HORNBECK OFFSHORE SERVICES, INC.,

AS ISSUER,

EACH OF THE GUARANTORS PARTY HERETO,

AS GUARANTORS

AND

WILMINGTON SAVINGS FUND SOCIETY, FSB,

AS TRUSTEE AND AS COLLATERAL AGENT

5.50% Senior Notes due 2025

INDENTURE

Dated as of [•], 2020

TABLE OF CONTENTS

INDENTURE dated as of [•], 2020, among HORNBECK OFFSHORE SERVICES, INC., a Delaware corporation (the "**Company**"), the Guarantors (as defined below) and WILMINGTON SAVINGS FUND SOCIETY, FSB, as Trustee (in such capacity, the "**Trustee**") and as collateral agent (in such capacity, the "**Collateral Agent**").

Each party agrees as follows for the benefit of the other parties and for the equal and ratable benefit of the Holders of the Company's 5.50% Senior Notes due 2025 (the "**Securities**") on the date hereof.

Article 1
DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.01 *Definitions.*

"**144A Global Security**" means a permanent global security that contains the Global Security Legend and that is deposited with the Securities Custodian and registered in the name of the DTC or its nominee, representing Securities originally issued to QIBs or Accredited Investors, other than Securities issued in reliance on Regulation S, or transferred in reliance on Rule 144A.

"**2020 Notes**" means the Company's 5.875% Senior Notes due April 1, 2020.

"**2021 Notes**" means the Company's 5.000% Senior Notes due March 1, 2021.

"**ABL Credit Facility**" means one or more asset-based credit agreements satisfying the First Lien Terms and Conditions, including the senior secured asset-based credit facility, dated as of June 28, 2019, by and among the Company, each Guarantor from time to time party thereto, each lender from time to time party thereto and CIT Northbridge Credit LLC, as administrative agent and collateral agent, together with any Permitted Refinancing Indebtedness in respect thereof.

"**Accredited Investor**" means an "accredited investor" as such term is defined in Rule 501(a) of Regulation D under the Securities Act.

"**Additional Collateral Conditions**" shall mean (i) the incurrence of $79.0 million in aggregate principal amount of Indebtedness pursuant to clauses (e) and (h) of the second paragraph of Section 4.11 hereof or (ii) the occurrence of a refinancing or amendment of the First Lien Term Loan Agreement, which results in not less than a one year extension of the maturity date of the First Lien Term Loan as in effect on the Issue Date.

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

"**All-In Yield**" means, as to any Indebtedness, the yield per annum thereof incurred or payable by the Company in an amount equal to the sum of: (a) the applicable interest rate (assuming an election to pay in kind) *provided*, that, in respect of any Indebtedness that is subject to a floating reference rate (e.g., LIBOR rate, base rate, etc.), such "floating" portion of the interest rate shall be equated to the "swap rate" applicable to such floating reference rate for the period from the closing date of such Indebtedness through the maturity of such Indebtedness (or, if such period is not available, the most approximate period available as reasonably determined by the Company in good faith), which such swap rate shall be as displayed on the USSW screen on Bloomberg (or any applicable successor page or if such Bloomberg page or successor becomes unavailable, any similar reference screen as reasonably selected by the Company in good faith) and (b) original issue discount, upfront fees, closing fees, backend fees, arrangement fees, structuring fees, commitment fees, underwriting fees and any similar fees paid to any lender (or an Affiliate of a lender) of such Indebtedness (but excluding any so called "call protection" or premiums that step-down over the life of the loan) (the "**Applicable Fees**"); *provided* that any Applicable Fees shall be equated to interest rate assuming a 4-year life to maturity on a straight line basis (or, if less, the stated life to maturity at the time of incurrence of the applicable Indebtedness); *provided, however*, under no circumstances shall the "All-In Yield" include (u) any Applicable Fees paid to a Person that is not a lender (or an Affiliate of a lender) of such Indebtedness, (v) customary agency fees, (w) consent, waiver and amendment fees paid to consenting lenders, (x) ticking fees on undrawn commitments, (y) interest accruing at the default rate (not to exceed 2.00% per annum) and (z) reimbursement of out-of-pocket expenses and customary indemnitees.

"**Applicable Procedures**" means, with respect to any transfer or exchange of beneficial interests in a Global Security, the rules and procedures of depositary for the Global Securities that apply to such transfer or exchange.

"**Appraised Value**" means, in connection with the incurrence of any Indebtedness pursuant to Section 4.20(b)(ii), with respect to any vessel (a) the appraised value of any vessel determined by a Specified Qualified Appraiser (each such report, an "**Appraisal Report**") and (b) if such Indebtedness is $50.0 million or more in aggregate principal amount, the lesser of the appraised value of any vessel determined by each of two Specified Qualified Appraisers; provided that, if the greater of the two appraised values has an appraised value that exceeds 110% of the other appraised value, then the "Appraised Value" of such vessel shall be the average value of the two appraised values.

"**Approved Brokerage Arrangements"** means arrangements for the brokerage by one or more of the Company's Restricted Subsidiaries of Vessels owned or chartered by one or more Unrestricted Subsidiaries of the Company that has been approved by the Board of Directors of the applicable Restricted Subsidiary or Restricted Subsidiaries as well as the Board of Directors of any applicable Unrestricted Subsidiary or Unrestricted Subsidiaries; provided that such approval by the applicable Unrestricted Subsidiary or Unrestricted Subsidiaries shall include the approval of the Independent Director.

"**Approved Management Arrangements"** means arrangements for the management by one or more of the Company's Restricted Subsidiaries of Vessels owned or chartered by one or more Unrestricted Subsidiaries of the Company that has been approved by the Board of Directors

of the applicable Restricted Subsidiary or Restricted Subsidiaries as well as the Board of Directors of any applicable Unrestricted Subsidiary or Unrestricted Subsidiaries; provided that such approval by the applicable Unrestricted Subsidiary or Unrestricted Subsidiaries shall include the approval of the Independent Director.

"**Approved Pooling Arrangements**" means arrangements, entered into no later than the earlier of (i) 90 days following the Issue Date or (ii) the date an Unrestricted Subsidiary acquires any Vessels other than the Drop Down Assets, implemented under the control of the Company or one or more of its Restricted Subsidiaries for the pooling of Vessels owned or chartered by one or more Restricted Subsidiaries of the Company and Vessels owned or chartered by one or more Unrestricted Subsidiaries of the Company for marketing and revenue sharing purposes that has been approved by the Board of Directors of the applicable Restricted Subsidiary or Restricted Subsidiaries as well as the Board of Directors of any applicable Unrestricted Subsidiary or Unrestricted Subsidiaries; provided that such approval by the applicable Unrestricted Subsidiary or Unrestricted Subsidiaries shall include the approval of the Independent Director.

"**Asset Sale**" means (a) the sale, lease, conveyance, transfer or other disposition (a "disposition") of any properties, assets or rights (including, without limitation, by way of a sale and leaseback), excluding dispositions in the ordinary course of business (*provided* that the disposition of all or substantially all of the properties or assets of the Company and its Restricted Subsidiaries taken as a whole will be subject to Section 5.01 of this Indenture and not to the provisions of Section 4.12 hereof), (b) the issue or sale by the Company or any of its Restricted Subsidiaries of Equity Interests of any of the Company's Subsidiaries, and (c) any Event of Loss, whether in the case of clause (a), (b) or (c), in a single transaction or a series of related transactions. Notwithstanding the foregoing provisions of this definition, the following transactions will be deemed not to be Asset Sales:

(i) a disposition of obsolete or excess equipment or other properties or assets;

(ii) a disposition of properties or assets (including Equity Interests) by the Company to a Restricted Subsidiary or by a Restricted Subsidiary to the Company or to a Restricted Subsidiary;

(iii) a disposition of cash or Cash Equivalents or similar investments;

(iv) a disposition of properties or assets (including Equity Interests) that constitutes a Permitted Investment or a Restricted Payment that is permitted by Section 4.09 of this Indenture;

(v) any disposition of property, assets or rights or issuance or sale of Equity Interests of any Restricted Subsidiary, in any transaction or series of related transactions with an aggregate fair market value of less than, or any Event of Loss that results in the payment of net proceeds (including insurance proceeds from an Event of Loss) of less than, $1,000,000;

(vi) any charter or lease of any equipment or other properties or assets entered into in the ordinary course of business and with respect to which the Company or any Restricted Subsidiary thereof is the lessor or Person granting the charter, except any such charter or lease that provides for the acquisition of such properties or assets by the lessee during or at the end of

the term thereof for an amount that is less than the fair market value thereof at the time the right to acquire such properties or assets occurs;

(vii) any lease, sublease, right of use, passage or access in respect of Real Property Interests given in the ordinary course of business;

(viii) any trade or exchange by the Company or by any Restricted Subsidiary of the Company of equipment or other properties or assets for equipment or other properties or assets owned or held by another Person (other than an Unrestricted Subsidiary), *provided*, that the fair market value of the properties or assets traded or exchanged by the Company or such Restricted Subsidiary (together with any cash or Cash Equivalents) is substantially equivalent to the fair market value of the properties or assets (together with any cash or Cash Equivalents) to be received by the Company or such Restricted Subsidiary and *provided*, *further*, that the properties or assets to be received by the Company or such Restricted Subsidiary are Productive Assets; and

(ix) an assignment of one or more receivables in connection with the ABL Credit Facility.

The fair market value of any non-cash proceeds of a disposition of properties or assets and of any properties or assets referred to in the foregoing clauses of this definition shall be determined in the manner contemplated in the definition of the term "fair market value," the results of which determination shall be set forth in an Officers' Certificate delivered to the Trustee.

"**Bankruptcy Law**" means Title 11 of the United States Code or any similar federal or state law for the relief of debtors.

"**Beneficial Owner**" shall mean any Person who is considered a beneficial owner of a security in accordance with Rule 13d-3 promulgated by the SEC under the Exchange Act.

"**Board of Directors**" means, as to any Person, the board of directors or board of managers of such Person or any duly authorized committee thereof.

"**Board Resolution**" means a copy of a resolution delivered to the Trustee and certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors of the Company and to be in full force and effect on the date of such certification.

"**Business Day**" means each day that is not a Legal Holiday.

"**Capital Lease Obligation**" means, at the time any determination thereof is to be made, the amount of the liability in respect of a capital lease or operating lease that would at such time be required to be capitalized on a balance sheet in accordance with GAAP.

"**Capital Stock**" of any Person means any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) equity of such Person, including any Preferred Shares, but excluding any debt securities convertible into such equity.

"**Cash Equivalents**" means (a) securities issued or directly and fully guaranteed or insured by the government of the United States of America or any agency or instrumentality of any such government having maturities of not more than six months from the date of acquisition, (b) certificates of deposit and Eurodollar time deposits with maturities of six months or less from the date of acquisition, bankers' acceptances with maturities not exceeding six months and overnight bank deposits, in each case with or issued by any commercial bank organized under the laws of any country that is a member of the Organization for Economic Cooperation and Development having capital and surplus in excess of $300,000,000 and whose long-term debt securities are rated at least A3 by Moody's and at least A by S&P, (c) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clauses (a) and (b) above entered into with any financial institution meeting the qualifications specified in clause (b) above, (d) commercial paper having a rating of at least P-1 from Moody's or at least A-1 from S&P and in each case maturing within 270 days after the date of acquisition, (e) deposits available for withdrawal on demand with any commercial bank not meeting the qualifications specified in clause (b) above (*provided*, that all deposits referred to in this clause (e) are made in the ordinary course of business and do not exceed $5,000,000 in the aggregate at any one time), and (f) money market mutual funds substantially all of the assets of which are of the type described in any of the foregoing clauses (a) through (d).

"**Cash Interest**" means any interest on the Securities payable in cash.

A "**Change of Control**" means the occurrence of any of the following: (a) the sale, assignment, transfer, lease, conveyance or other disposition (other than by way of merger or consolidation), in a single transaction or a series of related transactions, of all or substantially all of the properties or assets of the Company and its Restricted Subsidiaries, taken as a whole, (b) the adoption of a voluntary plan relating to the liquidation or dissolution of the Company, (c) the consummation of any transaction (including, without limitation, any merger or consolidation, but excluding the effect of any voting arrangement pursuant to any agreement among the Company and any stockholders of the Company as in effect on the Issue Date) the result of which is that any "person" (as such term is used in Section 13(d)(3) of the Exchange Act), other than a Permitted Holder, becomes the "beneficial owner" (as such term is defined in Rule 13d-3 and Rule 13d-5 under the Exchange Act), directly or indirectly through one or more intermediaries, of more than 50% of the voting power of the outstanding Voting Stock of the Company or (d) the first day on which more than a majority of the members of the Board of Directors of the Company are not Continuing Directors; *provided, however*, that a transaction in which the Company becomes a Subsidiary of another Person (other than a Person that is an individual) shall not constitute a Change of Control if (i) the shareholders of the Company immediately prior to such transaction "beneficially own" (as such term is defined in Rule 13d-3 and Rule 13d-5 under the Exchange Act), directly or indirectly through one or more intermediaries, a majority of the voting power of the outstanding Voting Stock of such other Person immediately following the consummation of such transaction and (ii) immediately following the consummation of such transaction, no "person" (as such term is defined above), other than such other Person (but including the holders of the Equity Interests of such other Person), "beneficially owns" (as such term is defined above), directly or indirectly through one or more intermediaries, more than 50% of the voting power of the outstanding Voting Stock of the Company. For purposes of this definition, a time charter of, bareboat charter or other contract for, Vessels to customers in the ordinary course of business shall not be deemed a lease under clause (a) above.

"**Collateral**" means all the assets and properties subject to the Lien created by the Pledge Agreement.

"**Common Equity**" of any Person means Capital Stock of such Person that is generally entitled to (1) vote in the election of directors of such Person (other than, with respect to the Company, the Noteholder Director and, with respect to an Unrestricted Subsidiary, the Independent Director) or (2) if such Person is not a corporation, vote or otherwise participate in the selection of the governing body, partners, managers or others that will control the management or policies of such Person.

"**Common Stock**" means the Company's Common Stock, par value $0.00001 per share.

"**Company**" means Hornbeck Offshore Services, Inc. or its successors.

"**Consolidated Cash Flow**" means, with respect to the Company for any period, the Consolidated Net Income of the Company for such period plus, to the extent deducted or excluded in calculating Consolidated Net Income for such period, (a) an amount equal to any extraordinary loss plus any net loss realized by the Company or any of its Guarantors in connection with an Asset Sale, (b) provision for taxes based on income or profits of the Company and its Guarantors, (c) Consolidated Interest Expense of the Company and its Guarantors, and (d) depreciation and amortization (including amortization of goodwill and other intangibles but excluding amortization of prepaid cash expenses that were paid in a prior period) of the Company and its Guarantors, in each case, on a consolidated basis and determined in accordance with GAAP.

"**Consolidated Interest Coverage Ratio**" means, with respect to the Company for any period, the ratio of the Consolidated Cash Flow of the Company for such period to the Consolidated Interest Expense of the Company for such period; *provided, however*, that the Consolidated Interest Coverage Ratio shall be calculated giving *pro forma* effect to each of the following transactions as if each such transaction had occurred at the beginning of the applicable four-quarter reference period: (a) any incurrence, assumption, guarantee, repayment, purchase or redemption by the Company or any of its Guarantors of any Indebtedness (other than revolving credit borrowings) subsequent to the commencement of the period for which the Consolidated Interest Coverage Ratio is being calculated but prior to the date on which the event occurred for which the calculation of the Consolidated Interest Coverage Ratio is made (the "**Calculation Date**"); (b) any acquisition that has been made by the Company or any of its Guarantors, or approved and expected to be consummated within 30 days of the Calculation Date, including, in each case, through a merger or consolidation, and including any related financing transactions, during the four-quarter reference period or subsequent to such reference period and on or prior to the Calculation Date; (c) any delivery to, or acquisition by, the Company or any of its Guarantors of any newly constructed vessel (or vessels), whether constructed by the Company or otherwise (including, but not limited to offshore supply vessels, offshore service vessels, multi-purpose support vessels, other construction vessels, crewboats, fast supply vessels, anchor handling and towing supply vessels, tankers, tugs and tank barges) usable in the normal course of business of the Company or any of its Guarantors, that is (or are) subject to a Qualified Services Contract and (d) any other transaction that may be given pro forma effect in accordance with Article 11 of

Regulation S-X under the Securities Act as in effect from time to time; *provided, further, however*, that (i) the Consolidated Cash Flow attributable to discontinued operations, as determined in accordance with GAAP, and operations or businesses disposed of prior to the Calculation Date, shall be excluded and (ii) the Consolidated Interest Expense attributable to discontinued operations, as determined in accordance with GAAP, and operations or businesses disposed of prior to the Calculation Date, shall be excluded, but only to the extent that the obligations giving rise to such Consolidated Interest Expense will not be obligations of the Company or any of its Guarantors following the Calculation Date. For purposes of clause (c) of this definition, the amount of Consolidated Cash Flow attributable to such vessel (or vessels) shall be calculated in good faith by a responsible financial or accounting officer of the Company and shall include in the calculation of the Consolidated Interest Coverage Ratio the revenues to be earned pursuant to the Qualified Services Contract relating to such vessel (or vessels), taking into account, where applicable, only contractual minimum amounts, and the estimated expenses related thereto. Such estimated expenses shall be based on the expenses of the most nearly comparable vessel in the Company's fleet or, if no such comparable vessel exists, then on the industry average for expenses of comparable vessels; *provided, however*, in determining the estimated expenses attributable to such new vessel (or vessels), the calculation shall give effect to the interest expense attributable to the incurrence, assumption or guarantee of any Indebtedness relating to the construction, delivery or acquisition of such new vessel (or vessels) in accordance with clause (a) of this definition.

Notwithstanding the foregoing, in any calculation of Consolidated Interest Coverage Ratio based on the foregoing clause (c), the *pro forma* inclusion of Consolidated Cash Flow attributable to such Qualified Services Contract for the four-quarter reference period shall be reduced by the actual Consolidated Cash Flow from such new vessel (or vessels) previously earned and accounted for in the actual results for the four-quarter reference period.

"**Consolidated Interest Expense**" means, with respect to the Company for any period, the sum, without duplication, of (a) the consolidated interest expense of the Company and its Guarantors for such period, whether paid or accrued (including, without limitation, amortization of original issue discount, non-cash interest payments, the interest component of any deferred payment obligations, the interest component of all payments associated with Capital Lease Obligations, commissions, discounts and other fees and charges incurred in respect of letter of credit or bankers' acceptance financings, and net payments (if any) pursuant to Hedging Obligations but excluding (i) amortization of debt issuance costs and (ii) any nonrecurring charges relating to any premium or penalty paid, write off of deferred finance costs or original issue discount or other charges in connection with redeeming or otherwise retiring any Indebtedness prior to its Stated Maturity, to the extent that any of such nonrecurring charges constitute interest expense) and (b) the consolidated interest expense of the Company and its Guarantors that was capitalized during such period.

"**Consolidated Net Income**" means, with respect to the Company for any period, the aggregate of the Net Income of the Company and its Guarantors for such period, on a consolidated basis, determined in accordance with GAAP, *provided* that (a) the Net Income (but not loss) of any non-Guarantor or that is accounted for by the equity method of accounting shall be included only to the extent of the amount of dividends or distributions paid in cash to the Company or a Guarantor thereof, (b) the Net Income of any Guarantor shall be excluded to the

extent that the declaration or payment of dividends or similar distributions by that Guarantor of that Net Income is not at the date of determination permitted without any prior governmental approval (that has not been obtained) or, directly or indirectly, by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Guarantor or its stockholders, (c) unrealized losses and gains under derivative instruments included in the determination of Consolidated Net Income, including, without limitation those resulting from the application of FASB ASC Topic No. 815, *Derivatives and Hedging*, shall be excluded and (d) the cumulative effect of a change in accounting principles shall be excluded. In addition, notwithstanding the preceding, there shall be excluded from Consolidated Net Income any nonrecurring charges relating to any premium or penalty paid, write off of deferred finance costs or original issue discount or other charges in connection with redeeming or otherwise retiring any Indebtedness prior to its Stated Maturity.

"**Contingent Preferred Shares**" means the Preferred Shares of the Company authorized under the Series C Certificate of Designation (and any successor class of Replacement Preferred Stock of a Successor Company authorized in accordance with Section 5.01(b)) to be issued to the holders of the New Notes pursuant to Section 6.03(b).

"**Continuing Director**" means, as of any date of determination, any member of the Board of Directors of the Company who (a) was a member of the Board of Directors on the Issue Date or (b) was nominated for election to the Board of Directors with the approval of, or whose election to the Board of Directors was ratified by, at least two-thirds of the directors who were members of the Board of Directors on the Issue Date or who were so elected to the Board of Directors thereafter.

"**Conversion Portion**" means at the time of the Conversion Election or Contingent Preferred Election, as applicable, a fraction, expressed as a percentage, (a) the numerator of which is the aggregate outstanding principal amount of the Securities outstanding at such time and (b) the denominator of which is the aggregate outstanding principal amount of the New Notes outstanding at such time.

"**Corporate Trust Office**" shall be at the address of the Trustee specified in Section 14.01 hereof or such other address as to which the Trustee may give notice to the Company.

"**Credit Facilities**" means the First Lien Term Loan Agreement, Second Lien Term Loan Agreement and ABL Credit Facility.

"**Custodian**" means any receiver, trustee, assignee, liquidator, custodian or similar official under any Bankruptcy Law.

"**Customary Recourse Exceptions**" means, with respect to any Non-Recourse Debt of an Unrestricted Subsidiary, exclusions from the exculpation provisions with respect to such Non-Recourse Debt for the voluntary bankruptcy of such Unrestricted Subsidiary, fraud, misapplication of cash, environmental claims, waste, willful destruction, and other circumstances customarily excluded by lenders from exculpation provisions and/or included in separate indemnification agreements in non-recourse financings.

"**Default**" means any event which is, or after notice or passage of time or both would be, an Event of Default.

"**Definitive Securities**" means certificated Securities that are not Global Securities.

"**Disqualified Stock**" means any Capital Stock that (a) by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, matures (excluding any maturity as a result of an optional redemption by the issuer thereof) or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder thereof, in whole or in part, on or prior to the date that is 91 days after the date on which the Securities mature or are redeemed or retired in full; *provided, however*, that any Capital Stock that would constitute Disqualified Stock solely because the holders thereof (or of any security into which it is convertible or for which it is exchangeable) have the right to require the issuer to repurchase such Capital Stock (or such security into which it is convertible or for which it is exchangeable) upon the occurrence of any of the events constituting an Asset Sale or a Change of Control shall not constitute Disqualified Stock if such Capital Stock (and all such securities into which it is convertible or for which it is exchangeable) provides that the issuer thereof will not repurchase or redeem any such Capital Stock (or any such security into which it is convertible or for which it is exchangeable) pursuant to such provisions prior to compliance by the Company with Section 4.12, Article 3 or Article 10 of this Indenture, as the case may be or (b) any Preferred Shares that materially and adversely impact the rights of the holders of the Securities, the Special Preferred Shares or the Contingent Preferred Shares; *provided*, that Disqualified Stock shall not include (i) the Special Preferred Shares and Contingent Preferred Shares and (ii) any Preferred Shares issued pursuant to the Rights Agreement.

"**Dollars**" or "**$**" refers to lawful money of the United States of America.

"**Domestic Subsidiary**" means any Subsidiary of the Company other than a Foreign Subsidiary.

"**Drop Down Assets**" means (i) HOS Caledonia; (ii) HOS Captain; (iii) HOS Claymore; (iv) HOS Commander; and (v) HOS Crockett, which on or prior to the Issue Date will be contributed to and held by a Tier 4 UnSub or any of its Subsidiaries free of any Liens in favor of the Credit Facilities' lenders in their capacity as such.

"**DTC**" means The Depository Trust Company, its nominees and their respective successors and assigns, or such other depository institution hereinafter appointed by the Company pursuant to the terms of this Indenture.

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

"**Event of Loss**" means, with respect to any property or asset of the Company or any Restricted Subsidiary, (a) any damage to such property or asset that results in an insurance settlement with respect thereto on the basis of a total loss or a constructive or compromised total loss or (b) the confiscation, condemnation or requisition of title to such property or asset by any

government or instrumentality or agency thereof and for which the Company has been compensated.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

"**Existing Indebtedness**" means Indebtedness of the Company and its Restricted Subsidiaries in existence on the Issue Date.

The term "***fair market value***" means, with respect to any property, asset or Investment, the fair market value of such property, asset or Investment at the time of the event requiring such determination, as determined in good faith by the Board of Directors of the Company, or, with respect to any property, asset or Investment in excess of $35,000,000 (other than cash or Cash Equivalents), as determined by a reputable investment appraisal firm that is, in the judgment of the disinterested members of such Board of Directors, qualified to perform the task for which such firm has been engaged and independent with respect to the Company.

"**First Lien All-In Yield**" means the All-In Yield in respect of the First Lien Term Loans calculated as of the Issue Date, subject to the following assumptions:

(a) the so-called "spread" or "margin" portion of the interest rate shall be deemed to be the average "spread" or "margin" over the Adjusted LIBOR Rate (as such term is defined in the First Lien Term Loan Agreement as in effect on the Issue Date) calculated from the Issue Date through the remaining term of the First Lien Term Loans in effect as of the Issue Date;

(b) the floating reference rate portion of the interest rate shall be deemed to be the LIBOR "swap rate" calculated for the period from the Issue Date through the remaining term of the First Lien Term Loans in effect as of the Issue Date (or, if such period is not available, the most approximate period available as reasonably determined by the Company in good faith); and

(c) all Applicable Fees shall be equated to interest rate assuming a 4-year life to maturity from the Issue Date on a straight line basis; provided that the exchange component of the First Lien Term Loans in effect as of the Issue Date shall be deemed to have the same Applicable Fees as the new money components of the First Lien Term Loans in effect as of the Issue Date.

"**First Lien Secured Debt Blended Weighted Average All-In Yield**" means the blended weighted average of the All-In Yield of all outstanding Secured Debt (other than Second Lien Term Loans outstanding as of the Issue Date and any Permitted Refinancing Indebtedness in respect thereof to the extent subject to a lien pari passu with or junior to the lien securing the Second Lien Term Loans outstanding as of the Issue Date).

"**First Lien Term Loan**" means any loan made pursuant to the First Lien Term Loan Agreement.

"**First Lien Term Loan Agreement**" means one or more credit agreements, note purchase agreements or indentures satisfying the First Lien Terms and Conditions, including that certain First Lien Term Loan Agreement, dated as of June 15, 2017 (as amended, restated,

amended and restated, modified or supplemented from time to time; *provided* that any such amendment, restatement, amendment and restatement, modification or supplement shall not change the aggregate principal amount, interest or premium, of the First Lien Term Loans permitted to be incurred thereunder from the aggregate principal amount, interest or premium outstanding as of the Issue Date, except as permitted under Section 4.11 hereof and to the extent any such changes comply with the First Lien Terms and Conditions), by and among the Company, Hornbeck Offshore Services, LLC, each lender from time to time party thereto, Wilmington Trust, National Association, as administrative agent and collateral agent together with any credit agreement, note purchase agreement, indenture or other agreement governing Permitted Refinancing Indebtedness in respect thereof.

"**First Lien Terms and Conditions**" means such Indebtedness:

(a) has a final maturity date no earlier than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the First Lien Term Loans as in effect on the Issue Date;

(b) other than in respect of an asset-based credit facility, such Indebtedness does not contain any leverage or coverage financial ratio maintenance covenants that are based on "EBITDA" (e.g., earnings before interest, tax, depreciation and amortization) or a similar proxy for cash flow; and

(c) (A) in the case of the ABL Credit Facility or Frist Lien Term Loans, that (i) the First Lien Secured Debt Blended Weighted Average All-In Yield, after giving pro forma effect to such Indebtedness incurrence, is not greater than 2.00% per annum above the First Lien All-In Yield; *provided*, *further*, that the Specified Interest Rate of such Indebtedness is not greater than the Specified Interest Rate (calculated as of the Issue Date giving effect to the assumptions set forth in clauses (a) and (b) of the definition of "First Lien All-In Yield") of the First Lien Term Loans as in effect on the Issue Date and (B) in the case of the Second Lien Term Loans, the Total Secured Debt Blended Weighted Average All-In Yield, after giving pro forma effect to such Indebtedness incurrence, is not greater than 3.00% per annum above the First Lien All-In Yield; provided, further, that the Specified Interest Rate of such Indebtedness is not greater than the sum of (x) the Specified Interest Rate (calculated as of the Issue Date giving effect to the assumptions set forth in clauses (a) and (b) of the definition of "**First Lien All-In Yield**") of the First Lien Term Loans as in effect on the Issue Date plus (y) 1.00% per annum; and (ii) such Indebtedness has call protection that is no less favorable to the Company than a two-year "no call" period (which, during the no-call period, shall be subject to a make-whole at T+50) and call premiums of 102% for the first year after the no-call period, 101% for the second year after the no-call period and 100% for each year thereafter; *provided*, that during any default, such call protection shall be no less favorable to the Company than a premium of 105% in the first and second year following such Indebtedness' issuance, 102% in the third year following such Indebtedness' issuance, and 101% in the years following the third year following such Indebtedness' issuance.

"**Foreign Subsidiary**" means any Subsidiary of the Company that was not formed under the laws of the United States or any state of the United States or the District of Columbia and that conducts substantially all of its operations outside the United States.

"**GAAP**" means generally accepted accounting principles set forth in the opinions and pronouncements of the (i) Public Company Accounting Oversight Board, (ii) statements and pronouncements of the Financial Accounting Standards Board, (iii) in such other statements by such other entity as may be approved by a significant segment of the accounting profession as in effect from time to time and (iv) the rules and regulations of the SEC governing to inclusion of financial statements in periodic reports required to be filed pursuant to Section 13 of the Exchange Act, including opinions and pronouncements in staff accounting bulletins and similar written statements from the accounting staff of the SEC.

"**Global Securities**" means certificated Securities in global form, without interest coupons, substantially in the form of Exhibit A hereto and registered in the name of DTC or a nominee of DTC.

