnership, estate, trust (including a trust qualified under Section 401(a) or 501(c)(17) of the Code), a portion of a trust permanently set aside for or to be used exclusively for the purposes described in Section 642(c) of the Code, association, private foundation within the meaning of Section 509(a) of the Code, joint stock company or other entity.

"PURPORTED BENEFICIAL TRANSFEREE" shall mean, with respect to any purported Transfer, any Person who, but for the provisions of paragraph (b) of Article IX, would Beneficially or Constructively Own shares of Capital Stock.

"PURPORTED RECORD TRANSFEREE" shall mean, with respect to any purported Transfer, any Person who, but for the provisions of paragraph (b) of Article IX, would be the record owner of shares of Capital Stock.

"REIT" shall mean a real estate investment trust under Sections 856 through 860 of the Code.

"REIT PROVISIONS OF THE CODE" shall mean Part II, Subchapter M of Chapter 1 of Subtitle A of the Code, as now enacted or hereafter amended, including successor statutes and regulations promulgated thereunder.

"RESTRICTION COMMENCEMENT DATE" shall mean the date upon which the Charter containing this Article IX is accepted for record with the State Department of Assessments and Taxation of Maryland.

"RESTRICTION TERMINATION DATE" shall mean the first day after the Restriction Commencement Date on which the Board determines that it is no longer in the best interests of the Corporation to attempt to, or continue to, qualify as a REIT.

"SECURITIES" shall mean common and preferred stock in a corporation, shares of beneficial interest in a trust or other unincorporated association, general partner interests in a general partnership, interests in a joint venture, general or limited partnership interests in a limited partnership, membership interests or non-member manager interests in a limited liability company, notes, debentures, bonds, and other evidences of indebtedness, including Mortgages, whether secured or unsecured, and includes any options, warrants, and rights to subscribe to or convert into any of the foregoing.

"STOCKHOLDERS" shall mean, at any particular time, those Persons who are shown as the holders of record of all shares of Capital Stock on the records of the Corporation at such time.

"TRANSFER" shall mean any issuance, sale, transfer, gift, assignment, devise or other disposition, as well as any other event that causes any Person to acquire Beneficial or Constructive Ownership, of shares

of Capital Stock (including (a) a change in the capital structure of the Corporation, (b) a change in the relationship between two or more Persons which causes a change in Beneficial or Constructive Ownership of shares of Capital Stock, (c) Transfers of interests in other entities that result in changes in Beneficial or Constructive Ownership of shares of Capital Stock, (d) the granting of any option, warrant or similar agreement, or entering into any agreement for the sale, transfer or other disposition of shares of Capital Stock, (e) the sale, transfer, assignment or other disposition of any Securities or rights convertible into or exchangeable for shares of Capital Stock, but excluding the exchange of Debt or any Security of the Corporation for shares of Capital Stock and (f) any transfer or other disposition of any interest in shares of Capital Stock as a result of a change in the marital status of the holder thereof), whether voluntary or involuntary, whether of record, constructively or beneficially and whether by operation of law or otherwise. The terms "TRANSFERS" and "TRANSFERRED" shall have correlative meanings.



STARWOOD FINANCIAL INC.

AMENDED AND RESTATED

BYLAWS

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ARTICLE I

OFFICES

Section 1. PRINCIPAL EXECUTIVE OFFICE. The principal executive office of Starwood Financial, Inc. (the "Company") shall be located at such place or places as the Board of Directors may designate.

Section 2. ADDITIONAL OFFICES. The Company may have additional offices at such places as the Board of Directors may from time to time determine or the business of the Company may require.

ARTICLE II

MEETINGS OF STOCKHOLDERS

Section 1. PLACE. All meetings of stockholders shall be held at the principal office of the Company or at such other place within the United States as shall be stated in the notice of the meeting.

Section 2. ANNUAL MEETING. An annual meeting of the stockholders for the election of directors and the transaction of any business within the powers of the Company shall be held on such date as shall be set by the Board of Directors. Except as the Articles of Incorporation of the Company, as amended (the "Charter") or statute provides otherwise, any business may be considered at an annual meeting without the purpose of the meeting having been specified in the notice. Failure to hold an annual meeting does not invalidate the Company's existence or affect any otherwise valid corporate acts.

Section 3. SPECIAL MEETINGS. The president, chief executive officer or Board of Directors may call special meetings of the stockholders. Special meetings of stockholders shall also be called by the secretary of the Company upon the written request of the holders of shares entitled to cast not less than a majority of all the votes entitled to be cast at such meeting. Such request shall state the purpose of such meeting and the matters proposed to be acted on at such meeting. The secretary shall inform such stockholders of the reasonably estimated cost of preparing and mailing notice of the meeting and, upon payment to the Company by such stockholders of such costs, the secretary shall give notice to each stockholder entitled to notice of the meeting.

Section 4. NOTICE OF MEETINGS; WAIVER OF NOTICE. Not less than ten nor more than 90 days before each stockholders' meeting, the Secretary shall give written notice of the meeting to each stockholder entitled to vote at the meeting and each other stockholder entitled to notice of the meeting. The notice shall state the time and place of the

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meeting and, if the meeting is a special meeting or notice of the purpose is required by statute, the purpose of the meeting. Notice is given to a stockholder when it is personally delivered to him or her, left at his or her residence or usual place of business, or mailed to him or her at his or her address as it appears on the records of the Company. Notwithstanding the foregoing provisions, each person who is entitled to notice waives notice if he or she before or after the meeting signs a waiver of the notice which is filed with the records of stockholders' meetings, or is present at the meeting in person or by proxy.

Section 5. ORGANIZATION. At every meeting of stockholders, the Chairman of the Board, if there be one, shall conduct the meeting or, in the case of

vacancy in office or absence of the Chairman of the Board, one of the following officers present shall conduct the meeting in the order stated: the Vice Chairman of the Board, if there be one, the President, the Vice Presidents in their order of rank and seniority, or a Chairman chosen by the stockholders entitled to cast a majority of the votes which all stockholders present in person or by proxy are entitled to cast, shall act as Chairman, and the secretary of the Company, or, in his absence, an assistant secretary of the Company, or in the absence of both the Secretary and assistant secretaries, a person appointed by the Chairman shall act as Secretary.

Section 6. QUORUM; ADJOURNMENTS. At any meeting of stockholders, the presence in person or by proxy of stockholders entitled to cast a majority of all the votes entitled to be cast at such meeting shall constitute a quorum; but this section shall not affect any requirement under any statute or the Charter of the Company for the vote necessary for the adoption of any measure. If, however, such quorum shall not be present at any meeting of the stockholders, the stockholders entitled to vote at such meeting, present in person or by proxy, shall have the power to adjourn the meeting from time to time to a date not more than 120 days after the original record date without notice other than announcement at the meeting. At such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally notified.

Section 7. VOTING. A plurality of all the votes cast at a meeting of stockholders duly called and at which a quorum is present shall be sufficient to elect a director. Each share may be voted for as many individuals as there are directors to be elected and for whose election the share is entitled to be voted. A majority of the votes cast at a meeting of stockholders duly called and at which a quorum is present shall be sufficient to approve any other matter which may properly come before the meeting, unless more than a majority of the votes cast is required by statute or by the Charter. Unless otherwise provided in the Charter, each outstanding share, regardless of class, shall be entitled to one vote on each matter submitted to a vote at a meeting of stockholders.

Section 8. PROXIES. A stockholder may authorize another person to act as proxy by transmitting, or authorizing the transmission of, a telegram, cablegram, datagram, or other means of electronic transmission to the person authorized to act as proxy or to a proxy solicitation firm, proxy support service organization, or other person authorized by the person who will act as proxy to receive the transmission. Unless a proxy provides otherwise, it is not valid more than 11 months after its date. A proxy is revocable by a stockholder at any time without condition or qualification unless the proxy states that it is irrevocable and the proxy is coupled with an interest. A proxy may be made irrevocable for so long as it is coupled with an

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interest. The interest with which a proxy may be coupled includes an interest in the stock to be voted under the proxy or another general interest in the Company or its assets or liabilities.

Section 9. VOTING OF STOCK BY CERTAIN HOLDERS. Stock of the Company registered in the name of a corporation, partnership, trust or other entity, if entitled to be voted, may be voted by the president or a vice president, a general partner or trustee thereof, as the case may be, or a proxy appointed by any of the foregoing individuals, unless some other person who has been appointed to vote such stock pursuant to a bylaw or a resolution of the governing body of such corporation or other entity or agreement of the partners of a partnership presents a certified copy of such bylaw, resolution or agreement, in which case such person may vote such stock. Any director or other fiduciary may vote stock registered in his name as such fiduciary, either in person or by proxy.

Shares of stock of the Company directly or indirectly owned by it shall not be voted at any meeting and shall not be counted in determining the total number of outstanding shares entitled to be voted at any given time, unless they are held by it in a fiduciary capacity, in which case they may be voted and shall be counted in determining the total number of outstanding shares at any given time.

The Board of Directors may adopt by resolution a procedure by which a stockholder may certify in writing to the Company that any shares of stock registered in the name of the stockholder are held for the account of a

specified person other than the stockholder. The resolution shall set forth the class of stockholders who may make the certification, the purpose for which the certification may be made, the form of certification and the information to be contained in it; if the certification is with respect to a record date or closing of the stock transfer books, the time after the record date or closing of the stock transfer books within which the certification must be received by the Company; and any other provisions with respect to the procedure which the Board of Directors considers necessary or desirable. On receipt of such certification, the person specified in the certification shall be regarded as, for the purposes set forth in the certification, the stockholder of record of the specified stock in place of the stockholder who makes the certification.

Section 10. INSPECTORS. At any meeting of stockholders, the chairman of the meeting may, or upon the request of any stockholder shall, appoint one or more persons as inspectors for such meeting. Such inspectors shall ascertain and report the number of shares represented at the meeting based upon their determination of the validity and effect of proxies, count all votes, report the results and perform such other acts as are proper to conduct the election and voting with impartiality and fairness to all the stockholders.

Each report of an inspector shall be in writing and signed by him or by a majority of them if there is more than one inspector acting at such meeting. If there is more than one inspector, the report of a majority shall be the report of the inspectors. The report of the inspector or inspectors on the number of shares represented at the meeting and the results of the voting shall be PRIMA FACIE evidence thereof.

#### Section 11. NOMINATIONS AND STOCKHOLDER BUSINESS

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(a) ANNUAL MEETINGS OF STOCKHOLDERS. Nominations of persons for election to the Board of Directors and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders (i) pursuant to the Company's notice of meeting, (ii) by or at the direction of the Board of Directors or (iii) by any stockholder of the Company who was a stockholder of record at the time notice of such meeting was sent.

(b) SPECIAL MEETINGS OF STOCKHOLDERS. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Company's notice of meeting. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected (i) pursuant to the Company's notice of meeting, (ii) by or at the direction of the Board of Directors or (iii) provided that the Board of Directors has determined that directors shall be elected at such special meeting, by any stockholder of the Company who is a stockholder of record at the time of giving of notice provided for in this Section 11(b), who is entitled to vote at the meeting and who complied with the notice procedures set forth in this Section 11(b). In the event the Company calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any such stockholder may nominate a person or persons (as the case may be) for election to such position as specified in the Company's notice of meeting.

(c) GENERAL. (1) Only such persons who are nominated in accordance with the procedures set forth in this Section 11 shall be eligible to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 11. The presiding officer of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made in accordance with the procedures set forth in this Section 11 and, if any proposed nomination or business is not in compliance with this Section 11, to declare that such defective nomination or proposal be disregarded.

(2) Notwithstanding the foregoing provisions of this Section 11, a stockholder shall also comply with all applicable requirements of state law with respect to the matters set forth in this Section 11.

Section 12. VOTING BY BALLOT. Voting on any question or in any election may be VIVA VOCE unless the presiding officer shall order or any stockholder shall demand that voting be by ballot.

Section 13. LIST OF STOCKHOLDERS. At each meeting of stockholders, a full, true and complete list of all stockholders entitled to vote at such meeting, showing the number and class of shares held by each and certified by the transfer agent for such class or by the secretary of the Company, shall be furnished by the secretary of the Company.

Section 14. INFORMAL ACTION BY STOCKHOLDERS. Any action required or permitted to be taken at a meeting of stockholders may be taken without a meeting if there is filed with the records of stockholders meetings a unanimous written consent which sets forth the action and is signed by each stockholder entitled to vote on the matter and a written waiver of any right to dissent signed by each stockholder entitled to notice of the meeting but not entitled to vote at it.