"**Guarantor**" means (a) each Restricted Subsidiary of the Company named on the signature pages hereof, (b) any other Restricted Subsidiary of the Company that becomes a Guarantor in accordance with the provisions of this Indenture and (c) the respective successors and assigns of such Restricted Subsidiaries, as required under Article 12 hereof, in each case until such time as any such Guarantor shall be released and relieved of its obligations pursuant to the provisions of this Indenture.

"**Hedging Obligations**" means, with respect to any Person, the obligations of such Person under (a) interest rate swap agreements, interest rate cap agreements and interest rate collar agreements, (b) other agreements or arrangements designed to protect such Person against fluctuations in interest rates and (c) any foreign currency futures contract, option or similar agreement or arrangement designed to protect such Person against fluctuations in foreign currency rates, in each case to the extent such obligations are incurred in the ordinary course of business of such Person.

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

"**HOS Achiever**" means the Vessel named HOS Achiever with official number 1759.

"**HOS Brass Ring**" means the Vessel named HOS Brass Ring with official number 2211.

"**HOS Caledonia**" means the Vessel named HOS Caledonia with official number 1244585.

"**HOS Captain**" means the Vessel named HOS Captain with official number 1244589.

"**HOS Claymore**" means the Vessel named HOS Claymore with official number 1244588.

"**HOS Commander**" means the Vessel named HOS Commander with official number 1244578.

"**HOS Crockett**" means the Vessel named HOS Crockett with official number 1244584.

"**HOS Iron Horse**" means the Vessel named HOS Iron Horse with official number 1989.

"**HOS Lift**" means the Vessel named HOS Lift with official number 1259887.

"**HOS Port**" means the two facility leases in Port Fourchon under which a Guarantor is a lessee.

"**HOS Warhorse**" means the MPSV named HOS Warhorse with official number 1258860 currently under construction.

"**HOS Wild Horse**" means the MPSV named HOS Wild Horse with official number 1258861 currently under construction.

"**IAI Global Security**" means a permanent global security that contains the Global Security Legend and that is deposited with the Securities Custodian and registered in the name of the DTC or its nominee representing Securities transferred to Institutional Accredited Investors.

"**Indebtedness**" means, with respect to any Person, any indebtedness of such Person, whether or not contingent or secured, in respect of (i) borrowed money including, without limitation, any guarantee thereof, or (ii) evidenced by bonds, debentures, notes or similar instruments or letters of credit (or reimbursement agreements in respect thereof), bank guarantees or bankers' acceptances or representing Capital Lease Obligations or the deferred and unpaid purchase price of any property or assets if and to the extent any of the foregoing indebtedness (other than letters of credit) would appear as a liability upon a balance sheet of such Person prepared in accordance with GAAP; *provided, however*, that any accrued expense or trade payable of such Person shall not constitute Indebtedness. The amount of any Indebtedness outstanding as of any date shall be (a) the accreted value thereof, in the case of any Indebtedness that does not require current payments of interest, and (b) the principal amount thereof, in the case of any other Indebtedness (with letters of credit being deemed to have a principal amount equal to the maximum potential liability of such Person and its Guarantors thereunder).

Furthermore, notwithstanding the foregoing, the following shall not constitute or be deemed "Indebtedness": (i) any indebtedness which has been defeased in accordance with GAAP or defeased pursuant to the deposit of cash or Cash Equivalents (in an amount sufficient to satisfy all such indebtedness obligations at maturity or redemption, as applicable, and all payments of interest and premium, if any) in a trust or account created or pledged for the sole benefit of the holders of such indebtedness, and subject to no other Liens, and the other applicable terms of the instrument governing such indebtedness; (ii) any obligations arising from agreements of a Person providing for indemnification, guarantees, adjustment of purchase price, holdbacks, contingent payment obligations based on a final financial statement or performance of acquired or disposed of assets or similar obligations (other than guarantees of Indebtedness), in each case, incurred or assumed by such Person in connection with the acquisition or disposition of assets (including through mergers, consolidations or otherwise); (iii) obligations with respect to letters of credit in support of trade obligations, third-party maritime claims, contractual commitments (including disputed contractual commitments and any Liens asserted with respect thereto that are related to HOS Warhorse and HOS Wild Horse), service contracts, and obligations incurred in connection with public liability insurance, workers' compensation,

unemployment insurance, old-age pensions and other social security benefits other than in respect of employee benefit plans subject to the Employee Retirement Income Security Act of 1974, as amended; and (iv) repayment or reimbursement obligations of the Company or any Restricted Subsidiary with respect to Customary Recourse Exceptions unless and until an event or circumstance occurs that triggers the Company's or such Restricted Subsidiary's direct payment liability or reimbursement obligation (as opposed to contingent or performance obligations) to the lender or other party to whom such obligation is actually owed, in which case the amount of such direct payment liability to such lender or other party shall, to the extent otherwise applicable, constitute Indebtedness.

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

"**Initial Noteholder**" means each direct or indirect record or beneficial Holder as of the Issue Date.

"**Initial Notes**" means the Securities and New Senior Notes directly or indirectly owned or held by an Initial Noteholder as of the Issue Date.

"**Institutional Accredited Investor**" means an institution that is an "accredited investor" as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act, that is not a QIB.

"**Interest Payment Date**" has the meaning set forth in Exhibit A attached hereto.

"**Investments**" means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the forms of direct or indirect loans (including guarantees by the referent Person of, and Liens on any property or assets of the referent Person securing, Indebtedness or other obligations of other Persons), advances or capital contributions (excluding commission, travel and similar advances to officers and employees made in the ordinary course of business), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities, together with all items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP; *provided*, *however*, that the following shall not constitute Investments: (i) extensions of trade credit or other advances to customers on commercially reasonable terms in accordance with normal trade practices or otherwise in the ordinary course of business, (ii) Hedging Obligations and (iii) endorsements of negotiable instruments and documents in the ordinary course of business. If the Company or any Restricted Subsidiary of the Company sells or otherwise disposes of any Equity Interests of any direct or indirect Restricted Subsidiary of the Company such that, after giving effect to any such sale or disposition, such Person is no longer a Restricted Subsidiary of the Company, the Company shall be deemed to have made an Investment on the date of any such sale or disposition equal to the fair market value of the Equity Interests of such Restricted Subsidiary not sold or disposed of.

"**Issue Date**" means [•], 2020.

"**Jones Act**" means the U.S. cabotage laws known as Section 2 of the Shipping Act of 1916 (46 U.S.C. § 50501) and the Merchant Marine Act of 1920 (46 U.S.C. § 50501), as amended.

"**Lien**" means, with respect to any property or asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such property or asset, whether or not filed, recorded or otherwise perfected under applicable law (including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction other than a precautionary financing statement respecting a lease not intended as a security agreement) or any assignment of (or agreement to assign) any right to income or profits from any property or asset by way of security.

"**Loan to Value Ratio**" means at any time, the ratio of (x) the aggregate principal amount of all Indebtedness of Tier 2 UnSub and its Subsidiaries outstanding at such time to (y) the aggregate fair market value of all assets securing the Indebtedness of Tier 2 UnSub and its Subsidiaries at such time; *provided*, that for purposes of this definition, the term "***fair market value***" means, with respect to any asset, the fair market value of such asset at the time of the event requiring such determination, as determined in good faith by the applicable Board of Directors, including the Independent Director, of such Tier 2 UnSub and its Subsidiaries; *provided*, *further*, that (i) the Drop Down Assets shall be deemed to have a fair market value of $125 million; (ii) any newly acquired vessels or fleet of vessels (the "**Acquired Vessels**") shall, for a period of six months commencing on their date of acquisition, be valued based on the lesser of (A) the actual consideration paid for such Acquired Vessels and (B) the Appraised Value of such Acquired Vessels, *provided*, that if the value of such Acquired Vessels based on VesselsValue.com has increased by 50% or more during such six month period, such Acquired Vessels shall be valued based on the Appraised Value, and (iii) after the six month period in clause (ii) above, the Acquired Vessels and, at any time, all other vessels shall be valued based on the Appraised Value.

"**Low-Spec OSV**" means any Vessel listed on Schedule A hereto.

"**Maturity Date**" means September 30, 2025.

"**MPSV**" means a multi-purpose service Vessel.

"**Net Income**" means, with respect to the Company, the net income (or loss) of the Company, determined in accordance with GAAP and before any reduction in respect of preferred stock dividends, excluding, however, (a) any gain (but not loss), together with any related provision for taxes on such gain (but not loss), realized in connection with (i) any Asset Sale or (ii) the disposition of any securities by the Company or any of its Guarantors or the extinguishment of any Indebtedness of the Company or any of its Guarantors and (b) any extraordinary or nonrecurring gain (but not loss), together with any related provision for taxes on such extraordinary or nonrecurring gain (but not loss).

"**Net Proceeds**" means the aggregate cash proceeds received by the Company or any of its Restricted Subsidiaries in respect of any Asset Sale, net of (without duplication) the following: (a) the direct costs relating to such Asset Sale (including, without limitation, legal, accounting and investment banking fees, sales commissions, recording fees, title transfer fees, title insurance premiums, appraiser fees and costs incurred in connection with preparing such

asset for sale) and any relocation expenses incurred as a result thereof, (b) taxes paid or estimated to be payable by the Company or any of its Restricted Subsidiaries as a result thereof (after taking into account any available tax credits or deductions), (c) amounts required to be applied and have been applied to permanently repay Indebtedness (other than under a Credit Facility) secured by a Lien on the property or assets that were the subject of such Asset Sale and (d) any reserve established in accordance with GAAP or any amount placed in escrow, in either case for adjustment in respect of the sale price of such property or assets, until such time as such reserve is reversed or such escrow arrangement is terminated, in which case Net Proceeds shall include only the amount of the reserve so reversed or the amount returned to the Company or its Restricted Subsidiaries from such escrow arrangement, as the case may be.

"**New Notes**" means the New Senior Notes and the Securities.

"**New Senior Notes**" means the Company's 10.00% Senior Notes due June 15, 2023.

"**New Senior Notes Indenture**" means the indenture dated as of [•], 2020, among the Company, the guarantors from time to time party thereto and the Trustee governing the New Senior Notes.

"**Newbuild UnSub Financing Overage**" means any financing for HOS Warhorse and HOS Wild Horse incurred by an Unrestricted Subsidiary (which, for the avoidance of doubt, does not need to meet the conditions of Section 4.11(i) and which such financing shall be for the purpose of funding the construction draw payments, interest payments, management fees, overhead costs, start-up costs, other bona fide out-of-pocket expenses and other ordinary course of business items), to the extent the funded amounts under such financing exceed a principal amount of $65.0 million (other than on account of amounts funded to pay management fees to the Company or any of its Restricted Subsidiaries).

"**Non-Recourse Debt**" means Indebtedness (a) as to which neither the Company nor any of its Restricted Subsidiaries (i) provides credit support of any kind (including any undertaking, agreement or instrument that would constitute Indebtedness) or is otherwise directly or indirectly liable (as a Guarantor or otherwise), except with respect to Customary Recourse Exceptions or (ii) constitutes the lender, (b) no default with respect to which (including any rights the holders thereof may have to take enforcement action against an Unrestricted Subsidiary) would permit (upon notice, lapse of time or both) the holders of Indebtedness of the Company or any of its Restricted Subsidiaries to declare a default on such Indebtedness or cause the payment thereof to be accelerated or payable prior to its stated maturity and (c) as to which the lenders have been notified in writing that they will not have any recourse to the stock or assets owned by the Company or any of its Restricted Subsidiaries.

"**Noteholder Director**" means a director elected by a majority vote of shares of Special Preferred Shares (as set forth in Section 7.11 hereof) at a meeting of stockholders or acting by written consent of such shares in accordance with the Series B Certificate of Designation for such shares; provided, however, that the initial Noteholder Director shall be selected and appointed by the Company from a list of three Persons submitted to the Company by certain interested holders of the Securities.

"**Officer**" means, with respect to any Person, the Chairman of the Board (if an executive officer), the Chief Executive Officer, the President, the Chief Operating Officer, the Chief Financial Officer, the Chief Administrative Officer, the Treasurer, any Assistant Treasurer, the Controller, the Secretary or any Vice President of such Person.

"**Officers' Certificate**" means a certificate signed on behalf of the Company by two Officers of the Company, one of whom must be, in the case of the Officers' Certificate referred to in Section 4.05 hereof, the principal executive officer, the principal financial officer, or the principal accounting officer of the Company, that meets the requirements of Section 14.03 hereof.

"**OID**" means the original issue discount of the Securities, if any, for U.S. federal income tax purposes.

"**Opinion of Counsel**" means a written opinion from legal counsel who is acceptable to the Trustee. The counsel may be an employee of or counsel to the Company or the Trustee.

"**Pari Passu Indebtedness**" means, with respect to any Net Proceeds from Asset Sales, Indebtedness of the Company and its Restricted Subsidiaries the terms of which require the Company or such Restricted Subsidiary to apply such Net Proceeds to offer to repurchase such Indebtedness.

"**Permitted Capital Uses**" means solely for the business and operations of the Company in the ordinary course of business (and not to fund exchange offers, Restricted Payments, Restricted Investments or similar payments or distributions).

"**Permitted Investments**" means:

(a) the contribution on or prior to the Issue Date of the Drop Down Assets (including any contract rights, receivables or other ancillary assets related to the foregoing) to a Tier 4 UnSub pursuant to Section 4.20 hereof;

(b) the contribution by the Company or a Restricted Subsidiary to a Tier 4 UnSub in an aggregate principal amount not to exceed $15.0 million (the "**Drop Down Cash Contribution**"); *provided*, that any such contribution shall only be made substantially simultaneously with the contribution of the Drop Down Assets pursuant to clause (a) of this definition and pursuant to Section 4.20 hereof;

(c) the contribution of the HOS Warhorse and the HOS Wild Horse to a Tier 4 UnSub if required by any lender to facilitate the incurrence of project financing Indebtedness of the type described pursuant to clause (h) of the definition of "Permitted Refinancing Indebtedness";

(d) any Investment in the Company (including, without limitation, any acquisition of the New Notes) or in a Restricted Subsidiary of the Company;

(e) any Investment in Cash Equivalents;

(f) Investments in stock, obligations or securities received in settlement of any debts owing to the Company or any Restricted Subsidiary of the Company as a result of bankruptcy or insolvency proceedings or upon the foreclosure, perfection or enforcement of any Lien in favor of the Company or any Restricted Subsidiary of the Company, in each case as to any debts owing to the Company or any Restricted Subsidiary of the Company that arose in the ordinary course of business of the Company or any such Restricted Subsidiary;

(g) any Investment by the Company or a Restricted Subsidiary in a Person to the extent such Investment was made or entered into in exchange for the issuance of Common Stock of the Company or a Restricted Subsidiary if as a result of such Investment (i) such Person becomes a Restricted Subsidiary of the Company or (ii) such Person is merged or consolidated with or into, or transfers or conveys all or substantially all of its properties or assets to, or is liquidated into, the Company or a Restricted Subsidiary of the Company; and

(h) any Investment made as a result of the receipt of non-cash consideration from (i) an Asset Sale that was made pursuant to and in compliance with Section 4.12 hereof or (ii) a disposition of assets that does not constitute an Asset Sale.

For purposes of determining whether any Investment (or proposed Investment) qualifies as a Permitted Investment, in the event that any such Investment meets the criteria of more than one of subparts (d) through (h), above, the Company shall be permitted to divide or classify such Investment on the date it is made, or later divide or reclassify all or a portion of such Investment, in any manner that qualifies as a Permitted Investment, and such Investment will be treated as having been made pursuant to one or more of such subparts.

"**Permitted Holders**" means (i) Todd M. Hornbeck; (ii) the spouse and lineal descendants of Todd M. Hornbeck; (iii) any controlled Affiliate of the foregoing; (iv) in the event of the incompetence or death of any of the Persons described in clause (i) or (ii) above, such Person's estate, executor, administrator, committee or other personal representative, in each case who at any particular date will beneficially own or have the right to acquire, directly or indirectly, Capital Stock of the Company owned by such Person; or (v) any trusts, general partnership or limited partnerships created for the benefit of the Persons described in clause (i), (ii) or (iv) above or any trust for the benefit of any such trust, general partnership or limited partnership.

"**Permitted Liens**" means:

(a) Liens securing the New Notes in accordance with the Pledge Agreement dated as of the Issue Date (or as contemplated as of the Issue Date to be entered into from time to time thereafter);

(b) Liens existing on the Issue Date (or Liens on any after-acquired assets or property but only to the extent such additional Liens are expressly required pursuant to the documentation governing such Indebtedness) securing Indebtedness incurred pursuant to clause (b) of the second paragraph of Section 4.11 hereof (such Liens in respect of the First Lien Term Loans, the "**Existing First Lien Term Loan Liens**") and any Permitted Refinancing Indebtedness thereof,

and any additional Liens to the extent permitted under the definition of "Permitted Refinancing Indebtedness" and as specified in clause (p);

(c) [Reserved];

(d) Liens in favor of the Company and its Restricted Subsidiaries;

(e) Liens securing the performance of tenders, bids, statutory obligations, surety, appeal, return-of-the-money or performance bonds, government contracts, insurance obligations and performance and completion guarantees and similar obligations incurred in the ordinary course of business, or Liens securing letters of credit, bank guarantees or similar instruments related thereto or obligations in respect of security or credit enhancement supporting performance obligations under service contracts, in each case in the ordinary course of business;

(f) Liens existing on the Issue Date, except for Liens permitted under clauses (a) and (b) of this definition;

(g) any interest or title of a lessor under an operating lease or precautionary Liens on property covered by leases;

(h) Liens arising by reason of deposits necessary to obtain standby letters of credit in the ordinary course of business;

(i) Liens securing Permitted Refinancing Indebtedness with respect to any Indebtedness secured by Liens referred to in clauses (a), (f) or (p); *provided* that with respect to (f) any such new Lien shall be limited to all or part of the same property that secured the original Lien; *provided, further*, that with respect to clause (p) any such new Lien shall not be duplicative of the Liens permitted under clause (p) and shall be limited to all or part of the same property as specified in clause (p);[1]

(j) judgment Liens not giving rise to an Event of Default so long as any appropriate legal proceeding that may have been duly initiated for the review of such judgment has not been finally terminated or the period within which such proceeding may be initiated has not expired;

(k) rights of banks to set off deposits against Indebtedness owed to said banks;

(l) Liens upon specific items of inventory or other goods and proceeds of the Company or its Restricted Subsidiaries securing the Company's or any such Restricted Subsidiary's obligations in respect of bankers' acceptances issued or created for the account of any such Person to facilitate the purchase, shipment or storage of such inventory or other goods in the ordinary course of business;

(m) legal or equitable Liens deemed to exist by reason of negative pledge covenants and other covenants or undertakings of a like nature;

[1] NTD: In the event the ABL is repaid prior to the Issue Date, to include appropriate baskets to allow for a replacement facility in respect thereof.

(n) [Reserved];

(o) Liens substituting shipyard Liens on HOS Warhorse, HOS Wild Horse and related assets existing on the Issue Date;

(p) Liens of no greater scope than the Existing First Lien Term Loan Liens securing Indebtedness incurred pursuant to clauses (c), (e), (f), (h), (i) or (j) (but, in the case of (j), only in respect of the foregoing clauses) of the second paragraph of Section 4.11 hereof; provided, that, subject to the occurrence of one or more of the Additional Collateral Conditions, the scope of the Liens permitted under this clause (p) (and any Liens in respect of the First Lien Term Loans, the Second Lien Term Loans, the ABL Credit Facility and any Permitted Refinancing Indebtedness in respect thereof) shall be permitted to include additional Liens on (i) HOS Port, (ii) HOS Lift, (iii) any non-trade receivables, (iv) HOS Achiever, HOS Brass Ring and HOS Iron Horse (or the equity of entities which own such vessels in this subclause (iv)), (v) the eighteen Low-Spec OSVs and (vi) any contract rights, receivables or other ancillary assets related to the foregoing;

(q) Liens securing Hedging Obligations;

(r) (1) Liens for taxes not yet due or which are being contested in good faith by appropriate action promptly initiated and diligently conducted, with such accruals as shall be required by GAAP having been made therefor, (2) with respect to U.S. flag Vessels, "preferred maritime liens" as defined in 46 U.S. Code §31301 and, with respect to foreign flag Vessels, the foreign equivalent thereof, arising by law in the ordinary course of business for sums either not yet due or being contested in good faith by appropriate action promptly initiated and diligently conducted, with such accruals as shall be required by GAAP having been made therefor, and (3) shipyard Liens and other Liens arising by operation of law in the ordinary course of business in constructing, operating, maintaining and repairing the Vessels, including Liens for charters or leases of a Vessel, for sums either not yet due or being contested in good faith by appropriate action promptly initiated and diligently conducted, with such accruals as shall be required by GAAP having been made therefor;

(s) other Liens securing obligations (other than Indebtedness for borrowed money) not to exceed $5.0 million in the aggregate at the time of incurrence;

(t) Liens on any property or asset of a Person existing at the time such Person is merged into or consolidated with the Company or any Restricted Subsidiary of the Company or designated as a Restricted Subsidiary pursuant to a Reunification Transaction complying with the requirements of Section 4.20(h) hereof, *provided* that such Liens were in existence prior to such merger, consolidation or designation, were not created in contemplation of it and do not extend to any property or asset of the Company or any of its Restricted Subsidiaries other than those of the Person merged into or consolidated with the Company or any of its Restricted Subsidiaries;

(u) Liens securing Indebtedness incurred pursuant to clause (m) of the second paragraph of Section 4.11 hereof; and

(v) leases and sub-leases, rights of use, passage or occupancy entered into in the ordinary course of business affecting the Real Property Interests.

"**Permitted Refinancing Indebtedness**" means any Indebtedness of the Company or any of its Guarantors issued (an "issuance") in exchange for, or the net proceeds of which are used to extend, refinance, renew, replace, defease or refund other Indebtedness of the Company or any of its Guarantors (a "refinancing") (it being agreed and understood that any such issuance and related refinancing are not required to occur concurrently or substantially concurrently); *provided*, *however*, that:

(a) the principal amount of such Permitted Refinancing Indebtedness does not exceed (i) the principal amount of the Indebtedness being refinanced, plus (ii) any prepayment premiums or commitment termination fees pursuant to the documentation governing such Indebtedness being refinanced or underwriting discounts or fees pursuant to the documents governing such Indebtedness being issued; *provided*, *however*, that (A) in respect of all permitted refinancing transactions in respect of Indebtedness outstanding as of the Issue Date, the amount in clause (ii) shall not exceed $25.0 million in the aggregate and (B) in respect of all other permitted refinancing transactions, the amount in clause (ii) shall not exceed $15.0 million in the aggregate;

(b) such Permitted Refinancing Indebtedness has a final maturity date no earlier than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded (or, in the case of a refinancing of the ABL Credit Facility or Second Lien Term Loans, of the First Lien Term Loans as in effect on the Issue Date);

(c) if the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded is subordinated in right of payment to the Securities or the Guarantees, such Permitted Refinancing Indebtedness is subordinated on terms at least as favorable to the Securities as those contained in the documentation governing the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded;

(d) such Indebtedness is incurred by the Company or the Guarantors (or the Restricted Subsidiaries, as the case may be) that is the obligor on the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded; *provided*, further, however, that if such Permitted Refinancing Indebtedness is subordinated to the Securities, such guarantee shall be subordinated to such Guarantor's Guarantee to at least the same extent;

(e) no Default or Event of Default shall have occurred and be continuing or would result from such incurrence of Indebtedness;

(f) Subject to clause (p) of the definition of "Permitted Liens," if the Indebtedness being extended, refinanced, renewed, replaced, defeased or refunded is secured, such Permitted Refinancing Indebtedness may also be secured by collateral the scope of which is not materially less favorable to the Company or to the holders of the Securities, taken as a whole, than the Indebtedness being refinanced (or, in the case of a refinancing of the ABL Credit Facility, than the First Lien Term Loan as in effect on the Issue Date);

(g) other than in respect of a permitted refinancing of the ABL Credit Facility to the extent such resulting Indebtedness is in the form of an asset-based credit facility, such Permitted Refinancing Indebtedness does not contain any leverage or coverage financial ratio maintenance covenants that are based on "EBITDA" (e.g., earnings before interest, tax, depreciation and amortization) or a similar proxy for cash flow;

(h) (A) in the case of a permitted refinancing of the ABL Credit Facility or First Lien Term Loans, that (i) the First Lien Secured Debt Blended Weighted Average All-In Yield, after giving pro forma effect to such Indebtedness incurrence, is not greater than 2.00% per annum above the First Lien All-In Yield; *provided*, *further*, that the interest rate (as determined solely pursuant to clause (a) of the definition of All-in Yield) (the "**Specified Interest Rate**") of such permitted refinancing debt is not greater than the Specified Interest Rate (calculated as of the Issue Date giving effect to the assumptions set forth in clauses (a) and (b) of the definition of "First Lien All-In Yield") of the First Lien Term Loans as in effect on the Issue Date and (B) in the case of a permitted refinancing of the Second Lien Term Loans, the Total Secured Debt Blended Weighted Average All-In Yield, after giving pro forma effect to such Indebtedness incurrence, is not greater than 3.00% per annum above the First Lien All-In Yield; *provided*, *further*, that the Specified Interest Rate of such permitted refinancing debt is not greater than the sum of (x) the Specified Interest Rate (calculated as of the Issue Date giving effect to the assumptions set forth in clauses (a) and (b) of the definition of "First Lien All-In Yield") of the First Lien Term Loans as in effect on the Issue Date plus (y) 1.00% per annum; and (ii) such Indebtedness has call protection that is no less favorable to the Company than a two-year "no call" period (which, during the no-call period, shall be subject to a make-whole at T+50) and call premiums of 102% for the first year after the no-call period, 101% for the second year after the no-call period and 100% for each year thereafter; *provided*, that during any default, such call protection shall be no less favorable to the Company than a premium of 105% in the first and second year following such Indebtedness' issuance, 102% in the third year following such Indebtedness' issuance, and 101% in the years following the third year following such Indebtedness' issuance.

"**Permitted Tax Distributions**" means, with respect to an Unrestricted Subsidiary, cash distributions to the direct or indirect holders of Capital Stock of such Unrestricted Subsidiary made not more frequently than once each fiscal quarter which shall be in an amount required to satisfy actual cash tax liabilities of such holders relating to such Unrestricted Subsidiary and any of its Subsidiaries for the immediately preceding fiscal quarter.

"**Person**" means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, limited liability company, government or any agency or political subdivision hereof or any other entity.

"**Pledge Agreement**" means the Non-Recourse Pledge Agreement dated as of the date of this Indenture among the assignors from time to time party thereto and the Collateral Agent in the form attached as Exhibit F hereto.

"**Preferred Shares**" means (i) Capital Stock of any class or classes (however designated) of a corporation which is preferred as to the payment of dividends, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such

corporation, over shares of Capital Stock of any other class of such corporation, (ii) the Contingent Preferred Shares and (iii) the Special Preferred Shares.

"**Productive Assets**" means Vessels or other assets (other than assets that would be classified as current assets in accordance with GAAP) of the kind used or usable by the Company or its Restricted Subsidiaries in the business of providing marine transportation or logistics services (or any other business that is reasonably complementary or related thereto as determined in good faith by the Board of Directors of the Company).

"**QIB**" means a "qualified institutional buyer" as defined in Rule 144A under the Securities Act.

"**Qualified Services Contract**" means, with respect to any newly constructed or converted offshore supply vessel, offshore service vessel (including, without limitation, any crewboat, fast supply vessel, multi-purpose service vessel, other construction vessel and anchor-handling towing supply (AHTS) vessel), tug, double-hulled tank barge and double-hulled tanker delivered to the Company or any of its Restricted Subsidiaries, or any such newly constructed or converted vessel constructed or converted for a third party and then acquired by the Company or any of its Restricted Subsidiaries within 365 days of such vessel's original delivery date, a contract that the Board of Directors of the Company, acting in good faith, designates as a "Qualified Services Contract" pursuant to a Board Resolution, which contract: (a) provides for services to be performed by the Company or one of its Restricted Subsidiaries involving the use of such vessel or a charter (bareboat or otherwise) of such vessel by the Company or one of its Restricted Subsidiaries, in either case for a minimum period of at least one year; and (b) provides for a fixed or minimum dayrate or fixed or minimum volume or freight rates (including, if applicable, lay time and demurrage) for such vessel.

"**Real Property Interests**" means in respect of the leasehold interest dated as of January 1, 2003 by and between Greater Lafourche Port Commission and ASCO USA, LLC ("ASCO") registered in COB 1524, folio 691, under Entry No. 932370 of the Conveyance Records of Lafourche Parish, Louisiana (subsequently assigned by ASCO to HOS Port, LLC on December 20, 2005) and the leasehold interest dated as of December 12, 2002, and amended as of October 15, 2006, by and between Greater Lafourche Port Commission and Rowan Marine Services, Inc. ("Rowan") registered in COB 1519, page 165, under Entry No. 928941 of the Conveyance Records of Lafourche Parish, Louisiana (subsequently assigned by Rowan to HOS Port, LLC on January 28, 2006), any interest of any kind including fee ownership, leases, sub-leases, rights of use, rights of access, servitudes and possessory rights.

"**Record Date**" means, in respect of a dividend or distribution to holders of Common Stock, the date fixed for determination of holders of Common Stock entitled to receive such dividend or distribution.

"**Registration Rights Agreement**" means that certain registration rights agreement with respect to the Contingent Preferred Shares, Contingent Preferred Warrants, Automatic Conversion Shares, Automatic Conversion Warrants, the Common Stock issuable upon exercise of the Automatic Conversion Warrants, dated the Issue Date by and among the Company and the other parties thereto, in the form of Exhibit G hereto.

"**Regular Record Date**" for the payment of interest on the Securities, means the March 15 (whether or not a Business Day) immediately preceding an Interest Payment Date on March 30 and the September 15 (whether or not a Business Day) immediately preceding an Interest Payment Date on September 30.

"**Regulation S**" means Regulation S promulgated under the Securities Act.