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Section 15. MEETING BY CONFERENCE TELEPHONE. Stockholders may participate in a meeting by means of a conference telephone or similar communications equipment if all persons participating in the meeting can hear each other at the same time. Participation in a meeting by these means constitutes presence in person at a meeting.

### ARTICLE III

#### DIRECTORS

Section 1. GENERAL POWERS; QUALIFICATIONS. The business and affairs of the Company shall be managed under the direction of its Board of Directors. All powers of the Company may be exercised by or under authority of the Board of Directors, except as conferred on or reserved to the stockholders by statute or by the Charter or By-Laws.

Section 2. NUMBER, TENURE AND QUALIFICATIONS. At any regular meeting or at any special meeting called for that purpose, a majority of the entire Board of Directors may establish, increase or decrease the number of directors, provided that the number thereof shall never be less than the minimum number required by the Maryland General Corporation Law, nor more than 15, and further provided that the tenure of office of a director shall not be affected by any decrease in the number of directors. The directors shall be divided into three classes as nearly equal in number as possible. At each successive annual meeting of stockholders, the holders of stock present in person or by proxy at such meeting and entitled to vote thereat shall elect members of such successive class to serve for three year terms and until their successors are elected and qualify. If the number of directors is changed, any increase or decrease shall be apportioned among the classes so as to maintain the number of directors in each class as nearly equal as possible, and any additional director of any class shall, subject to Section 10, hold office for a term that shall coincide with the remaining term of that class, but in no case shall a decrease in the number of directors shorten the term of any incumbent director.

Section 3. RESIGNATION. Any director may resign at any time by sending a written notice of such resignation to the principal executive office of the Company addressed to the Chairman of the Board or the President. Unless otherwise specified therein such resignation shall take effect upon receipt thereof by the Chairman of the Board or the President.

Section 4. REMOVAL OF DIRECTOR. Any director or the entire Board of Directors may be removed only in accordance with the provisions of the Charter.

Section 5. ANNUAL AND REGULAR MEETINGS. An annual meeting of the Board of Directors shall be held immediately after and at the same place as the annual meeting of stockholders, no notice other than this Bylaw being necessary. The Board of Directors may provide, by resolution, the time and place, either within or without the State of Maryland, for the holding of regular meetings of the Board of Directors without other notice than such resolution.

Section 6. SPECIAL MEETINGS. Special meetings of the Board of Directors may be called by or at the request of the chairman of the board (or any co-chairman of the board if more than one), president or by a majority of the directors then in office. The person or persons authorized to call special meetings of the Board of Directors may fix any place, either



within or without the State of Maryland, as the place for holding any special meeting of the Board of Directors called by them.

Section 7. NOTICE. Except as provided in Sections 5 and 6, the Secretary shall give notice to each director of each regular and special meeting of the Board of Directors. The notice shall state the time and place of the meeting. Notice is given to a director when it is delivered personally to him or her, left at his or her residence or usual place of business, or sent by telegraph, facsimile transmission or telephone, at least 24 hours before the time of the meeting or, in the alternative by mail to his or her address as it shall appear on the records of the Company, at least 72 hours before the time of the meeting. Unless these By-Laws or a resolution of the Board of Directors provides otherwise, the notice need not state the business to be transacted at or the purposes of any regular or special meeting of the Board of Directors. No notice of any meeting of the Board of Directors need be given to any director who attends except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened, or to any director who, in writing executed and filed with the records of the meeting either before or after the holding thereof, waives such notice. Any meeting of the Board of Directors, regular or special, may adjourn from time to time to reconvene at the same or some other place, and no notice need be given of any such adjourned meeting other than by announcement.

Section 8. QUORUM. A majority of the directors shall constitute a quorum for transaction of business at any meeting of the Board of Directors, provided that, if less than a majority of such directors are present at said meeting, a majority of the directors present may adjourn the meeting from time to time without further notice, and provided further that if, pursuant to the Charter of the Company or these Bylaws, the vote of a majority of a particular group of directors is required for action, a quorum must also include a majority of such group.

The Board of Directors present at a meeting which has been duly called and convened may continue to transact business until adjournment, notwithstanding the withdrawal of enough directors to leave less than a quorum.

Section 9. VOTING. The action of the majority of the directors present at a meeting at which a quorum is present shall be the action of the Board of Directors, unless the concurrence of a greater proportion is required for such action by applicable statute.

Section 10. PRESUMPTION OF ASSENT. A director of the Company who is present at a meeting of the Board of Directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his or her dissent or abstention shall be entered in the minutes of the meeting or unless he or she shall file his or her written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Company immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who votes in favor of such action.

Section 11. TELEPHONE MEETINGS. Directors may participate in a meeting by means of a conference telephone or similar communications equipment if all persons participating in the meeting can hear each other at the same time. Participation in a meeting by these means shall constitute presence in person at the meeting.

Section 12. INFORMAL ACTION BY DIRECTORS. Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting, if a consent in writing to such action is signed by each director and such written consent is filed with the minutes of proceedings of the Board of Directors.

Section 13. VACANCIES. If for any reason any or all the directors cease to be directors, such event shall not terminate the Company or affect these Bylaws or the powers of the remaining directors hereunder (even if fewer than three directors remain). Any vacancy on the Board of Directors for any cause

other than an increase in the number of directors shall be filled by a majority of the remaining directors, although such majority is less than a quorum. Any vacancy in the number of directors created by an increase in the number of directors may be filled by a majority vote of the entire Board of Directors. Any individual so elected as director shall hold office for the unexpired term of the director he is replacing.

Section 14. COMPENSATION. Directors shall not receive any stated salary for their services as directors but, by resolution of the Board of Directors, may receive fixed sums per year and/or per meeting and/or per visit to real property owned or to be acquired by the Company and for any service or activity they performed or engaged in as directors. Directors may be reimbursed for expenses of attendance, if any, at each annual, regular or special meeting of the Board of Directors or of any committee thereof and for their expenses, if any, in connection with each property visit and any other service or activity they performed or engaged in as directors; but nothing herein contained shall be construed to preclude any directors from serving the Company in any other capacity and receiving compensation therefor.

Section 15. LOSS OF DEPOSITS. No director shall be liable for any loss which may occur by reason of the failure of the bank, trust company, savings and loan association, or other institution with whom moneys or stock have been deposited.

Section 16. SURETY BONDS. Unless required by law, no director shall be obligated to give any bond or surety or other security for the performance of any of his duties.

Section 17. RELIANCE. Each director, officer, employee and agent of the Company shall, in the performance of his duties with respect to the Company, be fully justified and protected with regard to any act or failure to act in reliance in good faith upon the books of account or other records of the Company, upon an opinion of counsel or upon reports made to the Company by any of its officers or employees or by the adviser, accountants, appraisers or other experts or consultants selected by the Board of Directors or officers of the Company, regardless of whether such counsel or expert may also be a director.

Section 18. CERTAIN RIGHTS OF DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS. The directors shall have no responsibility to devote their full time to the affairs of the Company. Any director or officer, employee or agent of the Company, in his personal capacity or in a capacity as an affiliate, employee, or agent of any other person, or otherwise, may have business interests and engage in business activities similar to or in addition to or in competition with those of or relating to the Company.

#### ARTICLE IV

#### COMMITTEES

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Section 1. NUMBER, TENURE AND QUALIFICATIONS. The Board of Directors may appoint from among its members an Executive Committee, an Audit Committee, a Compensation Committee and other committees, composed of one or more directors, to serve at the pleasure of the Board of Directors; provided, however, that the Audit Committee, if formed, shall consist only of independent directors and the Compensation Committee, if formed, shall consist of two or more Independent Directors. For purposes of this section, an "Independent Director" shall mean any person if, in the opinion of the Board of Directors such person will exercise independent judgment and will materially assist in the function of the committee, except that such person shall not be an officer or employee of the Company, or a director who represents a close relative of a person who would not qualify as an Independent Director.

Section 2. POWERS. The Board of Directors may delegate to committees appointed under Section 1 of this Article any of the powers of the Board of Directors, except the power to authorize dividends on stock, elect directors, issue stock other than as provided in the next sentence, recommend to the stockholders any action which requires stockholder approval, amend these By-Laws, or approve any merger or share exchange which does not require stockholder approval. If the Board of Directors has given general authorization for the issuance of stock providing for or establishing a method or procedure

for determining the maximum number of shares to be issued, a committee of the Board of Directors, in accordance with that general authorization or any stock option or other plan or program adopted by the Board of Directors, may authorize or fix the terms of stock subject to classification or reclassification and the terms on which any stock may be issued, including all terms and conditions required or permitted to be established or authorized by the Board of Directors.

Section 3. MEETINGS. Notice of committee meetings shall be given in the same manner as notice for special meetings of the Board of Directors. A majority of the members of the committee shall constitute a quorum for the transaction of business at any meeting of the committee. The act of a majority of the committee members present at a meeting shall be the act of such committee. The Board of Directors may designate a chairman of any committee, and such chairman or any two members of any committee may fix the time and place of its meeting unless the Board shall otherwise provide. In the absence of any member of any such committee, the members thereof present at any meeting, whether or not they constitute a quorum, may appoint another director to act in the place of such absent member. Each committee shall keep minutes of its proceedings.

Section 4. TELEPHONE MEETINGS. Members of a committee of the Board of Directors may participate in a meeting by means of a conference telephone or similar communications equipment if all persons participating in the meeting can hear each other at the same time. Participation in a meeting by these means shall constitute presence in person at the meeting.

Section 5. INFORMAL ACTION BY COMMITTEES. Any action required or permitted to be taken at any meeting of a committee of the Board of Directors may be taken without a meeting, if a consent in writing to such action is signed by each member of the committee and such written consent is filed with the minutes of proceedings of such committee.

Section 6. VACANCIES. Subject to the provisions hereof, the Board of Directors shall have the power at any time to change the membership of any committee, to fill all

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vacancies, to designate alternate members to replace any absent or disqualified member or to dissolve any such committee.

## ARTICLE V

### OFFICERS

Section 1. GENERAL PROVISIONS. The officers of the Company shall include a chief executive officer, a president, a secretary and a chief financial officer and may include a chairman of the board (or one or more co-chairmen of the board), a vice chairman of the board, one or more executive vice presidents, one or more senior vice presidents, one or more vice presidents, a chief operating officer, a treasurer, one or more assistant secretaries and one or more assistant treasurers. In addition, the Board of Directors may from time to time appoint such other officers with such powers and duties as they shall deem necessary or desirable or authorize any committee or officer to appoint assistant or subordinate officers. The officers of the Company shall be elected annually by the Board of Directors at the first meeting of the Board of Directors held after each annual meeting of stockholders, except that the chief executive officer may appoint one or more vice presidents, assistant secretaries and assistant treasurers. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as may be convenient. Each officer shall hold office at the pleasure of the Board of Directors or until his death, resignation or removal in the manner hereinafter provided. Any two or more offices except president and vice president may be held by the same person. In its discretion, the Board of Directors may leave unfilled any office except that of president, treasurer and secretary. Election of an officer or agent shall not of itself create contract rights between the Company and such officer or agent.

Section 2. REMOVAL AND RESIGNATION. Any officer or agent of the Company may be removed by the Board of Directors if in its judgment the best interests of the Company would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Any officer of the Company may resign at any time by giving written notice of his

resignation to the Board of Directors, the chairman of the board (or any co-chairman of the board if more than one), the president or the secretary. Any resignation shall take effect at any time subsequent to the time specified therein or, if the time when it shall become effective is not specified therein, immediately upon its receipt. The acceptance of a resignation shall not be necessary to make it effective unless otherwise stated in the resignation. Such resignation shall be without prejudice to the contract rights, if any, of the Company.

Section 3. CHIEF EXECUTIVE OFFICER. The Board of Directors may designate a chief executive officer. In the absence of such designation, the chairman of the board (or, if more than one, the co-chairmen of the board in the order designated at the time of their election or, in the absence of any designation, then in the order of their election) shall be the chief executive officer of the Company. The chief executive officer shall have general responsibility for implementation of the policies of the Company, as determined by the Board of Directors, and for the management of the business and affairs of the Company.

Section 4. CHIEF OPERATING OFFICER. The Board of Directors may designate a chief operating officer. The chief operating officer shall have the responsibilities and duties as set forth by the Board of Directors or the chief executive officer.

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Section 5. CHIEF FINANCIAL OFFICER. The Board of Directors may designate a chief financial officer. The chief financial officer shall have the responsibilities and duties as set forth by the Board of Directors or the chief executive officer.

Section 6. CHAIRMAN OF THE BOARD. The Board of Directors shall designate a chairman of the board (or one or more co-chairmen of the board). The chairman of the board shall preside over the meetings of the Board of Directors and of the stockholders at which he shall be present. If there be more than one, the co-chairmen designated by the Board of Directors will perform such duties. The chairman of the board shall perform such other duties as may be assigned to him or them by the Board of Directors.