"**Regulation S Global Security**" means a permanent global security that contains the Global Security Legend and that is deposited with the Securities Custodian and registered in the name of the DTC or its nominee, representing Securities originally issued or transferred in reliance on Regulation S.

"**Resolutions**" means the resolutions set forth on Exhibit N that were unanimously approved by the members of the Board of Directors on February 10, 2020.

"**Restricted Global Security**" means any 144A Global Security, IAI Global Security or Regulation S Global Security, each of which is required to bear the legend set forth in Section 2.03(i) hereof.

"**Restricted Investment**" means an Investment other than a Permitted Investment.

"**Restricted Subsidiary**" of a Person means any Subsidiary of such Person that is not an Unrestricted Subsidiary.

"**Rights Agreement**" means that certain Rights Agreement dated as of July 1, 2013 by and between the Company and Computershare Inc.

"**Rights Plan**" means any plan or arrangement, other than the Rights Agreement, of the sort commonly referred to as a "rights plan" or "stockholder rights plan" or "shareholder rights plan" or "poison pill" that is designed to increase the cost to a potential acquirer of exceeding the applicable ownership thresholds through the issuance of Common Stock, new rights or preferred shares (or any other security or device that may be issued to stockholders of the Company, other than ratably to all stockholders of the Company) that carry redemption provisions, favorable purchase provisions or otherwise; and any related rights agreement.

"**Rule 144A**" means Rule 144A promulgated under the Securities Act.

"**SEC**" means the United States Securities and Exchange Commission.

"**Second Lien Term Loan**" means any loan made pursuant to the Second Lien Term Loan Agreement.

"**Second Lien Term Loan Agreement**" means that certain Second Lien Term Loan Agreement, dated as of February 7, 2019 (as amended, restated, amended and restated, modified or supplemented from time to time; *provided* that any such amendment, restatement, amendment and restatement, modification or supplement shall not change the aggregate principal amount, interest or premium, of the Second Lien Term Loan permitted to be incurred thereunder from the aggregate principal amount, interest or premium outstanding as of the Issue Date except as

permitted under Section 4.11 hereof and to the extent any such changes comply with the First Lien Terms and Conditions), by and among the Company, Hornbeck Offshore Services, LLC, each lender from time to time party thereto, Wilmington Trust, National Association, as administrative agent and collateral agent together with any credit agreement, note purchase agreement, indenture or other agreement governing Permitted Refinancing Indebtedness in respect thereof.

"**Secured Debt**" means the Credit Facilities and Indebtedness incurred under Sections 4.11 (c), (e), (f), (h) and (i) (including any paid in kind interest in respect thereof), together with any Permitted Refinancing Indebtedness in respect of any of the foregoing.

"**Securities**" has the meaning ascribed to it in the second introductory paragraph of this Indenture.

"**Securities Act**" means the Securities Act of 1933 (15 U.S.C. §§ 77a – 77aa), as amended, and the rules and regulations of the SEC promulgated thereunder.

"**Securities Custodian**" means the custodian with respect to the Global Securities, or any successor Person thereto, which shall initially be the Trustee.

"**Senior Debt**" means (a) all Indebtedness of the Company or any Restricted Subsidiary outstanding under each of the Credit Facilities; (b) all Indebtedness under the 2020 Notes and 2021 Notes still outstanding; (c) any other Indebtedness of the Company or any Restricted Subsidiary permitted to be incurred under the terms of the Indenture, including the New Notes, unless the instrument under which such Indebtedness is incurred expressly provides that it is subordinated in right of payment to the Securities or any Guarantee; and (d) all obligations with respect to the items listed in the preceding clauses (a) through (c).

"**Series B Certificate of Designation**" means the Certificate of Designation of Series B Preferred Stock filed by the Company with the Secretary of State of the State of Delaware on the date hereof, including the inclusion of such designation as part of the Third Restated Certificate of Incorporation of the Company.

"**Series C Certificate of Designation**" means the Certificate of Designation of Series C Preferred Stock filed by the Company with the Secretary of State of the State of Delaware on the date hereof, including the inclusion of such designation as part of the Third Restated Certificate of Incorporation of the Company.

"**Special Preferred Shares**" means the three non-economic voting shares of Preferred Shares issued by the Company under the Series B Certificate of Designation to the Trustee, for the benefit of the Holders, under this Indenture and the trustee under the New Senior Notes Indenture and any successor class of Replacement Preferred Stock of a Successor Company authorized and issued in accordance with Section 5.01(a).

"**Specified Qualified Appraise**r" means (i) Dufour Laskay & Strouse, Inc., (ii) Fearnley Offshore, (iii) Clarksons Platou, (iv) Pareto, (v) VesselsValue.com, (vi) Seabrokers Group, (vii) IHS-Markit and (viii) Arctic Offshore.

"**Stated Maturity**" means September 30, 2025.

"**Subordinated Indebtedness**" means (a) with respect to the Company, any Indebtedness of the Company which is by its terms subordinated in right of payment to the Securities and (b) with respect to any Restricted Subsidiary, any Indebtedness of such Restricted Subsidiary which is by its terms subordinated in right of payment to obligations in respect of the Securities.

"**Subsidiary**" means, with respect to any Person, (a) any corporation, association or other business entity of which more than 50% of the total Common Equity is at the time owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person (or a combination thereof), (b) any partnership (i) the sole general partner or the managing general partner of which is such Person or a Subsidiary of such Person or (ii) the only general partners of which are such Person or of one or more Subsidiaries of such Person (or any combination thereof) and (c) any other Person whose results for financial reporting purposes are consolidated with those of such Person in accordance with GAAP.

"**TIA**" means the Trust Indenture Act of 1939 (15 U.S.C. §§ 77aaa-77bbbb), as in effect on the date of this Indenture.

"**Tier 1 UnSub**" means the newly formed Domestic Subsidiary, which is wholly-owned, directly or indirectly, by the Company.

"**Tier 2 UnSub**" means the newly formed Domestic Subsidiary, which is wholly-owned by Tier 1 UnSub.

"**Tier 3 UnSub**" means a newly formed Subsidiary, which is, as of the date of its formation, wholly-owned by Tier 2 UnSub.

"**Tier 4 UnSub**" means a newly formed Subsidiary, which is, as of the date of its formation, wholly-owned by a Tier 3 UnSub.

"**Total Secured Debt Blended Weighted Average All-In Yield**" means the blended weighted average of the All-In Yield of debt outstanding in respect of the Secured Debt.

"**Trading Day**" means any Scheduled Trading Day during which (i) trading in the Common Stock generally occurs on the New York Stock Exchange or, if the Common Stock is not then listed on the New York Stock Exchange, on the principal other U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock is then listed or admitted for trading, and (ii) there is no Market Disruption Event. If the Common Stock (or such other security) is not so listed or traded, "Trading Day" means a Business Day.

"**Trust Officer**" means, when used with respect to the Trustee, the officer within the corporate trust department of the Trustee having direct responsibility for the administration of this Indenture.

"**Trustee**" means the party named as such in this Indenture until a successor replaces it and, thereafter, means the successor.

"**U.S. citizen**" means a person who is a "citizen of the United States" as defined in the Jones Act.

"**U.S. Dollar Equivalent**" means, with respect to any monetary amount in a currency other than the U.S. dollar, at or as of any time for the determination thereof, the amount of U.S. dollars obtained by converting such foreign currency involved in such computation into U.S. dollars at the spot rate for the purchase of U.S. dollars with the applicable foreign currency as quoted by Reuters (or, if Reuters ceases to provide such spot quotations, by any other reputable service as is providing such spot quotations, as selected by the Company) at approximately 11:00 a.m. (New York City time) on the date not more than two Business Days prior to such determination.

"**U.S. Government Securities**" means direct obligations of, or obligations guaranteed by, the United States of America for the payment of which guarantee or obligations the full faith and credit of the United States is pledged.

"**UCC**" means the Uniform Commercial Code as the same may, from time to time, be in effect in the State of New York; *provided, however*, that in the event that (a) by reason of mandatory provisions of law, any or all of the perfection or priority of the security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York or (b) the security interest in any Collateral cannot be perfected under the New York UCC but such security interest may be perfected under the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, the term "UCC" shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or priority and for purposes of definitions related to such provisions.

"**Unrestricted Global Security**" means one or more Global Securities that do not and are not required to bear the legend set forth in Section 2.03(i) hereof.

"**Unrestricted Subsidiary**" means (i) Tier 1 UnSub, Tier 2 UnSub, any Tier 3 UnSub and any Tier 4 UnSub and (ii) any Subsidiary of a Tier 4 UnSub; in each case unless and until such Subsidiary has become a Restricted Subsidiary of the Company in connection with a Reunification Transaction.

"**Vessel Acquisition Date**" means the first date on which the Parent, its Restricted Subsidiaries and its Unrestricted Subsidiaries, taken as a whole, have acquired at least 25 vessels in the aggregate since the occurrence of the Issue Date.

"**Vessels**" or "**vessels**" means marine vessels.

"**Voting Stock**" of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of Directors, managers or trustees of such Person.

"**VWAP**" per share of the Common Stock on any Trading Day means such price as displayed on Bloomberg (or any successor service) page [HOS <EQUITY> AQR] in respect of the period from 9:30 a.m. to 4:00 p.m., New York City time, on such Trading Day; or, if such price is not available, VWAP means the market value per share of the Common Stock on such day as determined by a nationally recognized independent investment banking firm retained for this purpose by the Company. The "VWAP" will be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours.

"**Warrant Agreements**" means the warrant agreements in the form attached hereto as Exhibits J and K, respectively, governing the Contingent Preferred Warrants and Automatic Conversion Warrants.

"**Weighted Average Life to Maturity**" means, when applied to any Indebtedness at any date, the number of years obtained by dividing (a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment, by (b) the then outstanding principal amount of such Indebtedness.

"**Wholly Owned Restricted Subsidiary**" of any Person means a Restricted Subsidiary of such Person to the extent that (a) all of the outstanding Capital Stock which (other than directors' qualifying shares and Capital Stock held by other statutorily required minority shareholders) shall at the time be owned directly or indirectly by such Person or (b) such Restricted Subsidiary is organized in a foreign jurisdiction and is required by the applicable laws and regulations of such foreign jurisdiction or its governmental agencies, authorities or state-owned businesses to be partially owned by the government of such foreign jurisdiction or individual or corporate citizens of such foreign jurisdiction in order for such Restricted Subsidiary to transact business in such foreign jurisdiction, provided that such Person, directly or indirectly, owns the remaining Capital Stock in such Restricted Subsidiary and, by contract or otherwise, controls the management and business of such Restricted Subsidiary to substantially the same extent as if such Restricted Subsidiary were a wholly owned Restricted Subsidiary.

Section 1.02 *Other Definitions*.

Term	**Defined in Section**
"Acquired Vessels"	1.01
"Affiliate Transaction"	4.13(a)
"Agent Members"	2.09(a)
"Agreement Currency"	4.16
"Applicable Fees"	1.01
"Appraisal Report"	1.01
"Asset Sale Offer"	3.09
"Authenticating Agent"	2.04
"Automatic Conversion Shares"	6.03(c)

"Automatic Conversion Warrants"	6.03(c)
"Calculation Date"	1.01
"Change of Control Purchase Date"	10.01
"Change of Control Purchase Notice"	10.01(b)
"Change of Control Purchase Price"	10.01
"Company Notice"	10.02(a)
"Company Notice Date"	10.02(a)
"Company Order"	2.04
"Contingent Preferred Election"	6.03(b)
"Contingent Preferred Warrants"	6.03(b)
"Conversion Election"	6.03(c)
"Covenant Defeasance"	8.03
"Defaulted Interest"	2.15
"Drop Down Cash Contribution"	1.01
"Event of Default"	6.01
"Excess Proceeds"	4.12(b)
"Existing First Lien Term Loan Liens"	1.01
"First Lien PIK Basket"	4.11(f)
"First Lien PIK Replacement Basket"	4.11(f)
"First Lien PIK Step-Up"	4.11(f)
"First Lien Terms and Conditions"	1.01
"Global Security Legend"	2.03(iv)
"Guarantee"	12.01(a)
"incur"	4.11
"incurrence"	4.11
"Independent Director"	4.20(b)
"Judgment Currency"	4.16
"Legal Defeasance"	8.02
"Legal Holiday"	14.06
"Offer Amount"	3.09
"Offer Period"	3.09
"Paying Agent"	2.05
"Payment Default"	6.01(f)
"PIK Interest"	2.15
"PIK Interest Security"	2.15
"PIK Payment"	2.15
"Purchase Date"	3.09
"Redemption Date"	3.07(a)
"Registrar"	2.05
"Replacement Preferred Stock"	5.01(b)
"Restricted Payments"	4.09(a)
"Restricted Securities"	2.03
"Restricted Securities Legend"	2.03
"Reunification Conditions"	4.20(h)
"Reunification Transaction"	4.20(h)
"Securities Register"	2.05

"Special Interest Payment Date"	2.15(a)
"Special Record Date"	2.15(a)
"Specified Interest Rate"	1.01
"Specified Proceeds Offer"	3.09
"Successor Company"	5.01(a)
"Triggering Event"	6.03(b)

Section 1.03 *Rules of Construction*. Unless the context otherwise requires:

(a) a term has the meaning assigned to it;

(b) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;

(c) "or" is not exclusive;

(d) "including" means including without limitation; and

(e) words in the singular include the plural and words in the plural include the singular.

(f) provisions apply to successive events and transactions;

(g) references to organization documents, agreements (including this Indenture) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements, replacements and other modifications thereto;

(h) the term "merger" includes a compulsory share exchange, a conversion of a corporation into another business entity and any other transaction having effects substantially similar to a merger under the General Corporation Law of the State of Delaware; and

(i) references to sections of or rules under the Securities Act or the Exchange Act shall be deemed to include substitute, replacement or successor sections or rules adopted by the SEC from time to time.

Whenever the covenants or default provisions or definitions in this Indenture refer to an amount in U.S. dollars, that amount will be deemed to refer to the U.S. Dollar Equivalent of the amount of any obligation denominated in any other currency or currencies, including composite currencies.

Any determination of U.S. Dollar Equivalent for any purpose under this Indenture will be determined as of a date of determination as described in the definition of "U.S. Dollar Equivalent" in Section 1.01 and, in any case, no subsequent change in the U.S. Dollar Equivalent after the applicable date of determination will cause such determination to be modified.

Article 2
THE SECURITIES

Section 2.01 *Title; Amount and Issue of Securities; Principal and Interest*.

(a) The Securities shall be known and designated as the "5.50% Senior Notes due 2025" of the Company. The Securities shall be issuable in denominations of $1.00 or multiples thereof.

(b) The Securities shall mature on September 30, 2025 unless earlier converted or repurchased in accordance with the provisions hereof.

(c) Interest on the Securities shall accrue from and including the date specified on the face of such Securities until (and excluding the date) the principal thereof is paid or made available for payment. Interest shall be payable-in-kind semiannually or, at the election of the Company, payable in cash semiannually, in each case in arrears on March 30 and September 30 in each year, commencing September 30, 2020.

(d) A Holder of any Security at 5:00 p.m., New York City time, on a Regular Record Date shall be entitled to receive interest on such Security on the corresponding Interest Payment Date, notwithstanding the conversion of such Securities at any time after the close of business on such Regular Record Date.

(e) Principal of, interest and premium, if any, on, Global Securities shall be payable to DTC in immediately available funds.

(f) Principal of, and any premium on, Definitive Securities shall be payable at the office or agency of the Company maintained for such purpose, which initially shall be the Corporate Trust Office of the Trustee. Interest on Definitive Securities will be payable (i) to Holders having an aggregate principal amount of $5,000,000 or less, by check mailed to the Holders of these Securities and (ii) to Holders having an aggregate principal amount of more than $5,000,000, either by check mailed to each Holder or, upon application in writing by a Holder to the Registrar not later than the relevant Regular Record Date, by wire transfer in immediately available funds to such Holder's account within the United States, which application shall remain in effect until the Holder notifies, in writing, the Registrar to the contrary.

Section 2.02 *Form of Securities.*

(a) Except as otherwise provided pursuant to this Section 2.02, the Securities are issuable in fully registered form without coupons in substantially the form of Exhibit A hereto, with such applicable legends as are provided for in Section 2.03. The Securities are not issuable in bearer form. The terms and provisions contained in the form of Security shall constitute, and are hereby expressly made, a part of this Indenture and to the extent applicable, the Company, the Guarantors and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby. Any of the Securities may have such letters, numbers or other marks of identification and such notations, legends and endorsements as the officers executing the same may approve (execution thereof to be conclusive evidence of such approval) and as are not inconsistent with the provisions of this Indenture, or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any securities exchange or automated quotation system on which the Securities may be traded or designated for issuance, or to conform to usage.

(b) Securities offered and sold to QIBs or Accredited Investors, other than Securities offered and sold under Regulation S, shall be issued initially in the form of one or more 144A Global Securities. Any Securities offered and sold in reliance on Regulation S shall be issued initially in the form of a Regulation S Global Security. If beneficial interests in any 144A Global Security or Regulation S Global Security are transferred to an Institutional Accredited Investor, then, for so long as the Applicable Procedures shall so permit, such beneficial interests shall be represented by an IAI Global Security having an initial principal amount equal to the aggregate amount of such beneficial interests. Each Global Security will initially bear the applicable legends as provided in Section 2.03. Each Global Security shall be duly executed by the Company and authenticated and delivered by the Trustee, and shall be registered in the name of DTC or its nominee and retained by the Trustee, as Securities Custodian, at its Corporate Trust Office, for credit to the accounts of the Agent Members holding the Securities evidenced thereby.

(c) Each Global Security shall represent such of the outstanding Securities as shall be specified therein, and each shall provide that it shall represent the aggregate amount of outstanding Securities from time to time endorsed thereon and that the aggregate amount of outstanding Securities represented thereby may from time to time be reduced or increased, as appropriate, to reflect exchanges, redemptions, repurchases and transfers of interests. Any endorsement of a Global Security to reflect the amount of any increase or decrease in the amount of outstanding Securities represented thereby shall be made by the Trustee, as Registrar and Note Custodian, in accordance with instructions given by the Holder thereof as required by Section 2.08 hereof.

(d) Any Holder of a Global Security shall, by acceptance of such Global Security, agree that transfers of beneficial interests in such Global Security may be effected only through a book-entry system maintained by the Holder of such Global Security (or its agent) and that ownership of a beneficial interest in the Global Security shall be required to be reflected in a book-entry.

Section 2.03 *Legends*. Each Security issued hereunder shall, upon issuance, bear the legend set forth in Section 2.03(i), and each Common Stock certificate representing shares of the Common Stock issued upon conversion of any Security issued hereunder, shall, upon issuance, unless as otherwise set forth below, bear the legend set forth in Section 2.03(ii) (each such legend, a "**Restricted Securities Legend**"), and such legend shall not be removed except as provided in Section 2.03(iii). Each Security that bears or is required to bear the Restricted Securities Legend set forth in Section 2.03(i) (together with each Common Stock certificate representing shares of the Common Stock issued upon conversion of such Security that bears or is required to bear the Restricted Securities Legend set forth in Section 2.03(ii), collectively, the "**Restricted Securities**") shall be subject to the restrictions on transfer set forth in this Section 2.03 (including the Restricted Securities Legend set forth below), and the Holder of each such Restricted Security, by such Holder's acceptance thereof, shall be deemed to have agreed to be bound by all such restrictions on transfer.

As used in this Section 2.03, the term "transfer" encompasses any sale, pledge, transfer or other disposition whatsoever of any Restricted Security.

(i) *Restricted Securities Legend for Securities*. Except as permitted by this Section 2.03, each Security certificate representing the Securities (and all Securities issued in exchange therefor or substitution thereof) shall bear a legend in substantially the following form:

"THE SECURITY EVIDENCED HEREBY (OR ITS PREDECESSOR) WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE UNITED STATES SECURITIES ACT OF 1933 (THE "SECURITIES ACT"), AND THIS SECURITY (AND THE COMMON STOCK INTO WHICH THIS SECURITY IS CONVERTIBLE) MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF THE SECURITY EVIDENCED HEREBY IS HEREBY NOTIFIED THAT THE SELLER MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A OR REGULATION S THEREUNDER. THE HOLDER OF THE SECURITY EVIDENCED HEREBY AGREES FOR THE BENEFIT OF THE COMPANY THAT (A) SUCH SECURITY MAY BE OFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED, ONLY (1) IN THE UNITED STATES TO A PERSON WHO THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, (2) OUTSIDE OF THE UNITED STATES IN AN OFFSHORE TRANSACTION IN ACCORDANCE WITH RULE 904 UNDER THE SECURITIES ACT, (3) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF AVAILABLE), (4) TO THE COMPANY, (5) TO AN INSTITUTIONAL "ACCREDITED INVESTOR" WITHIN THE MEANING OF RULE 501(A)(1), (2) OR (7) UNDER THE SECURITIES ACT THAT IS AN INSTITUTIONAL ACCREDITED INVESTOR ACQUIRING THE SECURITIES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF SUCH AN INSTITUTIONAL ACCREDITED INVESTOR FOR INVESTMENT PURPOSES AND NOT WITH A VIEW TO OR FOR OFFER OR SALE IN CONNECTION WITH ANY DISTRIBUTION IN VIOLATION OF THE SECURITIES ACT OR (6) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH OF CASES (1) THROUGH (6) IN ACCORDANCE WITH ALL APPLICABLE SECURITIES LAWS OF THE STATES OF THE UNITED STATES AND (B) THE HOLDER WILL, AND EACH SUBSEQUENT HOLDER IS REQUIRED TO, NOTIFY ANY PURCHASER OF THIS SECURITY FROM IT OF THE RESALE RESTRICTIONS REFERRED TO IN (A) ABOVE. IN ANY CASE, THE HOLDER OF THIS SECURITY WILL NOT, DIRECTLY OR INDIRECTLY, ENGAGE IN ANY HEDGING TRANSACTION WITH REGARD TO THE SECURITY EXCEPT AS PERMITTED UNDER THE SECURITIES ACT."

(ii) *Restricted Securities Legend for the Common Stock Issued Upon Conversion of the Securities*. Except as permitted by this Section 2.03, each stock

certificate representing Common Stock issued upon conversion of Securities bearing a Restricted Securities Legend will bear the following legend:

"THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT AS SET FORTH IN THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF, THE HOLDER AGREES (1) THAT IT WILL NOT RESELL OR OTHERWISE TRANSFER THE SECURITY EVIDENCED HEREBY, EXCEPT (A) TO THE COMPANY; (B) UNDER A REGISTRATION STATEMENT THAT HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT; OR (C) UNDER ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT; AND (2) IT WILL, PRIOR TO ANY TRANSFER OF THIS SECURITY FURNISH TO THE TRANSFER AGENT AND THE ISSUER SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS MAY BE REQUIRED TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT."

(iii) *Removal of the Restricted Securities Legends*. The Restricted Securities Legend may be removed from any Security or any Common Stock certificate representing shares of the Common Stock issued upon conversion of any Security if there is delivered to the Company such satisfactory evidence, which may include an opinion of independent counsel, as may be reasonably required by the Company, that neither such legend nor the restrictions on transfer set forth therein are required to ensure that transfers of such Security or shares of the Common Stock issued upon conversion of Securities, as the case may be, will not violate the registration requirements of the Securities Act or the qualification requirements under any state securities laws. Upon provision of such satisfactory evidence, at the written direction of the Company, (x) in the case of a Security, the Trustee shall pursuant to an Officers' Certificate and an Opinion of Counsel and a Company Order authenticate and deliver in exchange for such Security another Security or Securities having an equal aggregate principal amount that do not bear such legend or (y) in the case of a Common Stock certificate representing shares of the Common Stock, the transfer agent for the Common Stock shall authenticate and deliver in exchange for the Common Stock certificate or certificates representing such shares of Common Stock bearing such legend, one or more new Common Stock certificates representing a like aggregate number of shares of Common Stock that do not bear such legend. If the Restricted Securities Legend has been removed from a Security or Common Stock certificates representing shares of the Common Stock issued upon conversion of any Security as provided above, no other Security issued in exchange for all or any part of such Security, or no other Common Stock certificates issued in exchange for such Common Stock, shall bear such legend, unless the Company has reasonable cause to believe that such other Security is a "restricted security" (or such shares of Common Stock are "restricted securities") within the meaning of Rule 144 and instructs the Trustee in writing to cause a Restricted Securities Legend to appear thereon.

Any Security (or Security issued in exchange or substitution therefor) as to which the conditions for removal of the Restricted Securities Legend set forth in Section 2.03(i) have been satisfied may, upon surrender of such Security for exchange to the Registrar in accordance with the provisions of Section 2.08, be exchanged for a new Security or Securities, of like tenor and aggregate principal amount, which shall not bear the Restricted Securities Legend required by Section 2.03(i).

Any Common Stock certificate representing shares of Common Stock issued upon conversion of any Security as to which the conditions for removal of the Restricted Securities Legend set forth in Section 2.03(ii) have been satisfied may, upon surrender of the Common Stock certificates representing such shares of Common Stock for exchange in accordance with the procedures of the transfer agent for the Common Stock, be exchanged for a new Common Stock certificate or certificates representing a like aggregate number of shares of Common Stock, which shall not bear the Restricted Securities Legend.

(iv) *Global Security Legend*. Each Global Security shall also bear the following legend (the "**Global Security Legend**") on the face thereof:

"UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), NEW YORK, NEW YORK, TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF DTC OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE INDENTURE REFERRED TO IN THE TERMS OF SECURITIES ATTACHED HERETO."

(v) *[Reserved]*.

(vi) *OID Legend.* Each certificate evidencing a Global Security or a Definitive Security (and all Securities issued in exchange therefor or substitution thereof) shall bear a legend in substantially the following form:

"THIS SECURITY IS ISSUED WITH ORIGINAL ISSUE DISCOUNT FOR PURPOSES OF SECTION 1271 ET SEQ. OF THE INTERNAL REVENUE CODE. A HOLDER MAY OBTAIN THE ISSUE PRICE, AMOUNT OF ORIGINAL ISSUE

DISCOUNT, ISSUE DATE AND YIELD TO MATURITY FOR THE SECURITIES BY SUBMITTING A WRITTEN REQUEST FOR SUCH INFORMATION TO THE COMPANY AT THE FOLLOWING ADDRESS: HORNBECK OFFSHORE SERVICES, INC., 103 NORTHPARK BOULEVARD, SUITE 300, COVINGTON, LOUISIANA 70433, ATTENTION: CHIEF FINANCIAL OFFICER."

Section 2.04 *Execution and Authentication*.

One Officer shall sign the Securities for the Company by manual or facsimile signature. If an Officer whose signature is on a Security no longer holds that office at the time the Trustee authenticates the Security, the Security shall be valid nevertheless.

A Security shall not be valid until an authorized signatory of the Trustee manually authenticates the Security. The signature of the Trustee on a Security shall be conclusive evidence that such Security has been duly and validly authenticated and issued under this Indenture. A Security shall be dated the date of its authentication.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities executed by the Company in an unlimited aggregate principal amount to the Trustee for authentication, together with a written order of the Company signed by two Officers or by an Officer and an Assistant Secretary of the Company (the "**Company Order**") for the authentication and delivery of such Securities, and the Trustee in accordance with such Company Order shall authenticate and deliver such Securities as in this Indenture provided and not otherwise. All Securities issued on the Issue Date shall be identical in all respects with any such Securities authenticated and delivered thereafter, other than issue dates, the date from which interest accrues, appropriate CUSIP numbers or other identifying notations and any changes relating thereto. Notwithstanding anything to the contrary contained in this Indenture, subject to Section 2.12, all Securities issued under this Indenture shall vote and consent together on all matters as one class and no series of Securities will have the right to vote or consent as a separate class on any matter.

The Trustee may appoint an agent (the "**Authenticating Agent**") reasonably acceptable to the Company to authenticate the Securities. Initially, the Trustee will act as the Authenticating Agent. Any such instrument shall be evidenced by an instrument signed by a Trust Officer of the Trustee, a copy of which shall be furnished to the Company. Unless limited by the terms of such appointment, any such Authenticating Agent may authenticate Securities whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by the Authenticating Agent. An Authenticating Agent has the same rights as any Registrar, Paying Agent or agent for service of notices and demands.

In case the Company, pursuant to Article 5, shall be consolidated or merged with or into, or shall convey, transfer or lease all or substantially all of its properties and assets to, any Person, and the Successor Company, if not the Company, shall have executed an indenture supplemental hereto with the Trustee pursuant to Article 5, any of the Securities authenticated or delivered prior to such consolidation, merger, conveyance, transfer or lease may, from time to time, at the request of the Successor Company, be exchanged for other Securities executed in the name of the Successor Company with such changes in phraseology and form as may be appropriate, but

otherwise in substance of like tenor as the Securities surrendered for such exchange and of like principal amount; and the Trustee, upon Company Order (together with an Opinion of Counsel) of the Successor Company, shall authenticate and deliver Securities as specified in such order for the purpose of such exchange. If Securities shall at any time be authenticated and delivered in any new name of a Successor Company pursuant to this Section 2.04 in exchange or substitution for or upon registration of transfer of any Securities, such Successor Company, at the option of the Holders but without expense to them, shall provide for the exchange of all Securities at the time outstanding for Securities authenticated and delivered in such new name.

Section 2.05 *Registrar and Paying Agent*.

The Company shall maintain an office or agency where Securities may be presented for registration of transfer or for exchange (the "**Registrar**") and an office or agency where Securities may be presented for payment (the "**Paying Agent**"). The Registrar shall keep a register of the Securities and of their transfer and exchange (the "**Securities Register**"). The Company may have one or more co-registrars and one or more additional paying agents. The term "Paying Agent" includes any additional paying agent and the term "Registrar" includes any co-registrar.

The Company shall enter into an appropriate agency agreement with any Registrar or Paying Agent not a party to this Indenture. The agreement shall implement the provisions of this Indenture that relate to such agent. The Company shall notify the Trustee in writing of the name and address of each such agent. The Company or any of its domestically organized, wholly owned Subsidiaries may act as Paying Agent, Registrar or transfer agent.