Section 7. CHAIRMAN OF THE BOARD EMERITUS. The directors may elect by a majority vote, from time to time, a chairman of the board emeritus (or one or more co-chairmen of the board emeritus). The chairman of the board emeritus shall be an honorary position and shall have no vote on any matter considered by the directors. The chairman of the board emeritus shall serve for such term as determined by the Board of Directors and may be removed by a majority vote of directors with or without cause.

Section 8. PRESIDENT. The president or chief executive officer, as the case may be, shall in general supervise and control all of the business and affairs of the Company. In the absence of a designation of a chief operating officer by the Board of Directors, the president shall be the chief operating officer. He may execute any deed, mortgage, bond, contract or other instrument, except in cases where the execution thereof shall be expressly delegated by the Board of Directors or by these Bylaws to some other officer or agent of the Company or shall be required by law to be otherwise executed; and in general shall perform all duties incident to the office of president and such other duties as may be prescribed by the Board of Directors from time to time.

Section 9. VICE PRESIDENTS. In the absence of the president or in the event of a vacancy in such office, the vice president (or in the event there be more than one vice president, the vice presidents in the order designated at the time of their election or, in the absence of any designation, then in the order of their election) shall perform the duties of the president and when so acting shall have all the powers of and be subject to all the restrictions upon the president; and shall perform such other duties as from time to time may be assigned to him by the president or by the Board of Directors. The Board of Directors may designate one or more vice presidents as executive vice president or as vice president for particular areas of responsibility.

Section 10. SECRETARY. The secretary shall (a) keep the minutes of the proceedings of the stockholders, the Board of Directors and committees of the Board of Directors in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these Bylaws or

as required by law; (c) be custodian of the corporate records and of the seal of the Company; (d) keep a register of the post office address of each stockholder which shall be furnished to the secretary by such stockholder; (e) have general charge of the share transfer books of the Company; and (f) in general perform such other duties as from time to time may be assigned to him by the chief executive officer, the president or by the Board of Directors.

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Section 11. TREASURER. The treasurer shall have the custody of the funds and securities of the Company and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Company and shall deposit all moneys and other valuable effects in the name and to the credit of the Company in such depositories as may be designated by the Board of Directors. In the absence of a designation of a chief financial officer by the Board of Directors, the treasurer shall be the chief financial officer of the Company.

The treasurer shall disburse the funds of the Company as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the president and Board of Directors, at the regular meetings of the Board of Directors or whenever it may so require, an account of all his transactions as treasurer and of the financial condition of the Company.

If required by the Board of Directors, the treasurer shall give the Company a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of his office and for the restoration to the Company, in case of his death, resignation, retirement or removal from office, of all books, papers, vouchers, moneys and other property of whatever kind in his possession or under his control belonging to the Company.

Section 12. ASSISTANT SECRETARIES AND ASSISTANT TREASURERS. The assistant secretaries and assistant treasurers, in general, shall perform such duties as shall be assigned to them by the secretary or treasurer, respectively, or by the president or the Board of Directors. The assistant treasurers shall, if required by the Board of Directors, give bonds for the faithful performance of their duties in such sums and with such surety or sureties as shall be satisfactory to the Board of Directors.

Section 13. SALARIES. The salaries and other compensation of the officers shall be fixed from time to time by the Board of Directors and no officer shall be prevented from receiving such salary or other compensation by reason of the fact that he is also a director.

## ARTICLE VI

### CONTRACTS, LOANS, CHECKS AND DEPOSITS

Section 1. CONTRACTS. The Board of Directors may authorize any officer or agent to enter into any contract or to execute and deliver any instrument in the name of and on behalf of the Company and such authority may be general or confined to specific instances. Any agreement, deed, mortgage, lease or other document executed by one or more of the directors or by an authorized person shall be valid and binding upon the Board of Directors and upon the Company when authorized or ratified by action of the Board of Directors.

Section 2. CHECKS AND DRAFTS. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Company shall be signed by such officer or agent of the Company in such manner as shall from time to time be determined by the Board of Directors.

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Section 3. DEPOSITS. All funds of the Company not otherwise employed shall be deposited from time to time to the credit of the Company in such banks, trust companies or other depositories as the Board of Directors may designate.

## ARTICLE VII

## STOCK

Section 1. CERTIFICATES. The Board of Directors may determine to issue certificated or uncertificated shares of capital stock and other securities of the Company.

Section 2. TRANSFERS. Upon surrender to the Company or the transfer agent of the Company of a stock certificate duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, the Company shall issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books.

The Company shall be entitled to treat the holder of record of any share of stock as the holder in fact thereof and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such share or on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of the State of Maryland.

Notwithstanding the foregoing, transfers of shares of any class of stock will be subject in all respects to the Charter of the Company and all of the terms and conditions contained therein.

Section 3. REPLACEMENT CERTIFICATE. Any officer designated by the Board of Directors may direct a new certificate to be issued in place of any certificate previously issued by the Company alleged to have been lost, stolen or destroyed upon the making of an affidavit of that fact by the person claiming the certificate to be lost, stolen or destroyed. When authorizing the issuance of a new certificate, an officer designated by the Board of Directors may, in his discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or the owner's legal representative to advertise the same in such manner as he shall require and/or to give bond, with sufficient surety, to the Company to indemnify it against any loss or claim which may arise as a result of the issuance of a new certificate.

Section 4. CLOSING OF TRANSFER BOOKS OR FIXING OF RECORD DATE. The Board of Directors may set, in advance, a record date for the purpose of determining stockholders entitled to notice of or to vote at any meeting of stockholders or determining stockholders entitled to receive payment of any dividend or the allotment of any other rights, or in order to make a determination of stockholders for any other proper purpose. Such date, in any case, shall not be prior to the close of business on the day the record date is fixed and shall be not more than 90 days and, in the case of a meeting of stockholders, not less than ten days, before the date on which the meeting or particular action requiring such determination of stockholders of record is to be held or taken.

In lieu of fixing a record date, the Board of Directors may provide that the stock transfer books shall be closed for a stated period but not longer than 20 days. If the stock

transfer books are closed for the purpose of determining stockholders entitled to notice of or to vote at a meeting of stockholders, such books shall be closed for at least ten days before the date of such meeting.