The Company initially appoints the Trustee as Registrar and Paying Agent for the Securities. The Company may remove any Registrar or Paying Agent upon written notice to such Registrar or Paying Agent and to the Trustee; *provided*, *however*, that no such removal shall become effective until (i) acceptance of any appointment by a successor as evidenced by an appropriate agreement entered into by the Company and such successor Registrar or successor Paying Agent, as the case may be, and delivered to the Trustee or (ii) notification to the Trustee that the Trustee shall serve as Registrar or Paying Agent until the appointment of a successor in accordance with clause (i) above. The Registrar or Paying Agent may resign at any time upon written notice to the Company and the Trustee.

Section 2.06 *Paying Agent to Hold Money in Trust*.

By no later than 11:00 a.m., New York City time, on the date on which any principal of, interest and premium, if any, on any Security is due and payable, the Company shall deposit with the Paying Agent a sum sufficient in immediately available funds to pay such principal, interest and premium, if any, when due. The Company shall require each Paying Agent (other than the Trustee) to agree in writing that such Paying Agent shall hold in trust for the benefit of Holders or the Trustee all money held by such Paying Agent for the payment of principal of, interest or premium, if any, on the Securities and shall notify the Trustee in writing of any default by the Company in making any such payment. If the Company or a Subsidiary acts as Paying Agent, it shall segregate the money held by it as Paying Agent and hold it as a separate trust fund. The Company at any time may require a Paying Agent (other than the Trustee) to pay all money

held by it to the Trustee and to account for any funds disbursed by such Paying Agent. Upon complying with this Section 2.06, the Paying Agent (if other than the Company or a Subsidiary) shall have no further liability for the money delivered to the Trustee. Upon any bankruptcy, reorganization or similar proceeding with respect to the Company, the Trustee shall serve as Paying Agent for the Securities.

Section 2.07 *Holder Lists*.

The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Holders. If the Trustee is not the Registrar, the Company shall furnish or cause the Registrar to furnish to the Trustee, in writing at least five Business Days before each Interest Payment Date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Holders.

Section 2.08 *Transfer and Exchange*.

(a) *Transfer and Exchange of Global Securities*. The transfer and exchange of Global Securities or beneficial interests therein shall be effected through DTC, in accordance with this Indenture and the Applicable Procedures. Transfers of beneficial interests in the Restricted Global Securities shall be permitted as follows:

(i) *Restricted Global Security to Regulation S Global Security*. If an owner of a beneficial interest in a Restricted Global Security wishes to transfer its beneficial interest in such Restricted Global Security to a Person who is required or permitted to take delivery thereof in the form of an interest in a Regulation S Global Security, such owner shall, subject to the Applicable Procedures, exchange or cause the exchange of such interest for an equivalent beneficial interest in a Regulation S Global Security as provided in this Section 2.08(a)(i)Section 2.08(a)(i). Upon receipt by the Trustee of (A) instructions given in accordance with the Applicable Procedures directing the Trustee, as Registrar and Securities Custodian, to credit a beneficial interest in the Regulation S Global Security in an amount equal to the beneficial interest in the Restricted Global Security to be transferred and (B) a certificate substantially in the form of Exhibit B-1 hereto given by the owner of such beneficial interest stating that the transfer of such interest has been made in compliance with the transfer restrictions set forth in the legend in Section 2.03(i) and pursuant to and in accordance with Rule 903 or Rule 904 of Regulation S, then the Trustee, as Registrar and Securities Custodian, shall reduce the aggregate principal amount of such Restricted Global Security and increase the aggregate principal amount of the applicable Regulation S Global Security by the principal amount of the beneficial interest in the Restricted Global Security to be transferred.

(ii) *Restricted Global Security to 144A Global Security*. If an owner of a beneficial interest in a Restricted Global Security wishes to transfer its beneficial interest in such Restricted Global Security to a Person who is required or permitted to take delivery thereof in the form of an interest in a 144A Global Security, such owner shall, subject to the Applicable Procedures, exchange or cause the exchange of such interest for an equivalent beneficial interest in a 144A Global Security as provided in this 208(a)(ii).

Upon receipt by the Trustee of (A) instructions given in accordance with the Applicable Procedures directing the Trustee, as Registrar and Securities Custodian, to credit a beneficial interest in the 144A Global Security equal to the beneficial interest in the Restricted Global Security to be transferred and (B) a certificate substantially in the form of Exhibit B-2 attached hereto given by the owner of such beneficial interest stating that the Person transferring such interest in a Restricted Global Security reasonably believes that the Person acquiring such interest in a 144A Global Security is a QIB and is obtaining such beneficial interest in a transaction meeting the requirements of Rule 144A, then the Trustee, as Registrar and Securities Custodian, shall reduce the aggregate principal amount of such Restricted Global Security and increase the aggregate principal amount of the applicable 144A Global Security by the principal amount of the beneficial interest in the Restricted Global Security to be transferred.

(iii) *Restricted Global Security to IAI Global Security*. If an owner of a beneficial interest in a Restricted Global Security wishes to transfer its beneficial interest in such Restricted Global Security to a Person who is required to take delivery thereof in the form of an interest in an IAI Global Security, such owner shall, subject to the Applicable Procedures, exchange or cause the exchange of such interest for an equivalent beneficial interest in an IAI Global Security as provided in this 2.08(a)(iii). Upon receipt by the Trustee of (A) instructions given in accordance with the Applicable Procedures directing the Trustee, as Registrar and Note Custodian, to credit a beneficial interest in the IAI Global Security equal to the beneficial interest in the Restricted Global Security to be transferred and (B) a certificate substantially in the form of Exhibit B-2 hereto from the transferor and a certificate substantially in the form of Exhibit C hereto from the transferee, then the Trustee, as Registrar and Securities Custodian, shall reduce the aggregate principal amount of such Restricted Global Securities and increase the aggregate principal amount of the applicable IAI Global Securities by the principal amount of the beneficial interest in the Restricted Global Security to be transferred.

(iv) *Restricted Global Security to Unrestricted Global Security*. If an owner of a beneficial interest in a Restricted Global Security wishes to transfer its beneficial interest in such Restricted Global Security to a Person who is required or permitted to take delivery thereof in the form of an interest in an Unrestricted Global Security, such owner shall, subject to the Applicable Procedures, exchange or cause the exchange of such interest for an equivalent beneficial interest in an Unrestricted Global Security as provided in this Section 2.08(a)(iv). Upon receipt by the Trustee of (A) instructions given in accordance with the Applicable Procedures directing the Trustee, as Registrar and Securities Custodian, to credit a beneficial interest in an Unrestricted Global Security equal to the beneficial interest in the Restricted Global Security to be transferred and (B) a certificate substantially in the form of Exhibit B-3 attached hereto given by the owner of such beneficial interest stating (1) if the transfer is pursuant to Rule 144, that the transfer complies with the requirements of Rule 144, (2) the transfer is pursuant to an effective registration statement under the Securities Act, or (3) the transfer is to the Company or any of its Subsidiaries, then the Trustee, as Registrar and Securities Custodian, shall reduce the aggregate principal amount of such Restricted Global Security and increase the aggregate principal amount of the applicable Unrestricted

Global Security by the principal amount of the beneficial interest in the Restricted Global Security to be transferred.

(b) *Transfer and Exchange of Definitive Securities*. If issued, Definitive Securities may not be exchanged or transferred for beneficial interests in a Global Security. When Definitive Securities are presented by a Holder to the Registrar with a request to register the transfer of the Definitive Securities or to exchange such Definitive Securities for an equal principal amount of Definitive Securities of other authorized denominations, the Registrar shall register the transfer or make the exchange as requested only if the Definitive Securities are presented or surrendered for registration of transfer or exchange, are endorsed or accompanied by a written instrument of transfer in form satisfactory to the Registrar duly executed by such Holder or by its attorney, duly authorized in writing, and the Registrar receives the following (all of which may be submitted by facsimile):

(i) in the case of Definitive Securities that are Restricted Securities, such request shall be accompanied by the following additional information and documents, as applicable:

(A) if such Restricted Security is being delivered to the Registrar by a Holder for registration in the name of such Holder, without transfer, or such Restricted Security is being transferred (1) to the Company or any of its Subsidiaries, (2) in a transaction permitted by Rule 144 under the Securities Act or (3) pursuant to an effective registration statement under the Securities Act, a certification to that effect from such Holder (in substantially the form of Exhibit B-3 hereto);

(B) if such Restricted Security is being transferred to a Person the transferor reasonably believes is a QIB in accordance with Rule 144A under the Securities Act or pursuant to an exemption from registration in accordance with Rule 144 under the Securities Act, a certification to that effect from such Holder (in substantially the form of Exhibit B-3 hereto);

(C) if such Restricted Security is being transferred to a non-U.S. person (as defined in Regulation S) in an offshore transaction in accordance with Rule 903 or 904 under Regulation S of the Securities Act, a certification to that effect from such Holder (in substantially the form of Exhibit B-3 hereto but containing the certification called for by clauses (1) through (4) of Exhibit B-1 hereto); or

(D) if such Restricted Security is being transferred to an Institutional Accredited Investor in reliance on an exemption from the registration requirements of the Securities Act other than those listed in subparagraph (B) or (C) above, a certification to that effect from such Holder (in substantially the form of Exhibit B-3 hereto), and a certification substantially in the form of Exhibit C hereto from the transferee.

(c) *Opinion of Counsel*. Upon any exchange or transfer of a Restricted Security (including any beneficial interest in a Restricted Global Security) other than a transfer pursuant to an effective registration statement under the Securities Act or to the Company or any of its Subsidiaries, the Company or the Registrar may require, as a condition to such exchange or transfer, the delivery to them of an Opinion of Counsel satisfactory to them that such transfer complies with the Securities Act and any applicable blue sky laws of any state of the United States.

(d) *Restrictions on Transfer and Exchange of Global Securities*. Notwithstanding any other provision of this Indenture, a Global Security may not be transferred as a whole except by DTC to a nominee of DTC or by a nominee of DTC to DTC or another nominee of DTC or by DTC or any such nominee to a successor depositary to DTC or a nominee of such successor depositary to the DTC.

(e) *[Reserved].*

(f) *Legends*. Except as permitted by Section 2.03(iii), each Security certificate evidencing a Global Security or a Definitive Security (and all Securities issued in exchange therefor or substitution thereof) shall bear the applicable legend as set forth in Section 2.03.

(g) *Cancellation or Adjustment of Global Securities*. At such time as all beneficial interests in Global Securities have been exchanged for Definitive Securities, redeemed, repurchased or cancelled, all Global Securities shall be returned to or retained and cancelled by the Trustee in accordance with Section 2.14 hereof. At any time prior to such cancellation, if any beneficial interest in a Global Security is exchanged for Definitive Securities or a beneficial interest in another Global Security, redeemed, repurchased or cancelled, the principal amount of Securities represented by such Global Security shall be reduced accordingly and an endorsement shall be made on such Global Security by the Trustee, as Registrar and Securities Custodian, to reflect such reduction; and if the beneficial interest is being exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Security, such other Global Security shall be increased accordingly and an endorsement shall be made on such Global Security by the Trustee, as Registrar and Securities Custodian, to reflect such increase.

(h) General Provisions Relating to Transfers and Exchanges.

(i) To permit registrations of transfers and exchanges, subject to this Section 2.08, the Company shall execute and, upon the written order of the Company signed by an Officer of the Company, the Trustee shall authenticate Definitive Securities and Global Securities at the Registrar's request.

(ii) No service charge shall be made to a Holder for any registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith (other than any such transfer taxes or similar governmental charge payable upon exchange or transfer pursuant to Section 3.07, 4.12, 4.22, 9.04 and 10.01).

(iii) By its acceptance of any Security bearing a Restricted Securities Legend, each Holder of such a Security acknowledges the restrictions on transfer of such Security set forth in this Indenture and agrees that it will transfer such Security only as provided in this Indenture. The Registrar shall not register a transfer of any Security unless such transfer complies with the restrictions on transfer of such Security set forth in this Indenture. The Registrar shall be entitled to receive and rely on written instructions from the Company verifying such transfer complies with such restrictions on transfer. In connection with any transfer of Securities, each Holder agrees by its acceptance of the Securities to furnish the Registrar or the Company such certifications, legal opinions or other information as either of them may reasonably require to confirm that such transfer is being made pursuant to an exemption from, or a transaction not subject to, the registration requirements of the Securities Act, *provided* that the Registrar shall not be required to determine (but may rely on a determination made by the Company with respect to) the sufficiency of any such certifications, legal opinions or other information.

The Registrar shall retain copies of all certifications, letters, notices and other written communications received pursuant to Section 2.09 hereof or this Section 2.10. The Company shall have the right to inspect and make copies of all such letters, notices or other written communications at any reasonable time upon giving of reasonable written notice to the Registrar.

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

(v) The Company and the Registrar shall not be required:

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

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

(C) to register the transfer of a Security other than in minimum amounts of $1.00 or multiple integrals of $1.00.

(vi) Prior to due presentment for the registration of a transfer of any Security, the Trustee, any Agent and the Company may deem and treat the Person in whose name any Security is registered as the absolute owner of such Security for the purpose of receiving payment of principal of, premium, if any, and interest on such Security, and neither the Trustee, any Agent nor the Company shall be affected by notice to the contrary.

(vii) The Trustee shall authenticate Definitive Securities and Global Securities in accordance with the provisions of Section 2.04 and Section 2.08(h)(i)Section 2.08(h)(i) hereof.

(viii) The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Security (including any transfers between or among Direct or Indirect Participants or beneficial owners of interests in any Global Security) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

Section 2.09 *Book-Entry Provisions for the Global Securities*.

(a) The Global Securities initially shall:

(i) be registered in the name of DTC (or a nominee thereof);

(ii) be delivered to the Trustee as Securities Custodian;

(iii) bear the Restricted Securities Legend set forth in Section 2.03(i); and

(iv) bear the Global Security Legend set forth in Section 2.03(iv).

Members of, or participants in, DTC ("**Agent Members**") shall have no rights under this Indenture with respect to any Global Security held on their behalf by DTC, or the Trustee as its custodian, or under such Global Security, and DTC may be treated by the Company, the Guarantors, the Trustee and any agent of the Company, the Guarantors or the Trustee as the absolute owner of such Global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing contained herein shall prevent the Company, the Guarantors, the Trustee or any agent of the Company, the Guarantors or Trustee from giving effect to any written certification, proxy or other authorization furnished by DTC or impair, as between DTC and the Agent Members, the operation of customary practices governing the exercise of the rights of a Holder of any Security.

(b) The Holder of a Global Security may grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action which a Holder is entitled to take under this Indenture or the Securities.

(c) A Global Security may not be transferred, in whole or in part, to any Person other than DTC (or a nominee thereof) or to a successor thereof (or such successor's nominee), and no such transfer to any such other Person may be registered. Beneficial interests in a Global Security may be transferred in accordance with the rules and procedures of DTC.

(d) If at any time:

(i) DTC notifies the Company in writing that it is unwilling or unable to continue to act as depositary for the Global Securities and a successor depositary for the Global Securities is not appointed by the Company within 90 days of such notice;

(ii) DTC ceases to be registered as a "clearing agency" under the Exchange Act and a successor depositary for the Global Securities is not appointed by the Company within 90 days of such cessation;

(iii) the Company, at its option, notifies the Trustee in writing that it elects to cause the issuance of the Definitive Securities under this Indenture in exchange for all or any part of the Securities represented by a Global Security or Global Securities, subject to the procedures of DTC; or

(iv) an Event of Default has occurred and is continuing and the Registrar has received a request from DTC for the issuance of Definitive Securities in exchange for such Global Security or Global Securities;

the Securities Custodian shall surrender such Global Security or Global Securities to the Trustee for cancellation and the Company shall execute, and the Trustee, upon receipt of an Officers' Certificate and Company Order for the authentication and delivery of Securities, shall authenticate and deliver in exchange for such Global Security or Global Securities, Definitive Securities in an aggregate principal amount equal to the aggregate principal amount of such Global Security or Global Securities. Such Definitive Securities shall be registered in such names as DTC (or any nominee thereof) shall identify in writing as the beneficial owners of the Securities represented by such Global Security or Global Securities.

(e) Notwithstanding the foregoing, in connection with any transfer of beneficial interests in a Global Security to the beneficial owners thereof pursuant to Section 2.09(d), the Registrar shall reflect on its books and records the date and a decrease in the principal amount of such Global Security in an amount equal to the principal amount of the beneficial interests in such Global Security to be transferred.

None of the Trustee, the Registrar or the Paying Agent shall have any responsibility or liability for any actions taken or not taken by DTC.

Section 2.10 *[Reserved].*

Section 2.11 *Mutilated, Destroyed, Lost or Wrongfully Taken Securities*.

If a mutilated Security is surrendered to the Registrar or if the Holder of a Security claims that the Security has been lost, destroyed or wrongfully taken, the Company shall issue and the Trustee shall (pursuant to a Company Order and Opinion of Counsel) authenticate a replacement Security if the requirements of Section 8-405 of the UCC are met, such that the Holder (a) notifies the Company or the Trustee within a reasonable time after such Holder has notice of such loss, destruction or wrongful taking and the Registrar has not registered a transfer prior to receiving such notification, (b) makes such request to the Company or Trustee prior to the Security being acquired by a protected purchaser as defined in Section 8-303 of the UCC and (c) satisfies any other reasonable requirements of the Trustee. Such Holder shall furnish an

indemnity bond sufficient in the judgment of the Company and the Trustee to protect the Company, the Guarantors, the Trustee, the Paying Agent and the Registrar from any loss which any of them may suffer if a Security is replaced, and, in the absence of notice to the Company or the Trustee that such Security has been acquired by a protected purchaser, the Company shall execute and upon Company Order the Trustee shall authenticate and make available for delivery, in exchange for any such mutilated Security or in lieu of any such destroyed, lost or wrongfully taken Security, a new Security of like tenor and principal amount, bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or wrongfully taken Security has become due and payable, the Company in its discretion may, instead of issuing a new Security, pay such Security.

Upon the issuance of any new Security under this Section 2.11, the Company may require the payment by the Holder of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) in connection therewith.

Every new Security issued pursuant to this Section 2.11 in lieu of any mutilated, destroyed, lost or wrongfully taken Security shall constitute an original additional contractual obligation of the Company and any other obligor upon the Securities, whether or not the mutilated, destroyed, lost or wrongfully taken Security shall be at any time enforceable by anyone, and shall be entitled to all benefits of this Indenture equally and ratably with any and all other Securities duly issued hereunder.

The provisions of this Section 2.11 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or wrongfully taken Securities.

Section 2.12 *Outstanding Securities*.

Securities outstanding at any time are all Securities authenticated by the Trustee except for those cancelled by it, those delivered to it for cancellation and those described in this Section 2.12 as not outstanding. A Security does not cease to be outstanding in the event the Company or an Affiliate of the Company holds the Security; *provided*, *however*, that (i) a Security held by the Company or any of its Restricted Subsidiaries or any of the Unrestricted Subsidiaries shall not be entitled to receive the Contingent Preferred Shares, (ii) for purposes of determining which Securities are outstanding for consent or voting purposes hereunder, the provisions of Section 14.04 shall apply and (iii) in determining whether the Trustee shall be protected in making a determination whether the Holders of the requisite principal amount of outstanding Securities are present at a meeting of Holders of Securities for quorum purposes or have consented to or voted in favor of any request, demand, authorization, direction, notice, consent, waiver, amendment or modification hereunder, or relying upon any such quorum, consent or vote, only Securities which a Trust Officer of the Trustee actually knows to be held by the Company or an Affiliate of the Company shall not be considered outstanding; *provided*, that no holder of Contingent Preferred Shares or Contingent Preferred Warrants shall be deemed an Affiliate solely by reason of holding such securities.

If a Security is replaced or paid pursuant to Section 2.10, it ceases to be outstanding unless the Trustee and the Company receive proof satisfactory to them that the replaced Security is held by a protected purchaser.

If the Paying Agent segregates and holds in trust, in accordance with this Indenture at Stated Maturity, money sufficient to pay all principal, premium, if any, and interest payable on that date with respect to the Securities (or portions thereof) maturing then on and after that date such Securities (or portions thereof) cease to be outstanding and interest on them ceases to accrue.

Section 2.13 *Temporary Securities*.

In the event that Definitive Securities are to be issued under the terms of this Indenture, until such Definitive Securities are ready for delivery, the Company may prepare and upon receipt of a Company Order and Opinion of Counsel the Trustee shall authenticate temporary Securities. Temporary Securities shall be substantially in the form of Definitive Securities but may have variations that the Company considers appropriate for temporary Securities. Without unreasonable delay, the Company shall prepare and upon receipt of a Company Order and Opinion of Counsel the Trustee shall authenticate Definitive Securities. After the preparation of Definitive Securities, the temporary Securities shall be exchangeable for Definitive Securities upon surrender of the temporary Securities at any office or agency maintained by the Company for that purpose and such exchange shall be without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities, the Company shall execute, and the Trustee shall authenticate (upon receipt of a Company Order and Opinion of Counsel) and make available for delivery in exchange therefor, one or more Definitive Securities representing an equal principal amount of Securities. Until so exchanged, the Holder of temporary Securities shall in all respects be entitled to the same benefits under this Indenture as a Holder of Definitive Securities.

Section 2.14 *Cancellation*.

The Company at any time may deliver Securities to the Trustee for cancellation pursuant to a Officers' Certificate and Opinion of Counsel. The Registrar and the Paying Agent shall forward to the Trustee any Securities surrendered to them for registration of transfer, exchange or payment. The Trustee and no one else shall cancel all Securities surrendered for registration of transfer, exchange, payment or cancellation and dispose of such Securities in accordance with its internal policies and customary procedures including delivery of a certificate describing such Securities disposed of (subject to the record retention requirements of the Exchange Act). The Company may not issue new Securities to replace Securities it has paid for or delivered to the Trustee for cancellation for any reason other than in connection with a transfer or exchange.

At such time as all beneficial interests in a Global Security have either been exchanged for Definitive Securities, transferred, repurchased, converted or canceled, such Global Security shall be returned by the Securities Custodian to the Trustee for cancellation or retained and canceled by the Trustee. At any time prior to such cancellation, if any beneficial interest in a Global Security is exchanged for Definitive Securities, transferred in exchange for an interest in another Global Security, repurchased, converted or canceled, the principal amount of Securities

represented by such Global Security shall be reduced and an adjustment shall be made on the books and records of the Trustee (if it is then the Securities Custodian for such Global Security) with respect to such Global Security, by the Trustee or the Securities Custodian, to reflect such reduction.

Section 2.15 *Payment of Interest; Defaulted Interest*.

Interest on any Security which is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name such Security (or one or more predecessor Securities) is registered at the close of business on the Regular Record Date for such payment at the office or agency of the Company maintained for such purpose pursuant to Section 2.05.

For any interest period the Company may elect to pay all or any portion of interest in kind ("**PIK Interest**") on the then outstanding principal amount of the Securities (a "**PIK Payment**") by (a) in the case of interest on any Global Security, by increasing the principal amount of such Global Security and (b) with respect to a Definitive Security, by issuing to the Holder of such Definitive Security an additional Definitive Security, the principal amount of which shall be rounded up to the nearest whole dollar (a "**PIK Interest Security**").

Notwithstanding anything to the contrary, the payment of accrued interest in connection with any redemption or repurchase of the Securities as described under Article 3 or 10 hereof will be made solely in cash. If the Company elects to pay interest on the Securities as a combination of Cash Interest and PIK Interest, such Cash Interest and PIK Interest shall be paid on the Securities on a *pro rata* basis. In the event that the Company shall elect to pay PIK Interest for the interest period, then the Company shall deliver a written notice to the Trustee and the Holders not less than five Business Days prior to the applicable record date for the relevant Interest Payment Date, which notice shall state the total amount of interest to be paid on such Interest Payment Date and the total amount of PIK Interest.

The Company shall deliver to the Trustee no later than two Business Days prior to the applicable Interest Payment Date, (x) with respect to Definitive Securities, the required amount of new Definitive Securities (rounded up to the nearest whole dollar) and a Company Order and Opinion of Counsel to authenticate and deliver such PIK Interest Securities on the relevant Interest Payment Date or (y) with respect to Global Securities, unless prohibited by the procedures of DTC, an Officers' Certificate and Opinion of Counsel to the Trustee to increase the principal amount of the outstanding Global Security by an amount equal to the amount of PIK Interest for the applicable interest period (rounded up to the nearest whole dollar).

Any PIK Interest Security shall, after being executed and authenticated pursuant to Section 2.04 hereof, be mailed to the Person entitled thereto as shown on the register for the Definitive Securities as of the relevant Record Date.

Any PIK Payment shall be made in such form and on terms as specified in this Section 2.15, and the Company shall and the Trustee may take additional steps as necessary to effect such PIK Payment.

Any interest on any Security which is payable, but is not paid when the same becomes due and payable and such nonpayment continues for a period of 30 days, shall forthwith cease to be payable to the Holder on the Regular Record Date, and such interest and (to the extent lawful) interest on such interest at the rate borne by the Securities (such interest and interest thereon herein collectively called "**Defaulted Interest**") shall be paid by the Company at its election, in each case, as provided in clause (a) or (b) below:

(a) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names the Securities (or their respective predecessor Securities) are registered at the close of business on a Special Record Date (as defined below) for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Security and the date (not less than 30 days after such notice) of the proposed payment (the "**Special Interest Payment Date**"), and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this clause provided. Thereupon the Company shall fix a record date (the "**Special Record Date**") for the payment of such Defaulted Interest which shall be not more than 15 days and not less than 10 days prior to the Special Interest Payment Date and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Company shall promptly notify the Trustee of such Special Record Date, and in the name and at the expense of the Company, the Trustee shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date and Special Interest Payment Date therefor to be given in the manner provided for in Section 14.01, not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date and Special Interest Payment Date therefor having been so given, such Defaulted Interest shall be paid on the Special Interest Payment Date to the Persons in whose names the Securities (or their respective predecessor Securities) are registered at the close of business on such Special Record Date and shall no longer be payable pursuant to the following clause (b).

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

Subject to the foregoing provisions of this Section 2.15, each Security delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Security shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Security.

Section 2.16 *Computation of Interest*. Interest on the Securities shall be computed on the basis of a 360-day year of twelve 30-day months.

Section 2.17 *CUSIP and ISIN Numbers*.

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

Article 3
REDEMPTION

Section 3.01 *Notice to Trustee*

If the Company elects to redeem Securities pursuant to the optional redemption provisions of Section 3.07, it shall furnish to the Trustee, at least five Business Days (unless a shorter period is acceptable to the Trustee) before giving a notice of redemption pursuant to Section 3.03, an Officers' Certificate setting forth (i) the clause of this Indenture pursuant to which the redemption shall occur, (ii) the redemption date, (iii) the principal amount of Securities to be redeemed, (iv) the redemption price, if then determined and otherwise the method of its determination and (v) whether it requests the Trustee to give notice of such redemption. Any such notice may be cancelled at any time prior to the mailing of notice of such redemption to any holder and shall thereby be void and of no effect.

Section 3.02 *Selection of Securities to Be Redeemed*

(a) If less than all of the Securities are to be redeemed at any time, the Trustee shall select the Securities to be redeemed among the holders of the Securities on a *pro rata* basis, by lot or by such other method the Trustee deems fair and appropriate (or, in the case of Global Securities, the Trustee will select Securities for redemption based on DTC's method that most nearly approximates a *pro rata* selection).

(b) The Trustee shall promptly notify the Company in writing of the Securities selected for redemption and, in the case of any Security selected for partial redemption, the principal amount at maturity thereof to be redeemed. No Securities in amounts of $1.00 or less shall be redeemed in part. The Trustee may select for redemption portions of the principal of Securities that have denominations larger than $1.00. Securities and portions of Securities selected shall be in amounts of $1.00 or whole multiples of $1.00 in excess thereof; except that if all of the Securities of a Holder are to be redeemed, the entire outstanding amount of Securities held by such Holder, even if not a multiple of $1.00, shall be redeemed.

Section 3.03 *Notice of Redemption*

(a) At least 15 days but not more than 60 days before a redemption date, the Company shall mail or cause to be mailed, by first class mail, or electronically if held by DTC, a notice of redemption to each Holder whose Securities are to be redeemed at its registered address, except that redemption notices may be mailed more than 60 days prior to a redemption date if the notice is issued in connection with a Legal Defeasance or a Covenant Defeasance.

The notice shall identify the Securities (including CUSIP or ISIN number(s)) to be redeemed and shall state:

(i) the redemption date;

(ii) the redemption price, if then determined and otherwise the method of its determination;

(iii) if any Security is being redeemed in part, the portion of the principal amount of such Security to be redeemed and that, after the redemption date upon surrender of such Security, a new Security or Securities in a principal amount equal to the unredeemed portion of the original Security shall be issued in the name of the Holder thereof upon cancellation of the original Security;

(iv) the name and address of the Paying Agent;

(v) that Securities called for redemption must be surrendered to the Paying Agent to collect the redemption price and become due on the date fixed for redemption;

(vi) that, unless the Company defaults in making such redemption payment, interest, if any, on Securities called for redemption ceases to accrue on and after the redemption date;

(vii) the paragraph of the Securities and/or section of this Indenture pursuant to which the Securities called for redemption are being redeemed; and

(viii) that no representation is made as to the correctness or accuracy of the CUSIP or ISIN number, if any, listed in such notice or printed on the Securities.

If any of the Securities to be redeemed is in the form of a Global Security, then the Company shall modify the notice to the extent necessary to accord with the procedures of DTC applicable to redemption.

(b) At the Company's request, the Trustee shall give the notice of redemption in the Company's name and at its expense; *provided*, *however*, that the Company shall have delivered to the Trustee, as provided in Section 3.01, an Officers' Certificate requesting that the Trustee give such notice and setting forth the information to be stated in such notice as provided in the preceding paragraph. The notice, if mailed in the manner provided herein shall be presumed to have been given, whether or not the Holder receives such notice.