If no record date is fixed and the stock transfer books are not closed for the determination of stockholders, (a) the record date for the determination of stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day on which the notice of meeting is mailed or the 30th day before the meeting, whichever is the closer date to the meeting; and (b) the record date for the determination of stockholders entitled to receive payment of a dividend or an allotment of any other rights shall be the close of business on the day on which the resolution of the directors, declaring the dividend or allotment of rights, is adopted.

When a determination of stockholders entitled to vote at any meeting of stockholders has been made as provided in this section, such determination shall apply to any adjournment thereof, except when (i) the determination has been made through the closing of the transfer books and the stated period of closing has expired or (ii) the meeting is adjourned to a date more than 120 days after the record date fixed for the original meeting, in either of which case a new

record date shall be determined as set forth herein.

Section 5. STOCK LEDGER. The Company shall maintain at its principal executive office or at the office of its counsel, accountants or transfer agent, an original or duplicate share ledger containing the name and address of each stockholder and the number of shares of each class held by such stockholder.

Section 6. CERTIFICATION OF BENEFICIAL OWNERS. The Board of Directors may adopt by resolution a procedure by which a stockholder of the Company may certify in writing to the Company that any shares of stock registered in the name of the stockholder are held for the account of a specified person other than the stockholder. The resolution shall set forth the class of stockholders who may certify; the purpose for which the certification may be made; the form of certification and the information to be contained in it; if the certification is with respect to a record date or closing of the stock transfer books, the time after the record date or closing of the stock transfer books within which the certification must be received by the Company; and any other provisions with respect to the procedure which the Board of Directors considers necessary or desirable. On receipt of a certification which complies with the procedure adopted by the Board of Directors in accordance with this Section, the person specified in the certification is, for the purpose set forth in the certification, the holder of record of the specified stock in place of the stockholder who makes the certification.

Section 7. FRACTIONAL STOCK; ISSUANCE OF UNITS. The Board of Directors may issue fractional stock or provide for the issuance of scrip, all on such terms and under such conditions as they may determine. Notwithstanding any other provision of the Charter or these Bylaws, the Board of Directors may issue units consisting of different securities of the Company. Any security issued in a unit shall have the same characteristics as any identical securities issued by the Company, except that the Board of Directors may provide that for a specified period securities of the Company issued in such unit may be transferred on the books of the Company only in such unit.

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#### ARTICLE VIII

##### ACCOUNTING YEAR

The Board of Directors shall have the power, from time to time, to fix the fiscal year of the Company by a duly adopted resolution.

#### ARTICLE IX

##### DISTRIBUTIONS

Section 1. AUTHORIZATION. Dividends and other distributions upon the stock of the Company may be authorized and declared by the Board of Directors, subject to the provisions of law and the Charter of the Company. Dividends and other distributions may be paid in cash, property or stock of the Company, subject to the provisions of law and the Charter.

Section 2. CONTINGENCIES. Before payment of any dividends or other distributions, there may be set aside out of any assets of the Company available for dividends or other distributions such sum or sums as the Board of Directors may from time to time, in its absolute discretion, think proper as a reserve fund for contingencies, for equalizing dividends or other distributions, for repairing or maintaining any property of the Company or for such other purpose as the Board of Directors shall determine to be in the best interest of the Company, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created.

#### ARTICLE X

##### INVESTMENT POLICY

Subject to the provisions of the Charter of the Company, the Board of Directors may from time to time adopt, amend, revise or terminate any policy or policies with respect to investments by the Company as it shall deem appropriate in its sole discretion.

## ARTICLE XI

### SEAL

Section 1. SEAL. The Board of Directors may authorize the adoption of a seal by the Company. The seal shall contain the name of the Company and the year of its incorporation. The Board of Directors may authorize one or more duplicate seals and provide for the custody thereof.

Section 2. AFFIXING SEAL. Whenever the Company is permitted or required to affix its seal to a document, it shall be sufficient to meet the requirements of any law, rule or regulation relating to a seal to place the word "(SEAL)" adjacent to the signature of the person authorized to execute the document on behalf of the Company.

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## ARTICLE XII

### INDEMNIFICATION AND ADVANCES FOR EXPENSES

Section 1. PROCEDURE. Any indemnification, or payment of expenses in advance of the final disposition of any proceeding, shall be made promptly, and in any event within 60 days, upon the written request of the director or officer entitled to seek indemnification (the "Indemnified Party"). The right to indemnification and advances hereunder shall be enforceable by the Indemnified Party in any court of competent jurisdiction, if (i) the Company denies such request, in whole or in part, or (ii) no disposition thereof is made within 60 days. The Indemnified Party's costs and expenses incurred in connection with successfully establishing his or her right to indemnification, in whole or in part, in any such action shall also be reimbursed by the Company. It shall be a defense to any action for advance for expenses that (a) a determination has been made that the facts then known to those making the determination would preclude indemnification or (b) the Company has not received both (i) an undertaking as required by law to repay such advance in the event it shall ultimately be determined that the standard of conduct has not been met and (ii) a written affirmation by the Indemnified Party of such Indemnified Party's good faith belief that the standard of conduct necessary for indemnification by the Company has been met.

Section 2. EXCLUSIVITY, ETC. The indemnification and advance of expenses provided by the Charter and these By-Laws shall not be deemed exclusive of any other rights to which a person seeking indemnification or advance of expenses may be entitled under any law (common or statutory), or any agreement, vote of stockholders or disinterested directors or other provision that is consistent with law, both as to action in his or her official capacity and as to action in another capacity while holding office or while employed by or acting as agent for the Company, shall continue in respect of all events occurring while a person was as director or officer after such person has ceased to be a director or officer, and shall inure to the benefit of the estate, heirs, executors and administrators of such person. The Company shall not be liable for any payment under this By-Law in connection with a claim made by a director or officer to the extent such director or officer has otherwise actually received payment under insurance policy, agreement, vote or otherwise, of the amounts otherwise indemnifiable hereunder. All rights to indemnification and advance of expenses under the Charter of the Company and hereunder shall be deemed to be a contract between the Company and each director or officer of the Company who serves or served in such capacity at any time while this By-Law is in effect. Nothing herein shall prevent the amendment of this By-Law, provided that no such amendment shall diminish the rights of any person hereunder with respect to events occurring or claims made before its adoption or as to claims made after its adoption in respect of events occurring before its adoption. Any repeal or modification of this By-Law shall not in any way diminish any rights to indemnification or advance of expenses of such director or officer or the obligations of the Company arising hereunder with respect to events occurring, or claims made, while this By-Law or any provision hereof is in force.

Section 3. SEVERABILITY; DEFINITIONS. The invalidity or unenforceability of any provision of this Article XII shall not affect the validity or enforceability of any other provision hereof. The phrase "this By-Law" in this Article XII means this Article XII in its entirety.



## ARTICLE XIII

## WAIVER OF NOTICE

Whenever any notice is required to be given pursuant to the Charter of the Company or these Bylaws or pursuant to applicable law, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Neither the business to be transacted at nor the purpose of any meeting need be set forth in the waiver of notice, unless specifically required by statute. The attendance of any person at any meeting shall constitute a waiver of notice of such meeting, except where such person attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

## ARTICLE XIV

## AMENDMENT OF BYLAWS

In accordance with the Charter, these By-Laws may be repealed, altered, amended or rescinded (a) by the stockholders of the Company but only by the affirmative vote of not less than 80% of all the votes entitled to be cast by the outstanding shares of capital stock of the Company entitled to vote generally in the election of directors (considered for this purpose as one class) cast at a meeting of the stockholders called for that purpose (provided that notice of such proposed repeal, alteration, amendment or rescission is included in the notice of such meeting) or (b) by affirmative vote of not less than two-thirds of the Board of Directors at a meeting held in accordance with the provisions of these By-Laws.

## ARTICLE XV

## MISCELLANEOUS

Section 1. BOOKS AND RECORDS. The Company shall keep correct and complete books and records of its accounts and transactions and minutes of the proceedings of its stockholders and Board of Directors and of any executive or other committee when exercising any of the powers of the Board of Directors. The books and records of the Company may be in written form or in any other form which can be converted within a reasonable time into written form for visual inspection. Minutes shall be recorded in written form but may be maintained in the form of a reproduction. The original or a certified copy of these By-laws shall be kept at the principal office of the Company.

Section 2. VOTING STOCK IN OTHER COMPANIES. Stock of other corporations or associations, registered in the name of the Company, may be voted by the President, a Vice-President, or a proxy appointed by either of them. The Board of Directors, however, may by resolution appoint some other person to vote such shares, in which case such person shall be entitled to vote such shares upon the production of a certified copy of such resolution.

Section 3. MAIL. Any notice or other document which is required by these By-Laws to be mailed shall be deposited in the United States mails, postage prepaid.

Section 4. EXECUTION OF DOCUMENTS. A person who holds more than one office in the Company may not act in more than one capacity to execute, acknowledge, or verify an instrument required by law to be executed, acknowledged, or verified by more than one officer.

CONSENT OF INDEPENDENT ACCOUNTANTS

We hereby consent to the incorporation by reference in this Current Report on Form 8-K of our report on the financial statements and financial statements schedules of Starwood Financial Trust, for the three years ended December 31, 1998, dated March 15, 1999, incorporated by reference into its Registration Statement on Form S-4 (No. 333-85897) dated September 21, 1999.

PricewaterhouseCoopers LLP

New York, NY  
November 2, 1999

CONSENT OF INDEPENDENT ACCOUNTANTS

We hereby consent to the incorporation by reference in this Current Report on Form 8-K of our reports on the financial statements and financial statements schedules of TriNet Corporate Realty Trust, Inc., for the three years ended December 31, 1998, dated January 22, 1999, except for Note 16, as to which the date is March 12, 1999, incorporated by reference into its Registration Statement on Form S-4 (No. 333-85897) dated September 21, 1999.

PricewaterhouseCoopers LLP

San Francisco, CA  
November 2, 1999

N E W S B U L L E T I N

FROM:

The Financial Relations Board

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B S M G W O R L D W I D E

RE: Starwood Financial  
1114 Avenue of the Americas  
27th Floor  
New York, NY 10036  
Traded ASE: APT

TriNet Corporate  
Realty Trust  
One Embarcadero Center  
33rd Floor  
San Francisco, CA 94111  
Traded NYSE: TRI

AT STARWOOD FINANCIAL:  
Spencer B. Haber  
Executive Vice President-Finance and CFO  
(212) 930-9400

AT TRINET:  
Elisa F. DiTommaso  
Senior Vice President-Finance and CFO  
(415) 391-4300

MEDIA INQUIRIES:  
Eric Berman, Adam Weiner or Sarah Zitter Milstein  
Kekst and Company  
(212) 521-4800

INVESTOR INQUIRIES:  
Innisfree M&A Incorporated  
(888) 750-5834

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FOR IMMEDIATE RELEASE  
OCTOBER 22, 1999

LEADING VOTING ADVISOR RECOMMENDS  
VOTE FOR STARWOOD FINANCIAL-TRINET MERGER

Starwood Financial Board Formally Approves Stock Repurchase Program

NEW YORK and SAN FRANCISCO - October 22, 1999 - Starwood Financial Trust (ASE: APT) and TriNet Corporate Realty Trust, Inc. (NYSE:TRI) announced today that Institutional Shareholder Services ("ISS"), the nation's leading voting advisory service, has recommended that its clients, including institutional investors, mutual funds and other fiduciaries, vote FOR the merger of Starwood Financial and TriNet.

In its report, ISS noted that:

- The merger will create the largest publicly-traded finance company with an exclusive focus on commercial real estate.
- TriNet's business of providing net leases to creditworthy corporate tenants complements Starwood Financial's role in providing mortgage and other structured financing alternatives to real estate owners.
- The merger will enhance the national scope of the combined company and may provide better access to capital and the scale to conduct larger transactions, which are subject to less competition.
- The merger will increase the diversification of the combined company's asset base in terms of borrower/tenant concentration, property type, asset type and geography.

After weighing these positive considerations against any possible risk factors associated with the proposed transaction, ISS concluded that the Starwood Financial-TriNet merger agreement warrants shareholder support.

- more -

Leading Voting Advisor Recommends Vote FOR Starwood Financial-TriNet Merger  
Page 2 of 2

Starwood Financial and TriNet have scheduled special shareholder meetings for Wednesday, November 3, 1999, at which time the results of the companies' shareholder votes will be announced. An interactive investor presentation regarding the merger is available on the Internet at [www.vcall.com](http://www.vcall.com) (enter ticker symbol APT). In addition, shareholders may obtain

a copy of the proxy statement and proxy cards from the companies' solicitation agent, Innisfree M&A Incorporated at 888-750-5834.