Section 3.04 *Effect of Notice of Redemption*

Any redemption or notice of redemption may, at the discretion of the Company, be subject to one or more conditions precedent and, in the case of a redemption up to the amount of the net cash proceeds of any offering, be given prior to the completion of such offering. Otherwise, once a notice of redemption is mailed in accordance with Section 3.03, Securities

called for redemption become irrevocably due and payable on the redemption date at the redemption price.

Section 3.05 *Deposit of Redemption Price*

(a) Prior to 11:00 a.m. New York City time on the Business Day that is the redemption date, the Company shall deposit with the Trustee or with the Paying Agent (or, if the Company is acting as its own Paying Agent, segregate and hold in trust as provided in Section 2.06) money sufficient to pay the redemption price of and accrued interest on all Securities to be redeemed on that date. The Trustee or the Paying Agent shall promptly return to the Company any money deposited with the Trustee or the Paying Agent by the Company in excess of the amounts necessary to pay the redemption price of, and accrued and unpaid interest, if any, on, all Securities to be redeemed.

(b) If the Company complies with the provisions of the preceding paragraph, on and after the redemption date, interest shall cease to accrue on the Securities or the portions of Securities called for redemption. If a Security is redeemed on or after an interest record date but on or prior to the related Interest Payment Date, then any accrued and unpaid interest shall be paid to the Holder in whose name such Security was registered at the close of business on such record date. If any Security called for redemption shall not be so paid upon surrender for redemption because of the failure of the Company to comply with the preceding paragraph, interest shall be paid on the unpaid principal, from the redemption date until such principal is paid, and to the extent lawful on any interest not paid on such unpaid principal, in each case at the rate provided in the Securities or otherwise provided in this Indenture.

Section 3.06 *Securities Redeemed in Part*

Upon surrender of a Security that is redeemed in part, the Company shall issue and the Trustee shall authenticate (pursuant to a Company Order and Opinion of Counsel) for the Holder at the expense of the Company a new Security equal in principal amount to the unredeemed portion of the Security surrendered. No Securities in principal amount of $1.00 or less will be redeemed in part.

Section 3.07 *Optional Redemption*

(a) At any time and from time to time, the Company may redeem all or a part of the Securities, upon notice as described under Section 3.03, at a redemption price equal to 100% of the principal amount of the Securities redeemed plus accrued and unpaid interest thereon, if any, to, but excluding the date of redemption (any applicable date of redemption, the "**Redemption Date**"), subject to the rights of Holders on the relevant Record Date to receive interest due on the relevant Interest Payment Date falling on or prior to the Redemption Date.

(b) Any redemption pursuant to this Section 3.07 shall be made pursuant to the provisions of Sections 3.01 through 3.06 and shall be made on a *pro rata* basis, subject to adjustment in a manner that most nearly approximates a *pro rata* basis.

Section 3.08 *Application of Trust Money*

All money deposited with the Trustee pursuant to Section 3.05 shall be held in trust and applied by it, in accordance with the provisions of the Securities and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal (and premium, if any) and interest for whose payment such money has been deposited with the Trustee; but such money need not be segregated from other funds except to the extent required by law.

Section 3.09 *Offer to Purchase.*

In the event that the Company shall be required to commence an offer to all Holders to purchase Securities pursuant to Section 4.12 (an "**Asset Sale Offer**") or the Company or any Subsidiary shall be required to commence a Specified Proceeds Offer pursuant to Section 4.22, the Company shall follow the procedures specified below.

The Asset Sale Offer or Specified Proceeds Offer shall remain open for a period of 20 Business Days following its commencement and no longer, except to the extent that a longer period is required by applicable law (the "**Offer Period**"). No later than five Business Days after the termination of the Offer Period (the "**Purchase Date**"), the Company shall purchase the principal amount of Securities required to be purchased pursuant to Section 4.12 or Section 4.22 hereof (the "**Offer Amount**") or, if less than the Offer Amount has been tendered, all Securities validly tendered in response to the Asset Sale Offer or Specified Proceeds Offer. Payment for any Securities so purchased shall be made in the same manner as principal payments are made at Stated Maturity. Further, the Company shall comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws and regulations are applicable in connection with the purchase of Securities as a result of an Asset Sale Offer or Specified Proceeds Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Indenture relating to an Asset Sale Offer or Specified Proceeds Offer, the Company shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations described in this Section 3.09 by virtue thereof.

If the Purchase Date is on or after a Regular Record Date and on or before the related Interest Payment Date, any accrued and unpaid interest through but excluding the Purchase Date shall be paid to the Person in whose name a Security is registered at the close of business on such record date, and no additional interest relating to the same period shall be payable to Holders who tender Securities pursuant to the Asset Sale Offer.

Upon the commencement of an Asset Sale Offer or Specified Proceeds Offer, the Company shall send, by first class mail, a notice to each of the Holders, with a copy to the Trustee. The notice shall contain all instructions and materials necessary to enable such Holders to tender Securities pursuant to the Asset Sale Offer or Specified Proceeds Offer. The Asset Sale Offer or Specified Proceeds Offer shall be made to all Holders. The notice, which shall govern the terms of the Asset Sale Offer or Specified Proceeds Offer, shall state:

(a) that the Asset Sale Offer or Specified Proceeds Offer is being made pursuant to this Section 3.09 and the length of time the Asset Sale Offer or Specified Proceeds Offer shall remain open;

(b) the Offer Amount, the purchase price and the Purchase Date;

(c) that any Security not tendered or accepted for payment shall continue to accrue interest;

(d) that, unless the Company defaults in making such payment, any Security accepted for payment pursuant to the Asset Sale Offer or Specified Proceeds Offer shall cease to accrue interest after the Purchase Date;

(e) that Holders electing to have a Security purchased pursuant to an Asset Sale Offer or Specified Proceeds Offer may only elect to have all of such Security purchased and may not elect to have only a portion of such Security purchased;

(f) that Holders electing to have a Security purchased pursuant to any Asset Sale Offer or Specified Proceeds Offer shall be required to surrender the Security, with the form entitled "Option of Holder to Elect Purchase" on the reverse of the Security completed, to the Company or a Paying Agent at the address specified in the notice before the termination of the Offer Period;

(g) that Holders shall be entitled to withdraw their election if the Company or the Paying Agent, as the case may be, receives, not later than the expiration of the Offer Period, a facsimile transmission or letter setting forth the name of the Holder, the principal amount of the Security the Holder delivered for purchase and a statement that such Holder is withdrawing his election to have such Security purchased;

(h) that, if the aggregate principal amount of Securities surrendered by Holders exceeds the Offer Amount, the Trustee shall select the Securities to be purchased on a *pro rata* basis, with such adjustments as may be deemed appropriate by the Trustee so that only Securities in minimum denominations of $1.00, and integral multiples of $1.00 in excess thereof, shall be purchased; and

(i) that Holders whose Securities were purchased only in part shall be issued new Securities equal in principal amount to the unpurchased portion of the Securities surrendered (or transferred by book-entry transfer).

If any of the Securities subject to an Asset Sale Offer or Specified Proceeds Offer is in the form of a Global Security, then the Company shall modify such notice to the extent necessary to accord with the procedures of the DTC applicable to repurchases.

On or before the Purchase Date, the Company shall, to the extent lawful, accept for payment, on a *pro rata* basis to the extent necessary, the Offer Amount of Securities or portions thereof tendered pursuant to the Asset Sale Offer or Specified Proceeds Offer, or if less than the Offer Amount has been tendered, all Securities tendered, and shall deliver to the Trustee an Officers' Certificate stating that such Securities or portions thereof were accepted for payment

by the Company in accordance with the terms of this Section 3.09. The Company or the Paying Agent, as the case may be, shall promptly (but in any case not later than three days after the Purchase Date) mail or deliver to each tendering Holder an amount equal to the purchase price of the Securities tendered by such Holder and accepted by the Company for purchase, and the Company shall promptly issue a new Security, and the Trustee shall authenticate and mail or deliver such new Security to such Holder, in a principal amount equal to any unpurchased portion of the Security surrendered. Any Security not so accepted shall be promptly mailed or delivered by the Company to the Holder thereof. The Company shall publicly announce the results of the Asset Sale Offer or Specified Proceeds Offer on the Purchase Date.

Other than as specifically provided in this Section 3.09, any purchase pursuant to this Section 3.09 shall be made pursuant to the provisions of Section 3.01 through Section 3.07 hereof.

Article 4
COVENANTS

Section 4.01 *Payment of Securities*.

The Company shall promptly pay the principal of, interest and premium, if any, on the Securities on the dates and in the manner provided in the Securities and in this Indenture. Principal, interest and premium, if any, shall be considered paid on the date due if by 11:00 a.m., New York City time, on such date the Trustee or the Paying Agent holds in accordance with this Indenture immediately available funds sufficient to pay all principal, interest and premium, if any, then due. Any PIK Payment shall be considered paid on the date it is due (a) if PIK Interest Securities have been issued therefor, such PIK Interest Securities have been executed by the Company and authenticated by the Trustee on or prior to the date the payment is due in accordance with the terms of this Indenture or (b) if the PIK Payment is made by increasing the principal amount of Global Securities then authenticated, the Company has delivered the written request required by Section 2.14 and the Trustee has increased the principal amount of Global Securities then authenticated by the relevant amount on or prior to the date the payment is due.

The Company shall pay interest on overdue principal and premium, if any, at the rate specified therefor in the Securities, and it shall pay interest on overdue installments of interest at the same rate to the extent lawful.

Notwithstanding anything to the contrary contained in this Indenture, the Company may, to the extent it is required to do so by law, deduct or withhold income or other similar taxes imposed by the United States of America from principal, premium or interest payments hereunder.

Section 4.02 *Maintenance of Office or Agency*.

The Company will maintain an office or agency where the Securities may be presented or surrendered for payment, where, if applicable, the Securities may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Company in respect of the Securities and this Indenture may be served. The Company will give prompt written notice to the Trustee of any change in the location of any such office or agency. If at any time the

Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served to the Trustee, and the Company hereby appoints the Trustee as its agent to receive all such presentations, surrenders, notices and demands.

The Company may also from time to time designate one or more other offices or agencies where the Securities may be presented or surrendered for any or all such purposes and may from time to time rescind any such designation. The Company will give prompt written notice to the Trustee of any such designation or rescission and any change in the location of any such other office or agency.

The Company hereby designates the Corporate Trust Office of the Trustee as one such office or agency of the Company in accordance with Section 2.04 of this Indenture.

Section 4.03 *Corporate Existence*.

Except as otherwise provided in Article 5 or Article 12, each of the Company and the Guarantors will do or cause to be done all things necessary to preserve and keep in full force and effect (i) its existence and (ii) the material rights (charter and statutory), licenses and franchises of the Company, except, in the case of clause (ii), to the extent the Company otherwise reasonably determines it no longer desirable.

Section 4.04 *Payment of Taxes and Other Claims*.

The Company will pay or discharge or cause to be paid or discharged, before the same shall become delinquent, (i) all material taxes, assessments and governmental charges levied or imposed upon the Company or any Subsidiary or upon the income, profits or property of the Company or any Subsidiary and (ii) all lawful claims for labor, materials and supplies, which, if unpaid, might by law become a material liability or lien upon the property of the Company or any Subsidiary; *provided*, *however*, that the Company shall not be required to pay or discharge or cause to be paid or discharged any such tax, assessment, charge or claim whose amount, applicability or validity is being contested in good faith by appropriate proceedings and for which appropriate reserves, if necessary (in the good faith judgment of management of the Company), are being maintained in accordance with GAAP or where the failure to effect such payment will not be disadvantageous to the Holders.

Section 4.05 *Compliance Certificate*.

(a) The Company shall deliver to the Trustee and Collateral Agent, within 90 days after the end of each fiscal year, an Officers' Certificate stating that a review of the activities of the Company and its Restricted Subsidiaries during the preceding fiscal year has been made under the supervision of the signing Officers with a view to determining whether the Company has kept, observed, performed and fulfilled its obligations under this Indenture and the Pledge Agreement, and further stating, as to each such Officer signing such certificate, that to the best of his or her knowledge the Company has kept, observed, performed and fulfilled each and every covenant contained in this Indenture or the Pledge Agreement and is not in default in the performance or observance of any of the terms, provisions and conditions of this Indenture or the Pledge Agreement (or, if a Default or Event of Default shall have occurred, describing all such

Defaults or Events of Default of which he or she may have knowledge and what action the Company is taking or proposes to take with respect thereto) and that to the best of his or her knowledge no event has occurred and remains in existence by reason of which payments on account of the principal of or interest, if any, on the Securities is prohibited or if such event has occurred, a description of the event and what action the Company is taking or proposes to take with respect thereto.

(b) So long as not contrary to the then current recommendations of the American Institute of Certified Public Accountants, the year-end financial statements delivered pursuant to Section 4.18 shall be accompanied by a written statement of the Company's independent public accountants (who shall be a firm of established national reputation) that in making the examination necessary for certification of such financial statements, nothing has come to their attention that would lead them to believe that the Company has violated any provisions of Article 4 or Article 5 hereof or, if any such violation has occurred, specifying the nature and period of existence thereof, it being understood that such accountants shall not be liable directly or indirectly to any Person for any failure to obtain knowledge of any such violation.

(c) The Company shall, so long as any of the Securities are outstanding, deliver to the Trustee, forthwith upon any Officer becoming aware of any Default or Event of Default, or default or event of default under the New Senior Notes or the Company's existing or future Indebtedness, an Officers' Certificate specifying such Default or Event of Default and what action the Company is taking or proposes to take with respect thereto.

Section 4.06 *Further Instruments and Acts*.

Upon request of the Trustee, the Company will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purpose of this Indenture.

Section 4.07 *Stay, Extension and Usury Laws*.

The Company covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it shall not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but shall suffer and permit the execution of every such power as though no such law has been enacted.

Section 4.08 *Additional Guarantees*.

If any of the Company's Restricted Subsidiaries (including Foreign Subsidiaries but excluding (a) any Restricted Subsidiary of the Company that directly owns the Equity Interests of the Tier 1 UnSub provided that such Restricted Subsidiary has no other material assets and has no material liabilities and (b) any Restricted Subsidiary of the Company that has Indebtedness incurred pursuant to Section 4.11(q) and is prohibited by the terms of such Indebtedness from becoming a Guarantor, in the case of this clause (b), as long as such (i) Restricted Subsidiary has

not provided a guarantee for the benefit of any of the Credit Facilities or any Permitted Refinancing Indebtedness thereof and (ii) the pledge in the Equity Interests of the Tier 2 UnSub (or successor thereof) provided pursuant to the Pledge Agreement remains a first priority perfected security interest securing the obligations in respect of the Securities to the extent provided by Section 13.01 herein and the terms of the Pledge Agreement and shall not be subject to any effective subordination[2]) that is not already a Guarantor, (i) guarantees any Indebtedness of the Company or a Restricted Subsidiary or (ii) has assets with an aggregate book value on a standalone basis in excess of $10.0 million, then such Restricted Subsidiary will become a Guarantor and execute and deliver to the Trustee a supplemental indenture in substantially the form attached hereto as Exhibit E (provided, that, with respect to a Foreign Subsidiary, the Company and its Restricted Subsidiaries shall be permitted to modify the form attached hereto as Exhibit E as reasonably necessary to comply with applicable laws or regulations), a notation of Guarantee and an Officers' Certificate and (other than with respect to any Foreign Subsidiary) an Opinion of Counsel in accordance with Section 9.05, within, in the case of clause (i) above, 10 Business Days of the date on which it guarantees such other Indebtedness of the Company or, in the case of clause (ii) above, 20 Business Days (or 30 Business Days in the case of Foreign Subsidiaries) of the date on which internal financial statements are available for a fiscal quarter for which the aggregate book value of such Restricted Subsidiary exceeded $10.0 million; *provided,* that the aggregate book value of the assets of all Restricted Subsidiaries not providing a guarantee shall not be in excess of $25.0 million; *provided, further, however,* in the case of clause (ii) above, the Company and its Restricted Subsidiaries shall not be obligated to cause any Restricted Subsidiary to execute a Guarantee to the extent and for so long as the incurrence of such Guarantee could reasonably be expected to give rise to or result in: (1) any violation of applicable law or regulation; (2) any liability for the officers, directors or (except in the case of a Restricted Subsidiary that is a partnership) shareholders of such Restricted Subsidiary (or, in the case of a Restricted Subsidiary that is a partnership, directors or shareholders of the partners of such partnership); (3) any material cost, expense, liability or obligation (including with respect to any Taxes) other than reasonable out-of-pocket expenses and other than reasonable expenses incurred in connection with any governmental or regulatory filings required as a result of, or any measures pursuant to clause (1) of this clause undertaken in connection with, such Guarantee, which in any case under any of clauses (1), (2) and (3) of this clause cannot be avoided through measures reasonably available to the Company or a Restricted Subsidiary of the Company. The form of such notation of Guarantee is attached as Exhibit D hereto.

Section 4.09 *Restricted Payments*.

(a) The Company shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, (i) declare or pay any dividend or make any other payment or distribution on account of the Company's or any of its Restricted Subsidiaries' Equity Interests (including, without limitation, any such payment in connection with any merger or consolidation involving the Company) or to the direct or indirect holders of the Company's Equity Interests in their capacity as such (other than dividends or distributions payable in Equity Interests (other than Disqualified Stock) of the Company); (ii) purchase, redeem or otherwise acquire or retire for value (including, without limitation, in connection with any merger or consolidation involving

[2] NTD: To be updated as needed to provide that clause (b) only applies if the pledged equity is not subject to any priority Liens.

the Company) any Equity Interests of the Company or any direct or indirect parent of the Company; (iii) make any payment on or with respect to, or purchase, redeem, defease or otherwise acquire or retire for value, any Indebtedness that is subordinated in right of payment to the Securities or the Guarantees, as the case may be, except a payment of interest or a payment of principal at Stated Maturity; or (iv) make any Restricted Investment (all such payments and other actions set forth in clauses (i) through (iv) above being collectively referred to as "**Restricted Payments**").

(b) The foregoing provisions will not prohibit any of the following:

(i) the payment of any dividend or distribution by a Restricted Subsidiary of the Company to the Company or any of its other Restricted Subsidiaries; and if such Restricted Subsidiary is not a Wholly Owned Restricted Subsidiary, to minority holders of the Capital Stock of such Restricted Subsidiary so long as the Company or another Restricted Subsidiary receives at least its *pro rata* share of such dividend or distribution;

(ii) so long as no Default or Event of Default has occurred and is continuing, the purchase, redemption or other acquisition or retirement for value of any Equity Interests of the Company held by any employee of the Company or any of its Restricted Subsidiaries, *provided* that the aggregate price paid for all such purchased, redeemed, acquired or retired Equity Interests shall not exceed $500,000 in any calendar year;

(iii) the acquisition of Equity Interests by the Company in connection with the exercise of stock options or stock appreciation rights by way of cashless exercise or in connection with the satisfaction of withholding tax obligations;

(iv) the payment of any dividend within 60 days after the date of declaration thereof, if at said date of declaration such payment would have complied with the provisions of this Agreement;

(v) the payment or redemption of (a) any Subordinated Indebtedness of the Company or any Guarantor in exchange for, or out of the net cash proceeds of Permitted Refinancing Indebtedness of such Subordinated Indebtedness or (b) any Equity Interests of the Company or any of its Restricted Subsidiaries in exchange for or out of the net cash proceeds of the substantially concurrent sale (other than to a Restricted Subsidiary of the Company) of, other Equity Interests of the Company (other than any Disqualified Stock);

(vi) the purchase by the Company of fractional shares of Equity Interests arising out of stock dividends, splits or combinations or business combinations;

(vii) the redemption of any rights under the Company's Rights Agreement dated July 1, 2013; and

(viii) the redemption of any Equity Interests of the Company from Aliens (as defined in the Company's Certificate of Incorporation) who acquired the same to the extent contemplated under Article 12, Section 4 of the Certificate of Incorporation.

The amount of all Restricted Payments (other than cash) shall be the fair market value on the date that asset(s) or securities are proposed to be paid, transferred or issued by the Company or such Restricted Subsidiary, as the case may be, pursuant to the Restricted Payment. The fair market value of any non-cash Restricted Payment shall be determined in the manner contemplated by the definition of the term "fair market value."

For the avoidance of doubt, the foregoing provisions shall not prohibit or restrict any payments or revenue sharing between the Company or any of its Restricted Subsidiaries and any of the Company's Unrestricted Subsidiaries as a result of any Vessel management arrangement, Vessel pooling arrangement, Vessel brokerage arrangement or any similar arrangement; provided any such arrangement is in accordance with Sections 4.13 and 4.20 hereof.

Section 4.10 *Dividend and Other Payment Restrictions Affecting Subsidiaries.*

The Company shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any encumbrance or restriction on the ability of any Restricted Subsidiaries to do any of the following:

(a) (i) pay dividends or make any other distributions to the Company or any of its Restricted Subsidiaries on its Capital Stock or (ii) pay any Indebtedness owed to the Company or any of its Restricted Subsidiaries (it being understood that the priority of any preferred stock in receiving dividends or liquidating distributions prior to dividends or liquidating distributions being paid on common stock shall not be deemed a restriction on the ability to pay dividends or make any other distributions on Capital Stock);

(b) make loans or advances to the Company or any of its Restricted Subsidiaries; or

(c) transfer any of its properties or assets to the Company or any of its Restricted Subsidiaries,

except for such encumbrances or restrictions existing under or by reason of (1) the Credit Facilities, other Secured Debt or Existing Indebtedness, (2) this Indenture, the Indenture governing the New Senior Notes, the Securities, the New Senior Notes, the Guarantees and the guarantees in respect of the New Senior Notes, (3) applicable law, (4) by reason of customary non-assignment provisions in leases entered into in the ordinary course of business and consistent with past practices, (5) by reason of customary provisions restricting the transfer of copyrighted or patented materials consistent with industry practice, (6) customary provisions in any agreement creating any Hedging Obligations permitted under this Indenture, (7) Permitted Refinancing Indebtedness or (8) provisions with respect to the disposition of assets in asset sale agreements, stock sale agreements and other similar agreements.

Section 4.11 *Incurrence of Indebtedness and Issuance of Disqualified Stock.*

The Company shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise, with respect to (collectively, "**incur**" or an "**incurrence**") any Indebtedness and the Company shall not issue any Disqualified Stock and shall not permit any of its Restricted Subsidiaries to issue any Disqualified Stock.

The foregoing provisions shall not apply to the incurrence by the Company or any of its Restricted Subsidiaries of any of the following Indebtedness:

(a) Existing Indebtedness, except for Indebtedness under clauses (b) and (d) of this Section 4.11;

(b) Indebtedness under the Credit Facilities in an aggregate principal amount not to exceed $571.0 million (the amount outstanding on the Issue Date); *provided* that this amount shall be permanently reduced by any permanent repayment of any Credit Facility under Section 4.12(b)(i);

(c) Indebtedness incurred as a result of paid in kind interest paid on the First Lien Term Loans in accordance with the terms of the First Lien Term Loan Agreement in effect as of the Issue Date;

(d) Indebtedness represented by the New Notes;

(e) additional Indebtedness under the (i) First Lien Term Loan in effect as of the Issue Date or a facility satisfying the First Lien Terms and Conditions (which, for the avoidance of doubt, in either case, may be in the form of revolving loans) or (ii) under the ABL Credit Facility (as may be amended, extended or replaced by a new asset based revolving credit facility after the Issue Date satisfying the First Lien Terms and Conditions), in an aggregate principal amount, together with all other Indebtedness incurred under this clause (e), equal to the lower of (i) the aggregate principal amount of any permanent reduction of the ABL Credit Facility in effect as of the Issue Date and (ii) $50.0 million; *provided*, any such additional Indebtedness incurred under this clause (e) must be used solely for Permitted Capital Uses;

(f) in the event the First Lien Term Loan in effect as of the Issue Date is refinanced in accordance with terms of this Indenture pursuant to the definition of Permitted Refinancing Indebtedness and such Permitted Refinancing Indebtedness does not permit interest payments to be paid in kind, additional Indebtedness incurred under the credit agreement, note purchase agreement, indenture or other instrument governing such Permitted Refinancing Indebtedness in an aggregate principal amount not to exceed $50.0 million together with all other Indebtedness incurred under this clause (f) (the "**First Lien PIK Basket**"), which amount shall increase to $75.0 million if the final maturity date of such Permitted Refinancing Indebtedness is June 15, 2024 or later (the "**First Lien PIK Replacement Basket**" and the $25.0 million increase being the "**First Lien PIK Step-Up**"); *provided*, that each of the following is met:

(i) any Indebtedness incurred under this clause (f) shall be limited to (i) an aggregate principal amount of $25.0 million through the first anniversary of the Issue Date, (ii) an aggregate principal amount of $50.0 million through the second anniversary of the Issue Date and (iii) an aggregate principal amount of $75.0 million through the three years immediately following the Issue Date.

(ii) the First Lien PIK Step-Up shall be decreased by the amount of the Newbuild UnSub Financing Overage if the Company has contributed HOS Warhorse and HOS Wild Horse to the Tier 2 UnSub (or a Subsidiary thereof) pursuant to Section 4.20;

(iii) the First Lien PIK Replacement Basket shall be reduced by the amount of any Indebtedness incurred under clause (c) above; and

(iv) the Company and its Restricted Subsidiaries shall only be permitted to (a) incur Indebtedness under the First Lien PIK Replacement Basket pursuant to a non-revolving delayed draw term loan and (b) if the Company and the Restricted Subsidiaries have unrestricted cash and Cash Equivalents of not more than $125.0 million at the time of incurrence after giving *pro forma* effect to such incurrence and the application of proceeds thereof for the 90-day period following such incurrence (it being understood that, notwithstanding the requirements of this clause (iv), the Company and the Restricted Subsidiaries may have more than $125.0 million in unrestricted cash and Cash Equivalents if such excess is solely as a result of being required to incur the minimum amount of Indebtedness as required under the terms of such Permitted Refinancing Indebtedness) incurred pursuant to this clause (iv);

(g) intercompany Indebtedness between or among the Company and any of its Restricted Subsidiaries;

(h) Indebtedness incurred in an aggregate principal amount, together with all other Indebtedness incurred under this clause (h), not to exceed $29.0 million to finance Permitted Capital Uses, *provided,* that such Indebtedness satisfies the First Lien Terms and Conditions;

(i) Indebtedness incurred in an aggregate principal amount, together with all other Indebtedness incurred under this clause (i), not to exceed $65.0 million to finance Permitted Capital Uses to fund amounts actually incurred by the Company or a Restricted Subsidiary to complete construction of HOS Warhorse and HOS Wild Horse, which may be funded through (A) a delayed draw provision or other expansion of the First Lien Term Loans (which, for the avoidance of doubt, may be in the form of revolving loans) (or any refinancing thereof to the extent permitted by this Indenture or equivalent financing satisfying the First Lien Terms and Conditions) or (B) a project finance arrangement which shall be subject to customary terms and conditions for project financings of such type as reasonably determined by the Company in good faith (including, without limitation, lender protections in the form of reserve, construction, disbursement and similar accounts); *provided*, that no Indebtedness shall be permitted under this clause (i) in the event HOS Warhorse and HOS Wild Horse are contributed to the Tier 1 UnSub and contributed by the Tier 1 UnSub to the Tier 2 UnSub or are otherwise transferred, assigned or sold by the Company or a Guarantor to any party that is not the Company or a Guarantor;

(j) Permitted Refinancing Indebtedness (which, for the avoidance of doubt, may be in the form of revolving loans) incurred in exchange for, or the net proceeds of which are used to extend, refinance, renew, replace, defease or refund Indebtedness incurred pursuant to clauses (a), (b), (c), (d), (e), (f), (h), (i) or (j) of this Section 4.11; *provided* that in the case of clauses (b), (c), (e), (f), (h), (i) and (j) (but in the case of clause (j), only in respect to the foregoing clauses), any Permitted Refinancing Indebtedness thereof shall permanently reduce the aggregate principal amount permitted under each such clause by the amount of such Permitted Refinancing

Indebtedness (other than any additional principal amounts incurred as permitted under clause (a)(ii) of the definition of Permitted Refinancing Indebtedness);[3]

(k) Hedging Obligations;

(l) the guarantee by the Company of Indebtedness of any of its Restricted Subsidiaries or by any Restricted Subsidiary of Indebtedness of the Company or another Restricted Subsidiary, in each case, that was permitted to be incurred by another provision of this Section 4.11;

(m) Indebtedness incurred for the purpose of (i) financing all or any part of the purchase price of such property incurred prior to, at the time of, or within 120 days after, completion of the acquisition of such property or (ii) financing all or any part of the cost of construction, improvement or conversion of any such property, in principal amount that shall not exceed $3.0 million and, together with all such financing incurred under this clause (m) shall not exceed (x) $5.0 million in the aggregate at the time of incurrence prior to the Vessel Acquisition Date and (y) $10.0 million in the aggregate at the time of incurrence after the Vessel Acquisition Date;

(n) obligations in respect of performance of tenders, bids, statutory obligations, surety, appeal, return-of-money or performance bonds, government contracts, insurance obligations and performance and completion guarantees and similar obligations provided by the Company or any of its Restricted Subsidiaries or obligations in respect of letters of credit, bank guarantees or similar instruments related thereto or obligations in respect of security or credit enhancement supporting performance obligations under service contracts, in each case in the ordinary course of business or consistent with past practice;

(o) Indebtedness consisting of (a) the financing of insurance premiums or (b) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business;

(p) Indebtedness associated with bonds or surety obligations required by any law or by governmental authorities or customers in the ordinary course of business including letters of credit supporting such bonds or surety obligations;

(q) Indebtedness or Disqualified Stock of the Company or any of its Restricted Subsidiaries to the extent such Indebtedness or Disqualified Stock was Indebtedness or Disqualified Stock of an Unrestricted Subsidiary prior to the date of any Reunification Transaction complying with the requirements of Section 4.20(g) hereof involving such Unrestricted Subsidiary that was not incurred in contemplation of such Reunification Transaction;

(r) Indebtedness in respect of credit cards, credit card processing services, debit cards, stored value cards, commercial cards (including so-called “purchasing cards”,

[3] NTD: In the event the ABL is repaid prior to the Issue Date, to include appropriate baskets to allow for a replacement facility in respect thereof.