Starwood Financial also announced today that its Board has formally approved the implementation of a stock repurchase program upon closing of the merger, as previously described in the proxy statement mailed to shareholders with regard to the Starwood Financial-TriNet merger. The authorization allows Starwood Financial to purchase up to five million shares of its common stock from time to time after the closing of the merger, in the open market or through negotiated transactions.

TriNet Corporate Realty Trust, Inc. is the largest publicly-traded company specializing in the net leasing of corporate office and warehouse distribution properties. TriNet provides capital to major corporations and real estate owners nationwide by structuring purchase/leaseback transactions and acquiring properties subject to existing long-term leases to creditworthy office and industrial tenants. The company's portfolio contains 143 properties comprising more than 19 million square feet in 25 states and is 96% leased. Additional information on TriNet Corporate Realty Trust, Inc. is available on the company's Web site at <http://www.tricorp.com>.

Starwood Financial is the leading publicly-traded finance company focused exclusively on the commercial real estate industry. The company, which is taxed as a real estate investment trust, provides structured mortgage, mezzanine and lease financing through its proprietary origination, acquisition and servicing platform. The company's mission is to maximize risk-adjusted returns on equity by providing innovative and value-added financing solutions to the real estate industry.

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N E W S B U L L E T I N

FROM:

The Financial Relations Board

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B S M G W O R L D W I D E

RE: Starwood Financial  
1114 Avenue of the Americas  
27th Floor  
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Traded ASE: APT

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Traded NYSE: TRI

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AT TRINET:  
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Senior Vice President-Finance and CFO  
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MEDIA INQUIRIES:  
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Kekst and Company  
(212) 521-4800

INVESTOR INQUIRIES:  
Innisfree M&A Incorporated  
(888) 750-5834

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FOR IMMEDIATE RELEASE  
NOVEMBER 3, 1999

TRINET AND STARWOOD FINANCIAL STOCKHOLDERS  
APPROVE MERGER OF COMPANIES

SAN FRANCISCO AND NEW YORK CITY, November 3, 1999 - TriNet Corporate Realty Trust, Inc. (NYSE:TRI) and Starwood Financial Trust (AMEX: APT) today reported that their respective stockholders have approved the companies' plan to merge. No other approvals are required in order to close the transaction. The companies plan to close the merger promptly.

The proposed merger required approval of 66 2/3% of TriNet's outstanding shares and approval of 66 2/3% of Starwood Financial's outstanding shares. Approximately 83% of the shares voted by TriNet stockholders were cast in favor of the merger at a special meeting of TriNet stockholders held this morning in San Francisco. Over 99% of the shares voted by Starwood Financial shareholders were cast in favor of the merger at a special meeting of Starwood Financial's shareholders held this morning in New York.

In the merger, TriNet stockholders will receive 1.15 shares of Starwood Financial common stock for each share of TriNet common stock they own. The combined company will be the largest publicly-traded finance company focused exclusively on the commercial real estate industry.

Starwood Financial's shareholders also approved Starwood Financial's proposal to acquire ownership of its external advisor and its proposal to change Starwood Financial's form of organization from a trust to a corporation and eliminate its dual class share structure.

TriNet Corporate Realty Trust, Inc. is the largest publicly-traded company specializing in the net leasing of corporate office and warehouse distribution properties. TriNet provides capital to major corporations and real estate owners nationwide by structuring purchase/leaseback transactions and acquiring properties subject to existing long-term leases to creditworthy office

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and industrial tenants. The company's portfolio contains 142 properties comprising approximately 19 million square feet in 25 states and is 95% leased. Additional information on TriNet Corporate Realty Trust, Inc. is available on the company's Web site at <http://www.tricorp.com>.

Starwood Financial is the leading publicly-traded finance company focused exclusively on the commercial real estate industry. The company, which is taxed as a real estate investment trust, provides structured mortgage, mezzanine and lease financing through its proprietary origination, acquisition and servicing platform. The company's mission is to maximize risk-adjusted returns on equity by providing innovative and value-added financing solutions to the real estate industry.

Statements in this press release which are not historical fact may be deemed forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Although Starwood Financial and TriNet believe the expectations reflected in any forward-looking statements are based on reasonable assumptions, the companies can give no assurance that their expectations will be attained. Factors that could cause actual results to differ materially from the companies' expectations include the combined company's ability to achieve its property disposition targets and its ability to secure a credit enhancement arrangement on satisfactory terms, the combined company's ability to originate new investments, the availability and cost of capital for future investments, competition within the finance and real estate industries, real estate and economic conditions, and other risks detailed from time to time in SEC reports filed by Starwood Financial and TriNet.

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N E W S B U L L E T I N

RE: STARWOOD FINANCIAL  
1114 AVENUE OF THE AMERICAS  
27TH FLOOR  
NEW YORK, NY 10036  
TRADED NYSE: SFI

FROM:

THE FINANCIAL RELATIONS BOARD

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B S M G W O R L D W I D E

AT STARWOOD FINANCIAL:  
Spencer B. Haber  
Executive Vice President-Finance and CFO  
(212) 930-9400

INVESTOR INQUIRIES:  
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MEDIA INQUIRIES:  
Eric Berman, Adam Weiner or Sarah Zitter Milstein  
Kekst and Company  
(212) 521-4800

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FOR IMMEDIATE RELEASE  
NOVEMBER 4, 1999

STARWOOD FINANCIAL AND TRINET COMPLETE MERGER

NEW YORK - NOVEMBER 4, 1999 - Starwood Financial Inc. (NYSE: SFI) announced today that the merger of TriNet Corporate Realty Trust, Inc. with a subsidiary of Starwood Financial has been completed, creating the largest publicly-traded finance company focused exclusively on the commercial real estate industry. Starwood Financial, which was formerly known as Starwood Financial Trust and was externally advised, also stated that it is now a self-advised company.

Beginning today, Starwood Financial will trade on the New York Stock Exchange under the symbol "SFI." Previously, Starwood Financial traded under the symbol (ASE: APT) and TriNet Corporate Realty traded under the symbol (NYSE: TRI).

Starwood Financial Inc. is the largest publicly-traded finance company focused exclusively on the commercial real estate industry. The company's mission is to maximize risk-adjusted returns on equity by providing innovative and value-added financing solutions to the real estate industry. The company, which is taxed as a real estate investment trust, provides structured mortgage mezzanine and lease financing through its proprietary origination, acquisition and servicing platform.

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