"procurement cards" or "p-cards"), or cash management services, in each case, incurred in the ordinary course of business;

(s) other Indebtedness (other than Indebtedness for borrowed money) in an aggregate amount not to exceed $5.0 million at the time of incurrence;

(t) existing leasehold interests comprising any part of the Real Property Interests and any renewals, extensions, modifications, or renegotiations thereof and any additional leases, rights of use or of passage necessary for the operation or expansion of the Company's business, whether or not any such leasehold interests, renewals, extensions, modifications or renegotiations or such additional leases, rights of use or of passage are capital leases or operating leases.

The Company shall not, and shall not permit any Guarantor to, directly or indirectly, incur any Indebtedness which by its terms (or by the terms of any agreement governing such Indebtedness) is subordinated to any other Indebtedness of the Company or of such Guarantor, as the case may be, unless such Indebtedness is also by its terms (or by the terms of any agreement governing such Indebtedness) made expressly subordinate to the Securities or the Guarantee of such Guarantor, as the case may be, to the same extent and in the same manner as such Indebtedness is subordinated pursuant to subordination provisions that are most favorable to the holders of any other Indebtedness of the Company or of such Guarantor, as the case may be; *provided*, *however*, that no Indebtedness shall be deemed to be contractually subordinated in right of payment to any other Indebtedness solely by virtue of being unsecured or being secured by a Lien that is junior to a Lien securing any other Indebtedness.

Section 4.12 *Asset Sales.*

(a) The Company shall not, and shall not permit any of its Restricted Subsidiaries to, consummate an Asset Sale (excluding for this purpose an Event of Loss) unless:

(i) the Company or such Restricted Subsidiary, as the case may be, receives consideration at the time of such Asset Sale at least equal to the fair market value (as determined in accordance with the definition of such term, the results of which determination shall be set forth in an Officers' Certificate delivered to the Trustee) of the properties, assets, rights or Equity Interests issued or sold or otherwise disposed of; and

(ii) 100% of the aggregate consideration received by the Company and its Restricted Subsidiaries from such Asset Sale and all other Asset Sales since the Issue Date, on a cumulative basis, is in the form of cash or Cash Equivalents; *provided, however*, that the amount of (A) any (a) liabilities (as shown on the Company's or such Restricted Subsidiary's most recent balance sheet) of the Company or such Restricted Subsidiary (other than contingent liabilities and liabilities that are by their terms subordinated to the Securities or any Subsidiary Guarantee) and (b) any contingent liabilities or claims arising from litigation relating to any MPSV (regardless of whether such liabilities or claims are shown on the Company's or such Restricted Subsidiary's most recent balance sheet), in each case that are assumed by the transferee of any such assets, properties, rights or Equity Interests pursuant to a customary novation agreement that releases the Company or such Restricted Subsidiary from further liability; and (B)

any securities, notes or other obligations received by the Company or such Restricted Subsidiary from such transferee that are converted within 180 days by the Company or such Restricted Subsidiary into cash (to the extent of the cash received in that conversion) shall each be deemed to be Cash Equivalents for purposes of this Section 4.12; *provided*, that in no event shall the Company or any Restricted Subsidiary sell, convey, transfer or otherwise dispose the Capital Stock of the Tier 1 UnSub to any Person other than a Restricted Subsidiary of the Company that has no other material assets and has no material liabilities.

(b) Within 180 days after the receipt of any Net Proceeds from an Asset Sale (including, without limitation, any Event of Loss), the Company or any such Guarantor may apply such Net Proceeds to (i) permanently repay Senior Debt, (ii) in the case of a disposition of a Low-Spec OSV, repay Senior Debt, or (iii) acquire (including by way of a purchase or construction of assets or purchase of Capital Stock, merger, consolidation or otherwise) Productive Assets; *provided* that progress payments under contracts for the construction or conversion of vessels shall be deemed to be payments for the purchase of assets under this Section 4.12. Any net proceeds from Asset Sales that are not applied or invested as provided in clauses (i), (ii) or (iii) of this paragraph shall be deemed to constitute "**Excess Proceeds**."

(c) Within 10 days of each date on which the aggregate amount of Excess Proceeds exceeds $5,000,000, the Company shall commence an Asset Sale Offer pursuant to Section 3.09 hereof to purchase the maximum principal amount of Securities that may be purchased out of Excess Proceeds at an offer price in cash in an amount equal to 100% of the principal amount thereof, plus accrued and unpaid interest, if any, thereon, to the date of purchase, in accordance with the procedures set forth in Section 3.09 hereof; *provided*, *however*, that, if the Company is required to apply such Excess Proceeds to purchase, or to offer to purchase, any Pari Passu Indebtedness, the Company shall only be required to offer to purchase the maximum principal amount of Securities that may be purchased out of the amount of such Excess Proceeds multiplied by a fraction, the numerator of which is the aggregate principal amount of Securities outstanding and the denominator of which is the aggregate principal amount of Securities outstanding plus the aggregate principal amount of Pari Passu Indebtedness outstanding. To the extent that the aggregate principal amount of Securities tendered pursuant to an Asset Sale Offer is less than the amount that the Company is required to purchase, the Company or any Guarantor may use any remaining Excess Proceeds to redeem pro rata the New Notes. If the aggregate principal amount of Securities surrendered by Holders thereof exceeds the amount that the Company is required to purchase, the Trustee shall select the Securities to be purchased on a pro rata basis (or, in the case of Securities in global form, the Trustee will select Securities for repurchase based on the method of the DTC that most nearly approximates a pro rata selection), in any case with such adjustments as may be deemed appropriate by the Trustee so that only Securities in minimum denominations of $1.00 and integral multiples of $1.00 in excess thereof, shall be purchased. Upon completion of such offer to purchase and subject to the preceding sentence, the amount of Excess Proceeds shall be reset at zero.

(d) The Company shall not, and shall not permit any Restricted Subsidiary to, enter into or suffer to exist any agreement (other than any agreement governing the Credit Facilities) that would place any restriction of any kind (other than pursuant to law or regulation) on the ability of the Company to make an Asset Sale Offer.

Section 4.13 *Transactions with Affiliates.*

(a) The Company shall not, and shall not permit any of its Restricted Subsidiaries to, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate (each of the foregoing, an "**Affiliate Transaction**"), unless

(i) such Affiliate Transaction is on terms that are no less favorable to the Company or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Company or such Restricted Subsidiary with an unrelated Person or, if there is no such comparable transaction, on terms that are fair and reasonable to the Company or such Restricted Subsidiary; and

(ii) the Company delivers to the Trustee (i) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of $3.0 million, a resolution of the Board of Directors of the Company set forth in an Officers' Certificate certifying that such Affiliate Transaction complies with clause (i) above and that such Affiliate Transaction has been approved by a majority of the disinterested members of the Board of Directors of the Company and (ii) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of $10.0 million, an opinion as to the fairness to the Company or the relevant Subsidiary of such Affiliate Transaction from a financial point of view issued by an accounting, appraisal or investment banking firm that is, in the judgment of the Board of Directors of the Company, qualified to render such opinion and is independent with respect to the Company, *provided* that such opinion will not be required with respect to (A) any Affiliate Transaction or series of related Affiliate Transactions involving either (i) shipyard contracts that are awarded following a competitive bidding process and approved by a majority of the disinterested members of the Board of Directors of the Company or (ii) an Affiliate in which an unrelated third person owns Voting Stock in excess of that owned by the Company or any of its Restricted Subsidiaries, except as permitted by Section 4.13(b) and (B) any Affiliate Transaction involving the sale, lease, conveyance, transfer or other disposition of a Vessel for which the Company or any of its Restricted Subsidiaries has obtained an appraisal from a Specified Qualified Appraiser.

(b) The following shall be deemed not to be Affiliate Transactions:

(i) any employment agreement or other employee compensation plan or arrangement entered into by the Company or any of its Restricted Subsidiaries in the ordinary course of business of the Company or such Restricted Subsidiaries;

(ii) transactions between or among the Company and its Restricted Subsidiaries;

(iii) Permitted Investments and Restricted Payments that are permitted by the provisions of Section 4.09(b)(i)-(viii) of this Indenture;

(iv) loans or advances to officers, directors and employees of the Company or any of its Restricted Subsidiaries made in the ordinary course of business and consistent with past practices of the Company and its Restricted Subsidiaries in an aggregate amount not to exceed $500,000 outstanding at any one time;

(v) indemnities of officers, directors and employees of the Company or any of its Restricted Subsidiaries permitted by bylaw or statutory provisions;

(vi) maintenance in the ordinary course of business of customary benefit programs or arrangements for officers, directors and employees of the Company or any Restricted Subsidiary, including without limitation vacation plans, health and life insurance plans, deferred compensation plans, retirement or savings plans and similar plans;

(vii) issuance of Equity Interests (other than Disqualified Stock) by the Company, including any such Equity Interests issued in connection with acquisitions of properties or assets of any Person;

(viii) customary regular fees to directors of the Company or any of its Restricted Subsidiaries who are not employees of the Company or any Affiliate of the Company;

(ix) transactions with a Person that is an Affiliate of the Company solely because the Company or any of its Restricted Subsidiaries owns an Equity Interest in such Person;

(x) registration rights or similar agreements with officers, directors or significant shareholders of the Company; and

(xi) any Approved Management Arrangements, Approved Pooling Arrangement or Approved Brokerage Arrangements.

Section 4.14 *Liens.*

The Company shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur or assume any Lien on any property or asset owned on the Issue Date or thereafter acquired, or any income or profits therefrom, except Permitted Liens, to secure (a) any Indebtedness of the Company, unless prior to, or contemporaneously therewith, the Securities are equally and ratably secured, until such time as such Indebtedness is no longer secured by a Lien (other than Permitted Liens) or (b) any Indebtedness of any Guarantor, unless prior to, or contemporaneously therewith, its Guarantee is equally and ratably secured, until such time as such Indebtedness is no longer secured by a Lien (other than Permitted Liens); *provided*, *however*, that if such Indebtedness is expressly subordinated to the Securities or the Guarantees, the Lien securing such Indebtedness shall be subordinated and junior to the Lien securing the Securities or the Guarantees, as the case may be, with the same relative priority as such Indebtedness has with respect to the Securities or the Guarantees.

Section 4.15 [*Reserved*].

Section 4.16 *Enforceability of Judgments; Indemnification For Foreign Currency Judgments*.

The obligations of the Company to any Holder or the Trustee shall, notwithstanding any judgment in a currency (the "**Judgment Currency**") other than United States dollars (the "**Agreement Currency**"), be discharged only to the extent that on the day following receipt by such Holder or the Trustee, as the case may be, of any amount in the Judgment Currency, such Holder or the Trustee may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the amount originally to be paid to such Holder or the Trustee, as the case may be, in the Agreement Currency, the Company agrees, as a separate obligation and notwithstanding such judgment, to pay to such Holder or the Trustee, as the case may be, the difference, and if the amount of the Agreement Currency so purchased exceeds the amount originally to be paid to such Holder or the Trustee, as the case may be, such Holder or the Trustee, as the case may be, shall pay to or for the account of the Company such excess, *provided* that such Holder or the Trustee, as the case may be, shall not have any obligation to pay any such excess as long as a Default has occurred and is continuing, in which case such excess may be applied by such Holder or the Trustee, as the case may be, to such obligations.

Section 4.17 *Conduct of Business*.

The Company shall not, and shall not permit any of its Restricted Subsidiaries to, engage in the conduct of any business other than the marine transportation and logistics business and such other businesses as are complementary or related thereto as determined in good faith by the Board of Directors of the Company.

Section 4.18 *Reporting Obligations*.

(a) Whether or not the Company is required to file reports with the SEC, to the extent permitted by the SEC, the Company shall file with the SEC copies of its annual reports and of information, documents and other reports (or copies of such portions of any of the foregoing as the SEC may by rules and regulations prescribe) which the Company is required to file with the SEC, or would be required to file with the SEC by Section 13(a) or 15(d) under the Exchange Act if it were subject thereto within the time periods specified by the SEC's rules and regulations. For as long as the Securities are outstanding, the Company shall supply the Trustee within 15 days of applicable filing deadlines set forth in the Exchange Act and each Holder who so requests or shall supply to the Trustee for forwarding to each such Holder, without cost to such Holder, copies of such reports and other information.

(b) The public availability of the above reports on either the SEC's website or the Company's website will satisfy its obligation to furnish these reports to the Trustee; *provided* that the Trustee will have no obligation to determine whether or not such filings have been made.

(c) Delivery of reports, information and other documents under this Section 4.18 to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants

hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates). The Trustee shall not be required to examine any information for any reason hereunder, including without limitation, determining whether the Company has complied with its covenants or obligations hereunder or to ascertain the correctness or otherwise of the information or statements contained therein. The Trustee is entitled to assume such compliance and correctness unless an Officer of the Trustee is informed otherwise.

(d) The Company, or one of its representatives, agents or employees, shall calculate and deliver to the Trustee in writing all OID information to be reported to the Trustee to Holders as required by applicable law.

Section 4.19 *Holding Company Limitations*.

The Tier 1 UnSub and Tier 2 UnSub shall not:

(a) other than as contemplated by the Pledge Agreement or clause (c) of this Section 4.19, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise, with respect to any Indebtedness or any Liens or any other obligation or liability;

(b) directly hold any assets except (i) in the case of Tier 1 UnSub, Equity Interests in Tier 2 UnSub and (ii) in the case of Tier 2 UnSub, Equity Interests in any Tier 3 UnSub, (iii) dividends and distributions received in respect of Equity Interests owned by such Persons in compliance with Section 4.22 and (iv) as otherwise contemplated under clause (c) below; provided that the Equity Interests in clauses (i) and (ii) shall not include any preferred Equity Interests; and

(c) conduct any business or operations other than (i) holding assets in accordance with Section 4.19(b), (ii) (A) the maintenance of its legal existence, including the ability to incur fees, costs and expenses relating to such maintenance, (B) complying with applicable law and (C) holding director and shareholder meetings, preparing organizational records and other organizational activities required to maintain its separate organizational structure or to comply with applicable law, (iii) (A) filing tax reports and paying taxes and other customary obligations related thereto in the ordinary course (and contesting any taxes) and (B) participating in tax, accounting and other administrative matters as a member of the consolidated group of which the Tier 1 UnSub and/or its direct or indirect parent is a member, (iv) making any dividend or distribution in compliance with Section 4.22, (v) incurring fees, costs and expenses relating to overhead and general operating including professional fees for legal, tax and accounting issues and paying taxes in the ordinary course of business, (vi) providing customary indemnification to current and former officers, directors, members of management, managers, employees and advisors or consultants, (vii) activities incidental to the consummation of transactions permitted hereunder, (viii) any other transaction any of the Tier 1 UnSub or Tier 2 UnSub is explicitly permitted to enter into in accordance with this Indenture, (ix) preparing reports to governmental authorities and to its shareholders and (x) activities incidental to the businesses or activities described in clauses (i) to (ix) of this paragraph.

Section 4.20 *Unrestricted Subsidiary Limitations.*

(a) The Drop Down Assets and the Drop Down Cash Contribution shall be contributed to the capital of Tier 1 UnSub and then by Tier 1 UnSub to the capital of Tier 2 UnSub and then by Tier 2 UnSub to the capital of a Tier 3 UnSub and then by the Tier 3 UnSub to a Tier 4 UnSub on or prior to the Issue Date.

(b) Each Tier 3 UnSub and Tier 4 UnSub shall not, and shall not permit any of their respective Subsidiaries to, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise, with respect to (collectively, "**incur**" or an "**incurrence**") any Indebtedness for borrowed money and shall not issue any Disqualified Stock and shall not permit any of its Subsidiaries to issue any Disqualified Stock. The foregoing provisions shall not apply to the incurrence by any Tier 3 UnSub or Tier 4 UnSub or any of their respective Subsidiaries of any of the following Indebtedness:

(i) with respect to a Tier 4 UnSub and any of its Subsidiaries owning the HOS Warhorse or the HOS Wild Horse, Non-Recourse Debt to finance the completion of construction of HOS Warhorse and HOS Wild Horse, respectively, including construction, draw payments, interest payments, management fees, overhead costs, start-up costs, other bona fide out-of-pocket expenses and other ordinary course of business items; and

(ii) other Non-Recourse Debt if, after giving pro forma effect to such additional Indebtedness the Loan to Value Ratio is no greater than 0.70 to 1.00; *provided* that any such Indebtedness does not contain any financial maintenance covenant based on "EBTIDA" or a similar financial metric;

provided, that any Indebtedness or Liens incurred shall be unanimously approved by the Board of Directors, including the independent director who is not a member of the Company's Board of Directors or otherwise affiliated with the Company and its Restricted Subsidiaries (the "**Independent Director**"), of such Tier 3 UnSub or Tier 4 UnSub (or, if applicable, of a direct or indirect Subsidiary thereof). Each Unrestricted Subsidiary shall have an Independent Director who shall be the same person. If an Independent Director resigns, passes away or is otherwise removed, the Company shall submit three candidates to replace such Independent Director to a vote of the holders of the New Notes, voting as a single class, and the holders of a plurality of the New Notes voting in such election shall select the successor Independent Director from such candidates and the Company shall cause such person to be elected as the successor Independent Director of the applicable Unrestricted Subsidiary.

(c) Each Tier 3 UnSub and Tier 4 UnSub shall not, and shall not permit any of their respective Subsidiaries to, consummate any Affiliate Transaction by or among a Tier 3 UnSub or Tier 4 Unsub or their respective Subsidiaries on the one hand and the Company or a Restricted Subsidiary of the Company on the other hand, other than (i) Approved Pooling Arrangements, (ii) Approved Management Arrangements; (iii) Approved Brokerage Arrangements; or (iv) any such Affiliate Transaction that (A) is on terms that are no less favorable to such Tier 3 UnSub or Tier 4 UnSub than those that would have been obtained in a comparable transaction or such Tier 3 UnSub or Tier 4 UnSub with an unrelated Person or, if there is no such comparable transaction, on terms that are fair and reasonable to such Tier 3 UnSub or Tier 4 UnSub and (B) are approved

by the Independent Director of such Tier 3 UnSub or Tier 4 UnSub (or, if applicable, of a direct or indirect Subsidiary thereof).

(d) Each Tier 3 UnSub and Tier 4 UnSub shall not, and shall not permit any of their respective Subsidiaries to, consummate (i) the purchase or other acquisition of all or substantially all of the assets of (or any division or business line of) any other Person or (ii) the purchase or other acquisition (whether by means of a merger, consolidation, or otherwise) of all or substantially all of the Equity Interests of any other Person unless (A) such transaction has been approved unanimously by the Board of Directors, including the Independent Director, of such Tier 3 UnSub or Tier 4 UnSub (or, if applicable, of a direct or indirect Subsidiary thereof). Notwithstanding the foregoing, the contribution of the Drop Down Assets and the Drop Down Cash Contribution on the Issue Date are permitted.

(e) (i) Tier 2 UnSub shall not issue additional Equity Interests (other than to Tier 1 UnSub) and (ii) each Tier 3 UnSub and Tier 4 UnSub shall not, and shall not permit their respective Subsidiaries to, issue any Equity Interests unless, in the case of this clause (ii), such issuance is unanimously approved by the Tier 3 UnSub or Tier 4 UnSub Board of Directors, including the Independent Director, as the case may be, in connection with incurring Indebtedness of an Unrestricted Subsidiary permitted hereunder.

(f) Any Tier 3 UnSub and Tier 4 UnSub shall not, and shall not permit any of their respective Subsidiaries to, consummate a disposition of any properties, assets or rights (including, without limitation, by way of a sale and leaseback), excluding dividends or distributions in compliance with Section 4.22 and dispositions in the ordinary course of business, unless such transaction has been approved unanimously by the Board of Directors, including the Independent Director, of such Tier 3 UnSub or Tier 4 UnSub, as applicable (or, if applicable, of a direct or indirect Subsidiary thereof).

(g) Except as set forth in clause (h) of this Section 4.20,

(i) neither of the Tier 1 UnSub or Tier 2 UnSub shall consolidate with or merge with or into, or convey, transfer, lease or otherwise dispose, whether in a single transaction or a series of transactions, all or substantially all its properties and assets to, another Person; and

(ii) none of the Tier 3 UnSubs, Tier 4 UnSubs or any of their respective Subsidiaries shall consolidate with or merge with or into, or convey, transfer, lease or otherwise dispose, whether in a single transaction or a series of transactions, all or substantially all its properties and assets to, another Person unless, in the case of this clause (ii), (A) such consolidation, merger, conveyance, transfer, lease or disposition shall be unanimously approved by the Board of Directors of any applicable Tier 3 UnSub and/or Tier 4 UnSub, including the Independent Director of such Tier 3 UnSub or Tier 4 UnSub, as applicable (or, if applicable, of a direct or indirect Subsidiary thereof) and (B) such Unrestricted Subsidiary receives an opinion as to the fairness to the Unrestricted Subsidiary of such transaction from a financial point of view issued by an accounting, appraisal or investment banking firm that is, in the judgment of the Board of Directors of

the Unrestricted Subsidiary, including the Independent Director, qualified to render such opinion and is independent with respect to the Unrestricted Subsidiary.

(h) None of the Unrestricted Subsidiaries shall be designated as a Restricted Subsidiary or consolidate with or merge with or into, or convey, transfer, lease or otherwise dispose, whether in a single transaction or a series of transactions, all or substantially all its properties and assets to, the Company or any of its Restricted Subsidiaries or otherwise transfer assets to the Company or any of its Restricted Subsidiaries (except as permitted by Section 4.22) (any such consolidation, merger, conveyance, transfer, lease or disposition, a "**Reunification Transaction**") unless: (i) none of the New Senior Notes remain outstanding and the New Senior Notes Indenture is satisfied and discharged and (ii) following the satisfaction and discharge of the New Senior Notes Indenture, the Company has an equity market capitalization of at least $300.0 million based on a volume-weighted average price (VWAP) of the Common Stock for the 60 consecutive Trading Days immediately preceding the Reunification Transaction and an equity market capitalization of at least $300 million immediately prior to the Reunification Transaction; *provided* that the Common Stock is listed either on the New York Stock Exchange or NASDAQ during such 60-day period and has an average daily trading volume of at least $1.0 million over such 60-day period (the "**Reunification Conditions**"). Upon the occurrence of any Reunification Transaction, Section 4.19, 4.20 and 4.22 hereof shall cease to apply with respect to any Subsidiary of the Company that has become a Restricted Subsidiary of the Company in connection with such Reunification Transaction.

(i) Other than as provided in Section 4.20(h), the Unrestricted Subsidiaries shall remain, as long as any New Notes are outstanding, "unrestricted subsidiaries" under the agreements governing the Credit Facilities and any Permitted Refinancing Indebtedness thereof.

(j) (i) The Company and any Restricted Subsidiaries shall not own any Equity Interest of any Unrestricted Subsidiary except the Tier 1 UnSub and (ii) no lender or holder of any Indebtedness of the Company or any Restricted Subsidiaries (in their capacity as such lender or holder) (other than any secured party in respect of the New Notes or Permitted Refinancing Indebtedness in respect thereof) shall have a Lien on the equity or assets of the Unrestricted Subsidiaries other than Equity Interests of the Tier 1 UnSub. Additionally, no lender or holder of any such Indebtedness of the Company or any Restricted Subsidiary (in their capacity as such lenders or holders) shall have a guarantee of such Indebtedness provided by any Unrestricted Subsidiary.

(k) None of the Unrestricted Subsidiaries shall file a voluntary bankruptcy, reorganization or insolvency case or proceeding without the unanimous approval by the Board of Directors, including the Independent Director, of such Unrestricted Subsidiary.

Section 4.21 *First Lien Term Loan PIK Interest.*

The Company will pay interest in kind on the First Lien Term Loan outstanding as of the Issue Date (or any applicable refinancing thereof to the extent permitted by this Indenture) pursuant to an election made under the First Lien Term Loan Agreement as in effect as of the Issue Date (or equivalent provision, if any, in any refinancing thereof to the extent permitted by this Indenture), *provided*, that following the first anniversary of the Issue Date, the Company

may elect to pay any interest payment on the First Lien Term Loan in cash if at the time of such interest payment date (and after giving pro forma effect thereto), the Company and its Restricted Subsidiaries have unrestricted cash and Cash Equivalents of at least $125.0 million; *provided, further,* it is agreed and understood that this Section 4.21 shall not be in effect during any period in which the First Lien Term Loan has been replaced by a refinancing permitted by this Indenture if the terms of such refinancing do not provide for interest to be paid in kind.

Section 4.22 *Specified Proceeds*.

When Tier 2 UnSub receives any (a) dividends, distribution or similar payment from any Tier 3 UnSub or (b) proceeds from the sale of the Equity Interests of any Tier 3 UnSub or any Tier 4 UnSub or their respective Subsidiaries, Tier 2 UnSub shall:

(a) use such dividends, distribution or similar payment or proceeds for Permitted Tax Distributions;

(b) commence an offer to purchase the maximum principal amount of New Notes on a *pro rata* basis that may be purchased out of such proceeds at an offer price in cash in an amount equal to 100% of the principal amount thereof, plus accrued and unpaid interest, if any, thereon, to the date of purchase, in accordance with the procedures set forth in Section 3.09 hereof;

(c) distribute any such dividends, distribution or similar payment or proceeds to the Company or a Restricted Subsidiary, *provided,* such distribution shall not be subject to a Lien under the Credit Facilities other than with respect to Liens under clause (d) of Section 4.22, the Company or such Restricted Subsidiary is permitted under each agreement or instrument governing all of its Indebtedness to use such distribution solely to repurchase the New Notes and the Company or such Restricted Subsidiary applies the full aggregate amount of such distribution solely to make an offer to purchase the New Notes at a redemption price equal to 100% of the principal amount of the New Notes redeemed plus accrued and unpaid interests, if any, thereon to but excluding the Redemption Date in accordance with the procedures set forth in Section 3.09 with respect to the notice and *pro rata* provisions (each of clause (b) above and this clause (c), a "**Specified Proceeds Offer**");

(d) distribute any such proceeds to the Company or a Restricted Subsidiary in an aggregate principal amount since the Issue Date not to exceed the lesser of (A) the sum of (x) the Investment received from the Company or a Restricted Subsidiary pursuant to clause (b) under the definition of "Permitted Investments" *plus* (y) $1.0 million and (B) $16.0 million;

(e) contribute any such proceeds to any Tier 3 UnSub or Tier 4 UnSub (or any Subsidiary thereof); provided that such proceeds are invested in assets used or useful in the business of a Tier 3 UnSub or Tier 4 UnSub (or any Subsidiary thereof) within 365 days of such contribution (and, if not so applied within such time period, shall be applied pursuant to another clause of this Section 4.22); or

(f) apply (or cause a Subsidiary to apply) such proceeds to repay Indebtedness of any Tier 3 UnSub, Tier 4 UnSub or a Subsidiary thereof.

Section 4.23 *Company Specified Proceeds*. The Company shall not, and shall not permit any Restricted Subsidiary to, enter into or suffer to exist any agreement (other than any agreement governing the Credit Facilities) that would place any restriction of any kind (other than pursuant to law or regulation) on the ability of the Company to make a Specified Proceeds Offer and no distributions or dividends from any Unrestricted Subsidiary shall become subject to a Lien under the Credit Facilities, other than with respect to Liens under clauses (a) and (d) of Section 4.22.

Section 4.24 *Special Preferred Share*. On the Issue Date, the Company will issue one Special Preferred Share to the Trustee, for the benefit of the Holders.

Section 4.25 *No Issuances*. Except pursuant to the terms of this Indenture and the New Senior Notes Indenture, the Company shall not issue any (i) Special Preferred Shares or securities convertible into or exchangeable for Special Preferred Shares, (ii) Contingent Preferred Shares or securities convertible into or exchangeable for Contingent Preferred Shares, or (iii) any option, warrant, right (including conversion or any preemptive right, right of first refusal or similar right), or agreement of any character, orally or in writing, to purchase or acquire from the Company any Special Preferred Shares or Contingent Preferred Shares or securities convertible into or exchangeable for Special Preferred Shares or Contingent Preferred Shares.

Section 4.26 *Rights Plan*. The Company shall not enter into, become subject to or otherwise suffer to exist any Rights Plan (other than the Rights Agreement) unless (a) such Rights Plan automatically terminates by its terms on the earlier of (i) the Contingent Preferred Election or (ii) the Conversion Election and (b) neither the issuance of Common Stock nor Contingent Preferred Shares to any Initial Noteholder in respect of its Initial Notes would solely as a result of such issuance to the Initial Noteholder cause such Initial Noteholder to constitute an "Acquiring Person" (as such term is used in the Rights Agreement) or otherwise trigger a "flip-in event" or "flip-over event" of the nature contemplated in the Rights Agreement. For the avoidance of doubt, the foregoing shall not apply with respect to the acquisition of any additional Common Stock by an Initial Noteholder after the launch date of the Exchange Offer or the conversion of any additional New Senior Notes or Securities acquired by an Initial Noteholder after the Issue Date. Nothing in this Indenture shall constitute an amendment or waiver of the provisions of the Rights Agreement.

Section 4.27 *Further Assurances.*

(a) The Company and each of its Restricted Subsidiaries shall do, execute, acknowledge, deliver, record, rerecord, file, re-file, register and re-register, as applicable, any and all such further acts, deeds, conveyances, security agreements, mortgages, assignments, estoppel certificates, financing statements and continuations thereof, termination statements, notices of assignment, transfers, certificates, assurances and other instruments as may be required from time to time in order to:

(1) carry out more effectively the purposes of the Pledge Agreement;

(2) subject to the Liens created by the Pledge Agreement any of the properties, rights or interests required to be encumbered thereby;

(3) perfect and maintain the validity, effectiveness and priority of the Pledge Agreement and the Liens intended to be created thereby; and

(4) better assure, convey, grant, assign, transfer, preserve, protect and confirm to the Trustee any of the rights granted now or hereafter intended by the parties thereto to be granted to the Collateral Agent under the Pledge Agreement or under any other instrument executed in connection therewith.

(b) Upon the exercise by the Trustee or any holder of any power, right, privilege or remedy under this Indenture or the Pledge Agreement which requires any consent, approval, recording, qualification or authorization of any governmental authority, the Company (or, if applicable, any of its Subsidiaries) will execute and deliver all applications, certifications, instruments and other documents and papers that may be required from the Company (or any such Subsidiary) for such governmental consent, approval, recording, qualification or authorization.

Article 5
SUCCESSOR COMPANY

Section 5.01 *Consolidation, Merger and Sale of Assets of the Company*.

The Company shall not consolidate with or merge with or into, or convey, transfer, lease or otherwise dispose, whether in a single transaction or a series of transactions, all or substantially all its properties and assets to (i) another Person or (ii) a Restricted Subsidiary, unless in the case of this clause (ii):

(a) the resulting, surviving, or transferee Person (the "**Successor Company**") is a corporation, partnership, trust or limited liability company organized and existing under the laws of the United States of America, any State of the United States or the District of Columbia;

(b) the Successor Company, if not the Company, shall (i) expressly assume, by supplemental indenture, executed and delivered to the Trustee, in form satisfactory to the Trustee, all the obligations of the Company under the Securities and this Indenture and (ii) take all necessary actions to authorize and, if outstanding at such time, issue to the applicable holders thereof, two series of replacement Preferred Stock (the "**Replacement Preferred Stock**") in the number and having the designation, preferences, terms, qualifications, limitations, restrictions and relative rights, including voting, approval and director rights, as the Contingent Preferred Shares and Special Preferred Shares, respectively;

(c) immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing;

(d) immediately after giving *pro forma* effect to the transaction as if the same had occurred at the beginning of the applicable four-quarter period, either (1) the Consolidated Interest Coverage Ratio of the Successor Company for the most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date of such transaction would have been greater than 2.0 to 1.0, or (2) the Consolidated Interest

Coverage Ratio of the Successor Company is no less than the Consolidated Interest Coverage Ratio of the Company immediately before such transaction; and

(e) the Company shall have delivered to the Trustee and Collateral Agent an Officers' Certificate and an Opinion of Counsel, stating that such consolidation, merger or transfer and such supplemental indenture, if any, comply with this Indenture.

For purposes of this Section 5.01, the conveyance, transfer or lease of all or substantially all of the properties and assets of one or more Subsidiaries of the Company, which properties and assets, if held by the Company instead of such Subsidiaries, would constitute all or substantially all of the properties and assets of the Company on a consolidated basis, shall be deemed to be the transfer of all or substantially all of the properties and assets of the Company.

The Successor Company will succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture, but, in the case of a lease of all or substantially all its properties and assets, the Company will not be released from the obligation to pay the principal of, premium, if any, and interest on the Securities.

Article 6
DEFAULTS AND REMEDIES

Section 6.01 *Events of Default*. Each of the following is an "**Event of Default**":

(a) default in any payment of interest on any Security when the same becomes due and payable, and such default continues for a period of 15 days;

(b) default in the payment of the principal of any Security when the same becomes due and payable at its Stated Maturity, upon required repurchase, redemption, upon declaration of acceleration or otherwise;

(c) [Reserved];

(d) failure by the Company to give a Company Notice of the occurrence of a Change of Control to Holders pursuant to Section 10.01 or notice of a specified corporate transaction to Holders, in each case when due;

(e) failure by the Company to comply with any of the then applicable provisions of Sections 3.09, 4.12, 4.19(b), 4.20(a), 4.20(e)(i), 4.20(g), 4.20(h) and 4.20(i) and its obligations under Article 5;

(f) a default occurs under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness for money borrowed by the Company or any of its Restricted Subsidiaries (or the payment of which is guaranteed by the Company or any of its Restricted Subsidiaries), whether such Indebtedness or guarantee now exists, or is created after the Issue Date, which default (i) is caused by a failure to pay principal of or premium or interest on such Indebtedness prior to the expiration of any grace period provided in such Indebtedness, including any extension thereof (a "**Payment Default**") or (ii) results in the acceleration of such Indebtedness prior to its express maturity and (iii) in each

case, the principal amount of any such Indebtedness, together with the principal amount of any other such Indebtedness under which there has been a Payment Default or the maturity of which has been so accelerated, aggregates at least $10,000,000; and *provided*, *further*, that if such default is cured or waived or any such acceleration rescinded, or such Indebtedness is repaid, within a period of 10 days from the continuation of such default beyond the applicable grace period or the occurrence of such acceleration, as the case may be, an Event of Default and any consequential acceleration of the Securities shall be automatically rescinded, so long as such rescission does not conflict with any judgment or decree;

(g) a final judgment or final judgments for the payment of money are entered by a court or courts of competent jurisdiction against the Company or any of its Restricted Subsidiaries and such judgment or judgments are not paid or discharged for a period (during which execution shall not be effectively stayed) of 60 days, *provided* that the aggregate of all such undischarged judgments exceeds $10,000,000;

(h) the failure of any Guarantor to perform any covenant set forth in its Guarantee or the repudiation by any Guarantor of its obligations under its Guarantee or the unenforceability of any Guarantee for any reason other than as provided in this Indenture;

(i) the Company or any Guarantor pursuant to or within the meaning of any Bankruptcy Law:

(i) commences a voluntary case or proceeding;

(ii) consents to the entry of judgment, decree or order for relief against it in an involuntary case or proceeding;

(iii) consents to the appointment of a Custodian of it or for any substantial part of its property;

(iv) makes a general assignment for the benefit of its creditors;

(v) consents to or acquiesces in the institution of a bankruptcy or an insolvency proceeding against it;

(vi) takes any corporate action to authorize or effect any of the foregoing; or

(vii) takes any comparable action under any foreign laws relating to insolvency;

(j) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(i) is for relief against the Company or any Guarantor in an involuntary case;

(ii) appoints a Custodian of the Company for all or substantially all of the Company's or any Guarantor's property; or

(iii) orders the winding up or liquidation of the Company or any Guarantor;

and, in each case, the order or decree or relief remains unstayed and in effect for 90 days;

(k) any representation or warranty or agreement in the Pledge Agreement or in any certificate, document or other statement delivered in connection therewith was inaccurate in any material respect on the date made or deemed made, the Company or any Restricted Subsidiary of the Company repudiates any of its or their material obligations under the Pledge Agreement or the failure by the Company or any Subsidiary of the Company for 30 days to comply with any of its or their material obligations under the Pledge Agreement;

(l) any event of default under the Pledge Agreement or the Pledge Agreement shall cease, for any reason (other than pursuant to the terms thereof), to be in full force and effect, or the Company or any Restricted Subsidiary of the Company shall so assert, or any security interest created, or purported to be created, by the Pledge Agreement shall cease to be enforceable or of the same effect and priority purported to be created thereby; *provided* that it will not be an Event of Default if such condition results from the failure of the Trustee or the Collateral Agent to perform an obligation of the Trustee or Collateral Agent, as applicable, under the Pledge Agreement or this Indenture;

(m) the Company fails to observe or perform any covenant or other agreement in this Indenture or the Securities (other than those referred to in Section 6.01(d) and (e)) and for 30 days after written notice from the Trustee or Holders of 25% in principal amount of Securities then outstanding has been received to comply with any such covenant or other agreement; *provided* that, with respect to the obligation in Section 4.18 hereof to file certain reports within the time periods specified in such Section, it shall not be an Event of Default if such filing is made within 90 days after the end of such time period specified; or

(n) any amendment, modification, rescission, revocation or any other change to the Resolutions.

The foregoing will constitute Events of Default whatever the reason for any such Event of Default and whether it is voluntary or involuntary or is effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body.

Section 6.02 *Acceleration*. If an Event of Default (other than an Event of Default specified in Section 6.01(i) or Section 6.01(j) above) occurs and is continuing, the Trustee may, by notice to the Company, or the Holders of at least 25% in outstanding principal amount of the outstanding Securities by notice to the Company and the Trustee, may, and the Trustee at the request of such Holders shall, declare the principal of and accrued and unpaid interest, if any, and on all the Securities to be due and payable. Upon such a declaration, such principal, and accrued and unpaid interest shall be due and payable immediately. If an Event of Default specified in Section 6.01(i) or Section 6.01(j) above occurs and is continuing, the principal of and accrued and unpaid interest, if any, on all the Securities outstanding shall be immediately due and payable with no further action by the Trustee or the Holders.

Section 6.03 *Other Remedies*.

(a) If an Event of Default other than an Event of Default specified in Section 6.01(m), occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of principal or interest, if any, on the Securities or to enforce the performance of any provision of the Securities or this Indenture.

(b) For as long as any Securities remain outstanding, and unless any of the defaults referred to in the following clauses (i) and (ii) have otherwise been permanently cured or permanently waived under the Securities or such other existing or future debt, upon the occurrence of (i) any Event of Default under the Securities, (ii) any event of default under the Company's other existing or future debt, subject to applicable original grace periods (without giving effect to any amendments to those grace periods except in the case of events of default caused by any governmental agency; vessel classification society; trustee, administrative agent or other similar agent acting in its capacity as such and not at the direction of any lender or other creditor; or restrictions on banking services in non-U.S. jurisdictions, in each case which is outside of the Company's and its Restricted Subsidiaries' control and any affirmative covenants in the agreements governing the Credit Facilities), or (iii) any payment event of default under the Company's existing and future Indebtedness or payment default under the Company's existing and future Indebtedness which would, with the passage of time or the giving of notice or both, become an event of default under such Indebtedness (each of clauses (i), (ii) and (iii), a "**Triggering Event**"), at the election of the holders of a majority in principal amount of New Notes voting as a single class (the "**Contingent Preferred Election**"), the Company will issue to the holders of Securities Contingent Preferred Shares or warrants with an exercise price of $0.00001 per share with exercise conditions for holders otherwise entitled to Contingent Preferred Shares that do not certify to the Company's reasonable satisfaction that they are U.S. citizens (but only to the extent necessary to allow the Company to maintain compliance with the Company's certificate of incorporation and bylaws and Jones Act requirements) (the "**Contingent Preferred Warrants**"), in the form attached hereto as Exhibit H, issued pursuant to a Warrant Agreement in the form attached hereto as Exhibit J, representing the Conversion Portion of 98% of the economics of the Company and the right to vote the Conversion Portion of 98% of the voting interests of the Company (including, in each case, any Equity Interests then outstanding); *provided*, that the Contingent Preferred Shares and the Contingent Preferred Warrants will cease to have any share of the economics or voting interests of the Company upon issuance of the Automatic Conversion Shares. For purposes hereof, (a) the aggregate number of Contingent Preferred Shares to be issued shall not be reduced with any reduction in principal amount of the outstanding New Notes and (b) Securities held by the Company or any of its Subsidiaries will be treated as not outstanding for purposes of the issuance of Contingent Preferred Shares. Following a Triggering Event constituting a Contingent Preferred Election and prior to the issuance of Contingent Preferred Shares, the Company shall not, (i) either directly or indirectly by amendment, merger, consolidation or otherwise, purchase or redeem (or permit any subsidiary to purchase or redeem) or pay or declare any dividend or make any distribution on, any shares of capital stock of the Company, (ii) effect a liquidation, dissolution or winding-up of the Company, or (iii) effect a merger or consolidation of the Company.

(c) For as long as any Securities remain outstanding, and unless any of the defaults referred to in the following clauses (i) and (ii) have otherwise been permanently cured or permanently waived under the Securities or such other existing or future debt, upon the occurrence of (i) any Event of Default under the Securities, subject to customary grace periods,

(ii) any event of default under the Company's other existing or future debt, subject to applicable original grace periods (without giving effect to any amendments to those grace periods except in the case of events of default caused by any governmental agency; vessel classification society; trustee, administrative agent or other similar agent acting in its capacity as such and not at the direction of any lender or other creditor; or restrictions on banking services in non-U.S. jurisdictions, in each case which is outside of the Company's and its Restricted Subsidiaries' control and any affirmative covenants in the agreements governing the Credit Facilities, in each case which is outside of the Company's and its Restricted Subsidiaries' control and any affirmative covenants in the agreements governing the Credit Facilities), or (iii) any payment event of default under the Company's existing and future debt or payment default under the Company's existing and future debt which would, with the passage of time or the giving of notice or both, become an Event of Default under such debt, at the election of the holders of a majority in principal amount of the New Notes voting as a single class (a "**Conversion Election**"), all Securities will automatically convert into shares of Common Stock (the "**Automatic Conversion Shares**") or warrants with an exercise price of $0.00001 per share with exercise conditions for holders otherwise entitled to Automatic Conversion Shares that do not certify to the Company's reasonable satisfaction that they are U.S. citizens (but only to the extent necessary to allow the Company to maintain compliance with the Company's certificate of incorporation and bylaws and Jones Act requirements) (the "**Automatic Conversion Warrants**") in the form attached hereto as Exhibit I, issued pursuant to a Warrant Agreement in the form attached hereto as Exhibit K, such that ownership of Common Stock and exercise rights thereto pursuant to the Automatic Conversion Warrants held by holders of all of the then-outstanding Securities shall equal, following any such conversion, the Conversion Portion of 98% of the outstanding shares of Common Stock and the Conversion Portion of 98% of the outstanding shares of each other class of Capital Stock of the Company and rights issued under a Rights Plan of the Company on a *pro forma* basis (including, in each case, any Equity Interests then outstanding). For purposes hereof, (a) such Conversion Portion shall not be reduced with any reduction in principal amount of the outstanding Securities and (b) Securities held by the Company or any of its Subsidiaries will be automatically canceled and deemed to be not outstanding immediately prior to such conversion without any entitlement to any Automatic Conversion Shares.

(d) The initial Noteholder Director will be designated as provided in Section 3.14(a) of the Company's bylaws as in effect on the date hereof, and a copy of Section 3.14 of the bylaws is attached hereto as Exhibit L. The election of any subsequent Noteholder Director (including to fill any vacancy in such directorship) shall be as provided in the Series B Certificate of Designation and such Section 3.14(b). The Trustee will vote its Special Preferred Shares on behalf of the holders of the New Notes in accordance with Section 3.14(b) of the Company's bylaws upon written direction received from the Company as provided in Section 3.14(b) of the bylaws.

The Trustee may maintain a proceeding even if it does not possess any of the Securities or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative.

Section 6.04 *Waiver of Past Defaults*.

(a) The Holders of a majority in principal amount of the outstanding Securities by notice to the Trustee and the Collateral Agent may, on behalf of the Holders of all outstanding Securities, (a) waive, by their consent (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Securities), an existing Default or Event of Default and its consequences except (i) a Default or Event of Default resulting from the non-payment of the principal or interest, if any, on a Security, (ii) a Default or Event of Default resulting from the failure to deliver, upon conversion, shares of Common Stock upon the conversion of the Security or (iii) a Default or Event of Default in respect of a provision that under Section 9.02 cannot be amended without the consent of each Holder affected and (b) rescind any such acceleration with respect to the Securities and its consequences if (i) rescission would not conflict with any judgment or decree of a court of competent jurisdiction and (ii) all existing Events of Default, other than the nonpayment of the principal of or interest, if any, on the Securities that have become due solely by such declaration of acceleration, have been cured or waived. When a Default or Event of Default is waived, it is deemed cured, but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any consequent right.

Section 6.05 *Control by Majority*.

(a) The Holders of a majority in principal amount of the outstanding Securities may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or the Collateral Agent or of exercising any trust or power conferred on the Trustee or the Collateral Agent. However, the Trustee or the Collateral Agent may refuse to follow any direction that conflicts with law or this Indenture or, subject to Sections 7.01 and 7.02, that the Trustee or the Collateral Agent determines is unduly prejudicial to the rights of other Holders or would involve the Trustee or the Collateral Agent in personal liability; *provided*, *however*, that the Trustee or the Collateral may take any other action deemed proper by the Trustee or the Collateral Agent that is not inconsistent with such direction.

Section 6.06 *Limitation on Suits*.

Subject to Section 6.08, a Holder may not pursue any remedy with respect to this Indenture or the Securities unless:

(a) such Holder has previously given to the Trustee written notice stating that an Event of Default is continuing;

(b) Holders of at least 25% in principal amount of the outstanding Securities have requested in writing that the Trustee pursue the remedy;

(c) such Holders have offered to the Trustee security or indemnity satisfactory to it against any loss, liability or expense to be incurred in compliance with such request;

(d) the Trustee has not complied with such request within 60 days after receipt of the written request and the offer of security or indemnity; and

(e) the Holders of a majority in principal amount of the outstanding Securities have not given the Trustee a direction that, in the opinion of the Trustee, is inconsistent with such request within such 60-day period.

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

Section 6.07 *Rights of Holders to Receive Payment*.

Notwithstanding any other provision of this Indenture (including, without limitation, Section 6.06), the right of any Holder to receive payment of principal of, interest or premium, if any, on the Securities held by such Holder, on or after the respective due dates expressed in the Securities, or delivery of consideration due upon conversion of such Securities when due, or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

Section 6.08 *Collection Suit by Trustee*.

If an Event of Default specified in clause (a) or (b) of Section 6.01 occurs and is continuing, the Trustee is authorized to recover judgment in its own name and as trustee of an express trust against the Company for the whole amount then due and owing (together with interest on any unpaid interest to the extent lawful) and the amounts provided for in Section 7.06.

Section 6.09 *Trustee May File Proofs of Claim*.

The Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee and the Collateral Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, the Collateral Agent, their agents and counsel) and the Holders allowed in any judicial proceedings relative to the Company, the Guarantors or its or their respective creditors or properties and, unless prohibited by law or applicable regulations, may be entitled and empowered to participate as a member of any official committee of creditors appointed in such matter, and may vote on behalf of the Holders in any election of a trustee in bankruptcy or other Person performing similar functions, and any Custodian in any such judicial proceeding is hereby authorized by each Holder to make payments to the Trustee and the Collateral Agent and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee and Collateral Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Trustee, the Collateral Agent, their agents and its counsel, and any other amounts due to the Trustee and the Collateral Agent under Section 7.06.

Section 6.10 *Priorities*.

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

FIRST: to the Trustee and the Collateral Agent (and each of their agents and attorneys) for amounts due under Section 7.06 hereof, including payment of all compensation,

expense and liabilities incurred, and all advances made, by the Trustee or the Collateral Agent and the Trustee's or Collateral Agent's reasonable costs and expenses of collection;

SECOND: to Holders for amounts due and unpaid on the Securities for principal, interest or premium, if any, ratably, without preference or priority of any kind, according to the amounts due and payable on the Securities for principal and interest, respectively; and

THIRD: to the Company.

The Trustee may fix a record date and payment date for any payment to Holders pursuant to this Section 6.10. At least 15 days before such record date, the Company shall mail to each Holder and the Trustee a notice that states the record date, the payment date and amount to be paid.

Section 6.11 *Restoration of Rights and Remedies*.

If the Trustee or any Holder has instituted a proceeding to enforce any right or remedy under this Indenture and the proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to the Holder, then, subject to any determination in the proceeding, the Company, the Trustee, the Guarantors and the Holders will be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Company, the Trustee, the Guarantors and the Holders will continue as though no such proceeding had been instituted.

Section 6.12 *Undertaking of Costs*.

In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.12 does not apply to a suit by the Trustee, a suit by the Company, a suit by a Holder pursuant to Section 6.08 or a suit by Holders of more than 10% in outstanding principal amount of the Securities.

Article 7
TRUSTEE

Section 7.01 *Duties of Trustee*.

(a) If an Event of Default has occurred and is continuing, the Trustee shall exercise the rights and powers vested in it by this Indenture and use the same degree of care and skill in its exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

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

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

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates, opinions or orders furnished to the Trustee and conforming to the requirements of this Indenture. However, in the case of any such certificates, opinions or orders which by any provisions hereof are specifically required to be furnished to the Trustee, the Trustee shall examine such certificates and opinions to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein).

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

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

(ii) the Trustee shall not be liable for any error of judgment made in good faith by a Trust Officer of the Trustee unless it is proved that the Trustee was grossly negligent in ascertaining the pertinent facts; and

(iii) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.06.

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

(e) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Company.

(f) Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

(g) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties hereunder or in the exercise of any of its rights or powers, if it shall have reasonable grounds to believe that repayment of such funds or adequate indemnity (in its discretion) against such risk or liability is not reasonably assured to it.

(h) Every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 7.01.

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

Section 7.02 *Rights of Trustee*. Subject to Section 7.01:

(a) The Trustee may conclusively rely on any document (whether in its original or facsimile form) reasonably believed by it to be genuine and to have been signed or presented by the proper Person, including a holder or holders of the Securities and any representative thereof. The Trustee need not investigate any fact or matter stated in the document. The Trustee shall receive and retain financial reports and statements of the Company as provided herein, but shall have no duty to review or analyze such reports or statements to determine compliance under covenants or other obligations of the Company.

(b) Before the Trustee acts or refrains from acting, it may require an Officers' Certificate and/or an Opinion of Counsel. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on an Officers' Certificate and an Opinion of Counsel.

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

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers.

(e) The Trustee may consult with counsel of its selection, and the advice or opinion of counsel with respect to legal matters relating to this Indenture and the Securities shall be full and complete authorization and protection from liability in respect to any action taken, omitted or suffered by it hereunder in good faith and in reliance on the advice or opinion of such counsel.

(f) The Trustee shall not be responsible or liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit).

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

(h) The Trustee may request that the Company deliver a certificate setting forth the names of individuals and/or titles of Officers authorized at such time to take specified actions pursuant to this Indenture. Before the Trustee acts or refrains from acting, it may require an Officers' Certificate or an Opinion of Counsel or both. The Trustee will not be liable for any action it takes or omits to take in good faith in reliance on such Officers' Certificate or Opinion of Counsel. The Trustee may consult with counsel of its selection and the advice of such counsel or any Opinion of Counsel will be full and complete authorization and protection from liability in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

(i) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction (including, without limitation, a direction executed by holders of the Securities or any representatives of such holders), consent, order, bond, debenture, note, other

evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney at the sole cost of the Company and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation.

(j) The Trustee shall not be deemed to have notice of any Default or Event of Default other than an Event of Default under Section 6.01(a) or (b) unless written notice of any event which is in fact such a default is received by the Trustee at the address of the Trustee set forth in Section 14.01 (or any alternative address given to the Company by the Trustee), and such notice references the Securities and this Indenture. Delivery of reports, information and documents to the Trustee under Section 4.18 hereof is for informational purposes only, and the Trustee's receipt of the foregoing shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates).

(k) The Trustee will be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders, including in respect of the Special Preferred Shares, unless such Holders have offered to the Trustee indemnity or security satisfactory to it against the losses, liabilities and expenses that might be incurred by it in compliance with such request or direction.

(l) The Trustee shall not be required to give any bond or surety in respect of the performance of its powers and duties hereunder.

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

Section 7.03 *Individual Rights of Trustee*.

The Trustee in its individual or any other capacity may become the owner or pledgee of Securities and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not Trustee. Any Paying Agent or Registrar may do the same with like rights. However, the Trustee must comply with Sections 7.09 and 7.10. In addition, the Trustee shall be permitted to engage in transactions with the Company; *provided*, *however*, that if, during the continuance of any Default, the Trustee acquires any conflicting interest the Trustee must (i) eliminate such conflict within 90 days of acquiring such conflicting interest, (ii) apply to the SEC for permission to continue acting as Trustee or (iii) resign.

Section 7.04 *Trustee's Disclaimer*.

The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture or the Securities, shall not be accountable for the Company's use of the proceeds from the Securities, shall not be responsible for the use or application of any money received by any Paying Agent other than the Trustee and shall not be responsible for any

statement of the Company in this Indenture or in any document issued in connection with the sale of the Securities or in the Securities other than the Trustee's certificate of authentication.

Section 7.05 *Notice of Defaults*.

If a Default or Event of Default occurs and is continuing and if a Trust Officer of the Trustee has actual knowledge thereof, the Trustee shall mail by first class mail to each Holder at the address set forth in the Securities Register notice of the Default or Event of Default within 90 days after it occurs. Except in the case of a Default or Event of Default in payment of principal of, or interest on any Security (including payments pursuant to the required repurchase provisions of such Security, if any), the Trustee may withhold the notice if and so long as it determines in good faith that withholding the notice is in the interests of Holders.

Section 7.06 *Compensation and Indemnity*.

The Company shall pay to the Trustee and Collateral Agent from time to time such compensation for its acceptance of this Indenture and services hereunder as the Company and the Trustee and Collateral Agent shall from time to time agree in writing. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. In addition to the compensation the Company shall reimburse the Trustee and Collateral Agent upon request for all reasonable out-of-pocket expenses incurred or made by it. Such expenses shall include the reasonable compensation and out-of-pocket expenses, disbursements and advances of the Trustee's and Collateral Agent's agents, counsel, accountants and experts. The Company and the Guarantors, jointly and severally, shall indemnify the Trustee and Collateral Agent against any and all loss, liability, damages, claims or expense (including reasonable attorneys' fees and expenses) incurred by it without gross negligence or willful misconduct on its part in connection with the administration of this trust and the performance of its duties hereunder, including the costs and expenses of enforcing this Indenture (including this Section 7.06) and of defending itself against any claims (whether asserted by any Holder, the Company, any Guarantor or otherwise). The Trustee and Collateral Agent shall notify the Company promptly of any claim for which it may seek indemnity. Failure by the Trustee or Collateral Agent to so notify the Company shall not relieve the Company or any of the Guarantors of its obligations hereunder. The Company and such Guarantor shall defend the claim and the Trustee and Collateral shall provide reasonable cooperation at the Company's expense in the defense. The Trustee and Collateral Agent may have separate counsel and the Company shall pay the fees and expenses of such counsel, *provided* that the Company shall not be required to pay such fees and expenses if it assumes the Trustee's and Collateral Agent's defense, and, in the reasonable judgment of outside counsel to the Trustee and Collateral Agent, there is no conflict of interest between the Company or any Guarantor and the Trustee and Collateral Agent in connection with such defense. The Company and the Guarantors need not reimburse any expense or indemnify against any loss, liability or expense incurred by the Trustee or Collateral through the Trustee's or Collateral Agent's own willful misconduct or gross negligence.

To secure the Company's and the Guarantors' payment obligations in this Section 7.06, the Trustee shall have a lien prior to the Securities on all money or property held or collected by the Trustee other than money or property held in trust to pay principal of, interest and premium, if any, on particular Securities. Such lien shall survive the satisfaction and discharge of this

Indenture. The Trustee's right to receive payment of any amounts due under this Section 7.06 shall not be subordinate to any other unsecured liability or debt of the Company or any Guarantor.

The Company's and the Guarantors' payment obligations pursuant to this Section 7.06 shall survive the discharge of this Indenture and the removal or resignation of the Trustee or the Collateral Agent. When the Trustee or Collateral Agent incurs expenses after the occurrence of a Default specified in Section 6.01(i) or Section 6.01(j) with respect to the Company or any Guarantor, the expenses are intended to constitute expenses of administration under any Bankruptcy Law.

Section 7.07 *Replacement of Trustee*.

The Trustee may resign at any time by so notifying the Company. The Holders of a majority in principal amount of the Securities may remove the Trustee by providing the Trustee with 30 days' written notice and may appoint a successor Trustee. The Company shall remove the Trustee if:

(a) the Trustee fails to comply with Section 7.09;

(b) the Trustee is adjudged bankrupt or insolvent;

(c) a receiver or other public officer takes charge of the Trustee or its property; or

(d) the Trustee otherwise becomes incapable of acting.

If the Trustee resigns or is removed by the Company or by the Holders of a majority in principal amount of the Securities and such Holders do not within 90 days of such resignation or removal appoint a successor Trustee, or if a vacancy exists in the office of the Trustee for any reason (the Trustee in such event being referred to herein as the retiring Trustee), the Company shall promptly appoint a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Thereupon the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall mail a notice of its succession to Holders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee, subject to the lien provided for in Section 7.06.

If a successor Trustee does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee or the Holders of at least 10% in principal amount of the Securities may petition, at the Company's expense, any court of competent jurisdiction for the appointment of a successor Trustee.

If the Trustee fails to comply with Section 7.09, any Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

Notwithstanding the replacement of the Trustee pursuant to this Section 7.07, the Company's obligations under Section 7.06 shall continue for the benefit of the retiring Trustee.

The retiring Trustee shall have no responsibility or liability for any action or inaction of a successor Trustee.

Notwithstanding anything to the contrary in this Section 7.07, the resignation or removal of the retiring Trustee shall not become effective until the Special Preferred Share held by such Trustee are transferred to the successor Trustee. The Company agrees to take all necessary actions to permit and cause such transfer of the Special Preferred Share to such successor Trustee.

Section 7.08 *Successor Trustee by Merger*.

If the Trustee or Collateral Agent consolidates with, merges or converts into, or transfers all or substantially all its corporate trust business or assets to, another corporation or banking association, the resulting, surviving or transferee corporation or banking association without any further act shall be the successor Trustee or Collateral Agent.

In case at the time such successor or successors by merger, conversion or consolidation to the Trustee shall succeed to the trusts created by this Indenture, any of the Securities shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor trustee, and deliver such Securities so authenticated; and in case at that time any of the Securities shall not have been authenticated, any successor to the Trustee may authenticate such Securities either in the name of any predecessor hereunder or in the name of the successor to the Trustee; *provided* that the right to adopt the certificate of authentication of any predecessor Trustee or authenticate Securities in the name of any predecessor Trustee shall only apply to its successor or successors by merger, consolidation or conversion.

Section 7.09 *Eligibility; Disqualification*.

There will at all times be a Trustee hereunder that is a corporation organized and doing business under the laws of the United States of America or of any state thereof that is authorized under such laws to exercise corporate Trustee power, that is subject to supervision or examination by federal or state authorities and that has a combined capital and surplus of at least $50.0 million as set forth in its most recent published annual report of condition.

Section 7.10 *Preferential Collection of Claims Against Company*.

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

Section 7.11 *Special Preferred Share*.

The Trustee will hold one Special Preferred Share solely in its capacity as trustee for the Securities and for the benefit of the holders of the Securities. Any action taken by the Trustee

with respect to the Special Preferred Share will be in accordance with Section 3.14(b) of the Company's bylaws and subject to the rights of the Trustee set forth in Section 7.02 hereof. Each Holder of Securities, by its acceptance thereof authorizes and directs the Trustee to hold the Special Preferred Shares for the benefit of the Holders and to act (including with respect to the Special Preferred Shares) in accordance with the Series B Certificate of Designation and Section 3.14(b) of the Company's bylaws as in effect on the date hereof, and a copy of Section 3.14 of the bylaws is attached hereto as Exhibit L.

Section 7.12 *Limitation on Duty of Trustee in Respect of Collateral; Indemnification*.

Beyond the exercise of reasonable care in the custody thereof, neither the Trustee nor the Collateral Agent shall have any duty as to the Special Preferred Share or any Collateral in its possession or control or in the possession or control of any agent or bailee or any income thereon or as to preservation of rights against prior parties or any other rights pertaining thereto and neither the Trustee nor the Collateral Agent shall be responsible for filing any financing or continuation statements or recording any documents or instruments in any public office at any time or times or otherwise perfecting or maintaining the perfection of any security interest in the Collateral. Each of the Trustee and the Collateral Agent shall be deemed to have exercised reasonable care in the custody of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which it accords its own property and shall not be liable or responsible for any loss or diminution in the value of any of the Collateral, by reason of the act or omission of any carrier, forwarding agency or other agent or bailee selected by the Trustee or the Collateral Agent in good faith.

Neither the Trustee nor the Collateral Agent shall be responsible for the existence, genuineness or value of any of the Collateral or for the validity, perfection, priority or enforceability of the Liens in any of the Collateral, whether impaired by operation of law or by reason of any action or omission to act on its part hereunder, for the validity or sufficiency of the Collateral or any agreement or assignment contained therein, for the validity of the title of the Company to the Collateral, for insuring the Collateral or for the payment of taxes, charges, assessments or Liens upon the Collateral or otherwise as to the maintenance of the Collateral. Neither the Trustee nor the Collateral Agent shall have any duty to ascertain or inquire as to the performance or observance of any of the terms of this Indenture or the Pledge Agreement by the Company, the Guarantors or the Collateral Agent. The Trustee and the Collateral Agent may act and rely and shall be protected in acting and relying in good faith on the opinion or advice of or information obtained from any counsel, accountant, appraiser or other expert or adviser, whether retained or employed by the Issuer or by the Trustee or the Collateral Agent, in relation to any matter arising in the administration of this Indenture or the Pledge Agreement.

Article 8
LEGAL DEFEASANCE AND COVENANT DEFEASANCE; SATISFACTION AND DISCHARGE

Section 8.01 *Option to Effect Legal Defeasance or Covenant Defeasance.*

The Company may, at the option of its Board of Directors evidenced by a resolution set forth in an Officers' Certificate delivered to the Trustee, at any time, exercise its rights under

either Section 8.02 or 8.03 hereof with respect to all outstanding Securities upon compliance with the conditions set forth below in this Article 8.

Section 8.02 *Legal Defeasance and Discharge.*

Upon the Company's exercise under Section 8.01 hereof of the option applicable to this Section 8.02, the Company shall, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, be deemed to have discharged its obligations with respect to all outstanding Securities, and each Guarantor shall be deemed to have discharged its obligations with respect to its Guarantee, on the date the conditions set forth in Section 8.04 below are satisfied (hereinafter, "*Legal Defeasance*"). For this purpose, Legal Defeasance means that the Company shall be deemed to have paid and discharged the entire Indebtedness represented by the outstanding Securities, and each Guarantor shall be deemed to have paid and discharged its Guarantee (which in each case shall thereafter be deemed to be "outstanding" only for the purposes of Section 8.06 hereof and the other Sections of this Indenture referred to in (a) and (b) below) and to have satisfied all its other obligations under such Securities or Guarantee and this Indenture (and the Trustee, on demand of and at the expense of the Company, shall execute proper instruments acknowledging the same), except for the following provisions which shall survive until otherwise terminated or discharged hereunder: (a) the rights of Holders of outstanding Securities to receive solely from the trust fund described in Section 8.04 hereof, and as more fully set forth in such Section, payments in respect of the principal of, and premium, if any, and interest on, such Securities when such payments are due, (b) the Company's obligations with respect to such Securities under Sections 2.05, 2.06, 2.10, 2.12 and 4.02 hereof, (c) the rights, powers, trusts, duties and immunities of the Trustee hereunder and the Company's and any Guarantor's obligations in connection therewith and (d) this Article 8. Subject to compliance with this Article 8, the Company may exercise its option under this Section 8.02 notwithstanding the prior exercise of its option under Section 8.03 hereof.

Section 8.03 *Covenant Defeasance.*

Upon the Company's exercise under Section 8.01 hereof of the option applicable to this Section 8.03, the Company and each Guarantor shall, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, be released from their respective obligations under the covenants contained in Article 4 (other than those in Sections 4.01, 4.02, 4.03 and 4.07) on and after the date the conditions set forth below are satisfied (hereinafter, "*Covenant Defeasance*"), and the Securities shall thereafter be deemed not "outstanding" for the purposes of any direction, waiver, consent or declaration or act of Holders (and the consequences of any thereof) in connection with such covenants, but shall continue to be deemed "outstanding" for all other purposes hereunder. For this purpose, Covenant Defeasance means that, with respect to the outstanding Securities, the Company and any Guarantor may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document and such omission to comply shall not constitute a Default or an Event of Default under Section 6.01 hereof, but, except as specified above, the remainder of this Indenture and such Securities shall be unaffected thereby. In addition, upon the Company's exercise under Section 8.01 hereof of the option applicable to this Section 8.03 hereof, subject to the satisfaction of the conditions set forth in

Section 8.04 hereof, Sections 6.01(e), 6.01(f) and 6.01(g) hereof shall not constitute Events of Default.

Section 8.04 *Conditions to Legal or Covenant Defeasance.*

In order to exercise either Legal Defeasance or Covenant Defeasance:

(a) the Company must irrevocably deposit with the Trustee, in trust, for the benefit of the Holders, cash in dollars, non-callable U.S. Government Securities, or a combination thereof, in such amounts as will be sufficient (without consideration of any reinvestment of interest), in the opinion of a nationally recognized firm of independent public accountants, to pay the principal of, and premium, if any, and interest on, the outstanding Securities on the Stated Maturity thereof or on the applicable redemption date, as the case may be, and the Company must specify whether the Securities are being defeased to Stated Maturity or to a particular redemption date;

(b) in the case of an election under Section 8.02 hereof, the Company shall have delivered to the Trustee an Opinion of Counsel in the United States reasonably acceptable to the Trustee confirming that (A) the Company has received from, or there has been published by, the Internal Revenue Service a ruling or (B) since the Issue Date, there has been a change in the applicable U.S. federal income tax law, in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, the Holders of the outstanding Securities will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such Legal Defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred;

(c) in the case of an election under Section 8.03 hereof, the Company shall have delivered to the Trustee an Opinion of Counsel in the United States reasonably acceptable to the Trustee confirming that the Holders of the outstanding Securities will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such Covenant Defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;

(d) no Default or Event of Default shall have occurred and be continuing either (A) on the date of such deposit (other than a Default or Event of Default resulting from the incurrence of Indebtedness or the grant of Liens securing such Indebtedness, all or a portion of the proceeds of which will be used to defease the Securities pursuant to this Article 8 concurrently with such incurrence or within 30 days thereof) or (B) insofar as Events of Default described in Sections 6.01(i) and 6.01(j) are concerned, at any time in the period ending on the 91st day after the date of such deposit;

(e) such Legal Defeasance or Covenant Defeasance shall not result in a breach or violation of, or constitute a default under, any material agreement or instrument (other than this Indenture) to which the Company or any of its Guarantors is a party or by which the Company or any of its Guarantors is bound;

(f) the Company shall have delivered to the Trustee an Officers' Certificate stating that the deposit was not made by the Company with the intent of preferring the Holders over any other creditors of the Company or with the intent of defeating, hindering, delaying or defrauding creditors of the Company or others; and

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

Concurrently with the satisfaction of the conditions set forth in this Section 8.04, any Liens securing the Securities that were created pursuant to the requirements of Section 4.14 hereof shall terminate and be released, and the Trustee, on demand and at the expense of the Company, shall execute proper instruments acknowledging such release.

Section 8.05 *Satisfaction and Discharge.*

When (1) the Company shall deliver to the Registrar for cancellation all Securities theretofore authenticated (other than any Securities which have been mutilated, destroyed, lost or wrongfully taken and in lieu of or in substitution for which other Securities shall have been authenticated and delivered) and not theretofore canceled, or (2) all the Securities not theretofore canceled or delivered to the Registrar for cancellation shall have (a) been converted in accordance with the terms hereof or (b) become due and payable on the Stated Maturity, Change of Control Purchase Date or the Redemption Date, as applicable, and the Company shall deposit with the Trustee cash and shares of Common Stock, as applicable, sufficient to pay all amounts (without consideration of any reinvestment of interest) owing in respect of all Securities (other than any Securities which shall have been mutilated, destroyed, lost or wrongfully taken and in lieu of or in substitution for which other Securities shall have been authenticated and delivered) not theretofore canceled or delivered to the Registrar for cancellation, including the principal amount and interest accrued and unpaid to (but excluding) such Stated Maturity, Change of Control Purchase Date or Redemption Date, as the case may be, and if in either case (1) or (2) the Company shall also pay or cause to be paid all other sums payable hereunder by the Company, then this Indenture with respect to the Securities shall cease to be of further effect (except as to (i) remaining rights of registration of transfer, substitution and exchange and conversion of Securities; (ii) rights hereunder of Holders to receive from the Trustee payments of the amounts then due, including interest, if any, with respect to the Securities and the other rights, duties and obligations of Holders, as beneficiaries hereof solely with respect to the amounts, if any, so deposited with the Trustee; and (iii) the rights, obligations and immunities of the Trustee, Collateral Agent, Authenticating Agent, Paying Agent and Registrar under this Indenture with respect to the Securities), and the Trustee, on demand of the Company accompanied by an Officers' Certificate and an Opinion of Counsel as required by Section 8.03 and at the cost and expense of the Company, shall execute proper instruments acknowledging satisfaction of and discharging this Indenture with respect to the Securities; however, the Company hereby agrees to reimburse the Trustee, Authenticating Agent, Paying Agent and Registrar for any costs or expenses thereafter reasonably and properly incurred by the Trustee, Authenticating Agent, Paying Agent and Registrar and to compensate the Trustee, Authenticating Agent, Paying Agent and Registrar for any services thereafter reasonably and

properly rendered by the Trustee, Authenticating Agent, Paying Agent and Registrar in connection with this Indenture with respect to the Securities.

Section 8.06 *Deposited Money and U.S. Government Securities to be Held in Trust; Other Miscellaneous Provisions.*

Subject to Section 8.07 hereof, all money and U.S. Government Securities (including the proceeds thereof) deposited with the Trustee pursuant to Section 8.04 or 8.05 hereof in respect of the outstanding Securities shall be (i) held in trust and (ii) applied by the Trustee, in accordance with the provisions of such Securities and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as Paying Agent) as the Trustee may determine, to the Holders of such Securities of all sums due and to become due thereon in respect of principal, premium, if any, and interest, but such money need not be segregated from other funds except to the extent required by law.

The Company shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the cash or U.S. Government Securities deposited pursuant to Section 8.04 or 8.05 hereof or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of the outstanding Securities.

Anything in this Article 8 to the contrary notwithstanding, the Trustee shall deliver or pay to the Company from time to time upon the request of the Company any money or government securities held by it as provided in Section 8.04 or 8.05 hereof which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee (which in the former case may be the opinion delivered under Section 8.04(a) hereof), are in excess of the amount thereof that would then be required to be deposited to effect an equivalent Legal Defeasance or Covenant Defeasance.

Section 8.07 *Repayment to Company.*

Subject to applicable escheat and abandoned property laws, any money or U.S. Government Securities deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of, or premium, if any, or interest on, any Security and remaining unclaimed for two years after such principal, premium, if any, or interest has become due and payable shall be paid to the Company or (if then held by the Company) shall be discharged from such trust; and the Holder of such Security shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money or U.S. Government Securities, and all liability of the Company as trustee thereof, shall thereupon cease.

Nothing contained in this Section 8.07 shall be deemed to affect any obligation of the Trustee or any Paying Agent to search for lost Holders pursuant to Rule 17Ad-17 under the Exchange Act.

Section 8.08 *Reinstatement.*

If the Trustee or a Paying Agent is unable to apply any dollars or U.S. Government Securities in accordance with Section 8.05 or 8.06 hereof, by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Company's and the Guarantors' obligations under this Indenture, the Securities and the Guarantees shall be revived and reinstated as though no deposit had occurred pursuant to Section 8.02, 8.03 or 8.05 hereof until such time as the Trustee or such Paying Agent is permitted to apply all such money in accordance with Section 8.05 or 8.06 hereof, as the case may be; *provided*, *however*, that, if the Company or any Guarantor makes any payment of principal of, or premium, if any, or interest on, any Security following the reinstatement of its obligations, then it shall be subrogated to the rights of the Holders of such Securities to receive such payment from the money or U.S. Government Securities held by the Trustee or such Paying Agent.

Section 8.09 *Officers' Certificate; Opinion of Counsel*. Upon any application or demand by the Company to the Trustee to take any action under Article 8, the Company shall furnish to the Trustee an Officers' Certificate or Opinion of Counsel stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with.

Article 9
AMENDMENTS

Section 9.01 *Without Consent of Holders*.

The Company, the Guarantors, the Trustee and the Collateral Agent may amend this Indenture, the Securities and the Guarantees without notice to or consent of any Holder:

(a) to cure any ambiguity, omission, defect or inconsistency in this Indenture in a manner that does not individually or in the aggregate adversely affect the rights of any Holder of Securities in any respect;

(b) to comply with Article 5 or Section 12.04 in respect of the assumption by a Successor Company of an obligation of the Company under this Indenture or any successor Guarantor under any Guarantee;

(c) to add Guarantors with respect to the Securities or release Guarantors from Guarantees as provided or permitted by the terms of this Indenture;

(d) to secure the Securities;

(e) to add to the covenants of the Company for the benefit of the Holders or to surrender any right or power herein conferred upon the Company;

(f) to comply with any requirement of the SEC in connection with the qualification of this Indenture under the TIA;

(g) to provide for the acceptance of appointment by a successor Trustee, Collateral Agent or Paying Agent or facilitate the administration of the trusts under this Indenture by more than one Trustee, Collateral Agent or Paying Agent;

(h) to add to any Events of Default for the benefit of Holders of Securities;

(i) [Reserved];

(j) to make any change that does not materially adversely affect the rights of any Holder;

(k) to enter into additional or supplemental Pledge Agreements or similar security agreements to provide additional Collateral to secure the Securities or an intercreditor agreement with respect thereto; or

(l) to make, complete or confirm any grant of Collateral permitted or required by this Indenture or the Pledge Agreement.

After an amendment under this Section 9.01 becomes effective, the Company shall mail to Holders a notice briefly describing such amendment. The failure to give such notice to all Holders, or any defect therein, shall not impair or affect the validity of an amendment under this Section 9.01.

Section 9.02 *With Consent of Holders.*

Except as provided below in this Section 9.02, the Company, the Guarantors, the Trustee and the Collateral Agent may amend or supplement this Indenture, the Securities, the Guarantees or the Pledge Agreement with the consent of the Holders of at least a majority in principal amount of the Securities then outstanding voting as a single class (including, without limitation, consents obtained in connection with a tender offer or exchange offer for, or purchase of, the Securities), and, subject to Sections 6.05 and 6.08 hereof, any existing Default or Event of Default (other than a Default or Event of Default in the payment of the principal of, premium, if any, or interest on the Securities, except a payment default resulting from an acceleration that has been rescinded) or compliance with any provision of this Indenture, the Securities, the Guarantees and the Pledge Agreement may be waived with the consent of the Holders of a majority in aggregate principal amount of the then outstanding Securities voting as a single class (including consents obtained in connection with a tender offer or exchange offer for, or purchase of, the Securities); *provided* that, any amendment or supplement to the definition of "Unrestricted Subsidiary" as provided herein will require the consent of the Holders of at least 66 2/3% in principal amount of the Securities and the New Senior Notes then outstanding voting as a single class and *provided*, *further*, for the avoidance of doubt, that no amendment or waiver may be made that has the effect of releasing all or substantially all of the Collateral from, or resulting in an effective subordination[4] of, the Liens securing the Securities except pursuant to

[4] NTD: To be updated as needed to provide that a 90% vote is required for any amendment to the Indenture resulting in the pledged equity being subject to a priority Lien.

the last paragraph of this Section 9.02. Section 2.12 and Section 2.13 hereof shall determine which Securities are considered to be "outstanding" for the purposes of this Section 9.02.

Sections 6.03(b) and (c) may not be amended without the consent of the majority of the New Notes voting as a single class.

It shall not be necessary for the consent of the Holders of Securities under this Section 9.02 to approve the particular form of any proposed amendment, supplement or waiver. It shall be sufficient if such consent approves the substance of the proposed amendment or supplement. A consent to any amendment, supplement or waiver under this Indenture by any Holder given in connection with a tender of such Holder's Securities will not be rendered invalid by such tender.

After an amendment, supplement or waiver under this Section 9.02 becomes effective, the Company shall send to the Holders of Securities affected thereby a notice briefly describing the amendment, supplement or waiver. The failure to give such notice to all the Holders, or any defect in the notice will not impair or affect the validity of any such amendment, supplement or waiver. Furthermore, by its acceptance of the Securities, each Holder of Securities is deemed to have consented to the terms of the Pledge Agreement and to have authorized and directed the Trustee to execute, deliver and perform the Pledge Agreement, binding the Holders to the terms thereof.

Without the consent of each affected Holder of Securities, an amendment or waiver under this Section 9.02 may not (with respect to any Securities held by a non-consenting Holder):

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

(2) reduce the principal of or change the fixed final maturity of any such Securities or alter or waive the provisions with respect to the redemption of such Securities (other than provisions relating to Section 4.12, Section 10.01 and Section 10.02 hereof to the extent that any such amendment or waiver does not have the effect of reducing the principal of or changing the fixed final maturity of any such Securities or altering or waiving the provisions with respect to the redemption of such Securities);

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

(4) waive a Default in the payment of principal of or premium, if any, or interest on the Securities, except a rescission of acceleration of the Securities by the Holders of at least a majority in aggregate principal amount of the Securities and a waiver of the payment default that resulted from such acceleration, or in respect of a covenant or provision contained in this Indenture or any Guarantee which cannot be amended or modified without the consent of all Holders;

(5) make any Securities payable in money other than that stated therein;

(6) make any change in the provisions of this Indenture relating to waivers of past Defaults or the rights of Holders to receive payments of principal of or premium, if any, or interest on the Securities;

(7) make any change in these amendment and waiver provisions;

(8) impair the right of any Holder to institute suit for the enforcement of any payment of principal of, or interest on such Holder's Securities on or after the due dates therefor;

(9) make any change to or modify the ranking of the Securities that would adversely affect the Holders;

(10) except as expressly permitted by this Indenture, modify or release the Guarantees in any manner materially adverse to the Holders of the Securities; and

(11) (A) make any change in any Pledge Agreement, release of Guarantors or the provisions in this Indenture dealing with Guarantors, Collateral or application of trust proceeds of the Collateral with the effect of releasing the Liens on all or substantially all of the collateral which secure the obligations in respect of the Securities (including any amendments to Section 13.04) or (B) change or alter the priority of the Liens securing the obligations in respect of the Securities in any material portion of the Collateral in any way materially adverse, taken as a whole, to the Holders, other than, in each case, as provided under the terms of this Indenture or the Pledge Agreement.

Notwithstanding the foregoing, without the consent of the Holders of 90% in aggregate principal amount of the Securities then outstanding, no amendment or waiver may be made that has the effect of releasing all or substantially all of the Collateral from, or resulting in an effective subordination[5] of, the Liens securing the Securities.

Section 9.03 *Revocation and Effect of Consents and Waivers*.

A consent to an amendment or a waiver by a Holder of a Security shall bind the Holder and every subsequent Holder of that Security or portion of the Security that evidences the same debt as the consenting Holder's Security, even if notation of the consent or waiver is not made on the Security. However, any such Holder or subsequent Holder may revoke the consent or waiver as to such Holder's Security or portion of the Security if the Trustee receives the notice of revocation before the date the amendment or waiver becomes effective or otherwise in accordance with any related solicitation documents. After an amendment or waiver becomes effective, it shall bind every Holder. An amendment or waiver shall become effective upon receipt by the Trustee of the requisite number of written or electronic consents under Section 9.01 or 9.02, as applicable.

The Company may, but shall not be obligated to, fix a record date for the purpose of determining the Holders entitled to give their consent or take any other action described above or

[5] NTD: To be updated as needed to provide that a 90% vote is required for any amendment to the Indenture resulting in the pledged equity being subject to a priority Lien.

required or permitted to be taken pursuant to this Indenture. If a record date is fixed, then notwithstanding the immediately preceding paragraph, those Persons who were Holders at such record date (or their duly designated proxies), and only those Persons, shall be entitled to give such consent or to revoke any consent previously given or to take any such action, whether or not such Persons continue to be Holders after such record date. No such consent shall become valid or effective more than 120 days after such record date.

Section 9.04 *Notation on or Exchange of Securities*.

If an amendment changes the terms of a Security, the Company may require the Holder of the Security to deliver it to the Trustee. The Trustee may place an appropriate notation on the Security regarding the changed terms and return it to the Holder. Alternatively, if the Company or the Trustee so determines, the Company in exchange for the Security shall issue and the Trustee shall authenticate a new Security that reflects the changed terms. Failure to make the appropriate notation or to issue a new Security shall not affect the validity of such amendment.

Section 9.05 *Trustee to Sign Amendments*.

The Trustee and the Collateral Agent shall sign any amendment authorized pursuant to this Article 9 if the amendment does not adversely affect the rights, duties, liabilities or immunities of the Trustee or Collateral Agent. If it does, the Trustee and Collateral Agent may but need not sign it. In signing such amendment the Trustee and Collateral Agent shall receive and (subject to Sections 7.01 and 7.02) shall be fully protected in relying upon an Officers' Certificate and an Opinion of Counsel stating (i) that such amendment is authorized or permitted by this Indenture and (ii) that such amendment is the valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, which opinion may contain customary exceptions and qualifications.

Article 10
PURCHASE AT THE OPTION OF HOLDERS UPON A CHANGE OF CONTROL

Section 10.01 *Purchase at the Option of the Holder Upon a Change of Control*.

If a Change of Control shall occur at any time, each Holder shall have the right, at such Holder's option, to require the Company to purchase any or all of such Holder's Securities on a date specified by the Company that is no later than the 35th calendar day after the date of the Company Notice of the occurrence of such Change of Control (subject to extension to comply with applicable law, as provided in Section 10.02(d) (the "**Change of Control Purchase Date**")). The Company shall purchase such Securities at a price (the "**Change of Control Purchase Price**"), which shall be paid in cash, equal to 100% of the principal amount of the Securities to be purchased plus accrued and unpaid interest to but excluding the Change of Control Purchase Date, unless the Change of Control Purchase Date is between a Regular Record Date and the Interest Payment Date to which it relates, in which case the Change of Control Purchase Price shall equal 101% of the principal amount of Securities to be purchased and accrued and unpaid interest shall be paid to the Holder of record on the Regular Record Date.

(a) *Notice of Change of Control*. The Company, or at its request (which must be received by the Paying Agent at least three Business Days (or such lesser period as agreed to by

the Paying Agent) prior to the date the Paying Agent is requested to give such notice as described below) the Paying Agent, in the name of and at the expense of the Company, shall mail to all Holders and the Trustee a Company Notice of the occurrence of a Change of Control and of the purchase right arising as a result thereof, including the information required by Section 10.02(a) hereof, on or before the 20th calendar day after the occurrence of such Change of Control. The Company shall promptly furnish to the Paying Agent a copy of such Company Notice.

(b) *Exercise of Option*. For a Security to be so purchased at the option of the Holder, such Holder must deliver to the Paying Agent such Security duly endorsed for transfer, together with a written notice of purchase (a "**Change of Control Purchase Notice**") in the form entitled "Option of Holder to Elect Purchase" attached to the Security duly completed, on or before the Business Day immediately preceding the Change of Control Purchase Date, subject to extension to comply with applicable law. The Change of Control Purchase Notice shall state:

(i) if certificated, the certificate numbers of the Securities which the Holder shall deliver to be purchased, or if not certificated, such notice must comply with appropriate DTC procedures;

(ii) the portion of the principal amount of the Securities which the Holder shall deliver to be purchased, which portion must be $1.00 in principal amount or a multiple thereof; and

(iii) that such Securities shall be purchased as of the Change of Control Purchase Date pursuant to the terms and conditions specified in paragraph 4 of the Securities and in this Indenture.

(c) *Procedures*. The Company shall purchase from a Holder, pursuant to this Section 10.01, Securities if the principal amount of such Securities is $1.00 or a multiple of $1.00 if so requested by such Holder.

Any purchase by the Company contemplated pursuant to the provisions of this Section 10.01 shall be consummated by the delivery of the Change of Control Purchase Price to be received by the Holder promptly following the later of the Change of Control Purchase Date or the time of book-entry transfer or delivery of the Securities.

Notwithstanding anything herein to the contrary, any Holder delivering to the Paying Agent the Change of Control Purchase Notice contemplated by this Section 10.01 shall have the right at any time prior to the close of business on the Business Day prior to the Change of Control Purchase Date to withdraw such Change of Control Purchase Notice (in whole or in part) by delivery of a written notice of withdrawal to the Paying Agent in accordance with Section 10.02.(b).

The Paying Agent shall promptly notify the Company of the receipt by it of any Change of Control Purchase Notice or written notice of withdrawal thereof.

At or before 11:00 a.m. (New York City time) on the Change of Control Purchase Date, the Company shall deposit with the Paying Agent (or if the Company or an Affiliate of the

Company is acting as the Paying Agent, shall segregate and hold in trust) cash sufficient to pay the aggregate Change of Control Purchase Price of the Securities to be purchased pursuant to this Section 10.01. Payment by the Paying Agent of the Change of Control Purchase Price for such Securities shall be made promptly following the later of the Change of Control Purchase Date or the time of book-entry transfer or delivery of such Securities. If the Paying Agent holds, in accordance with the terms of this Indenture, cash sufficient to pay the Change of Control Purchase Price of such Securities on the Change of Control Purchase Date, then, on and after such date, such Securities shall cease to be outstanding and interest, on such Securities shall cease to accrue, whether or not book-entry transfer of such Securities is made or such Securities are delivered to the Paying Agent, and all other rights of the Holder shall terminate (other than the right to receive the Change of Control Purchase Price and previously accrued and unpaid interest upon delivery or transfer of the Securities). Nothing herein shall preclude any withholding tax required by law.

The Company shall require each Paying Agent (other than the Trustee) to agree in writing that the Paying Agent shall hold in trust for the benefit of Holders or the Trustee all cash held by the Paying Agent for the payment of the Change of Control Purchase Price and shall notify the Trustee of any default by the Company in making any such payment. If the Company or an Affiliate of the Company acts as Paying Agent, it shall segregate the cash held by it as Paying Agent and hold it as a separate trust fund. The Company at any time may require a Paying Agent to deliver all cash held by it to the Trustee and to account for any funds disbursed by the Paying Agent. Upon doing so, the Paying Agent shall have no further liability for the cash delivered to the Trustee.

Section 10.02 *Further Conditions and Procedures for Purchase at the Option of the Holder Upon a Change of Control.*

(a) *Notice of Purchase Date or Change of Control*. The Company shall send notices (each, a "**Company Notice**") to the Holders, the Trustee, the Paying Agent and beneficial owners as required by applicable law, on or before the 20th calendar day after the occurrence of the Change of Control (each such date of delivery, a "**Company Notice Date**"). Each Company Notice shall include a form of Change of Control Purchase Notice, to be completed by a Holder and shall state:

(i) the applicable Change of Control Purchase Price;

(ii) the applicable Change of Control Purchase Date and the last date on which a Holder may exercise its repurchase rights under Section 10.01;

(iii) the name and address of the Paying Agent;

(iv) that Securities must be surrendered to the Paying Agent to collect payment of the Change of Control Purchase Price;

(v) that the Change of Control Purchase Price for any Securities as to which a form entitled "Option of Holder to Elect Purchase" on the reverse of the Securities has been given and not withdrawn shall be paid by the Paying Agent promptly following the

later of the Change of Control Purchase Date or the time of book-entry transfer or delivery of such Securities;

(vi) the procedures the Holder must follow under Section 10.01 and this Section 10.02;

(vii) that, unless the Company defaults in making payment of such Change of Control Purchase Price on Securities covered by any Change of Control Purchase Notice, as applicable, interest will cease to accrue on and after the Change of Control Purchase Date;

(viii) the CUSIP or ISIN number of the Securities;

(ix) the procedures for withdrawing a Change of Control Purchase Notice; and

(x) the events causing a Change of Control and the effective date of the Change of Control.

At the Company's request, made at least five Business Days prior to the date upon which such notice is to be mailed, and at the Company's expense, the Paying Agent shall give the Company Notice in the Company's name; *provided*, *however*, that, in all cases, the text of the Company Notice shall be prepared by the Company.

(b) *Adequacy and Effect of Change of Control Purchase Notice; Withdrawal; Effect of Event of Default*. The Company shall reasonably determine whether the Change of Control Purchase Notice delivered by the relevant Holders satisfies the conditions set out in Section 10.01(b) and this Section 10.02 for such notices. The Company's determination under this Section 10.02(b) will be binding and conclusive, absent manifest error.

Upon receipt by the Company of the Change of Control Purchase Notice specified in Section 10.01(b), the Holder of the Securities in respect of which such Change of Control Purchase Notice was given shall (unless such Change of Control Purchase Notice is withdrawn as specified in the following two paragraphs) thereafter be entitled to receive solely the Change of Control Purchase Price with respect to such Securities. Such Change of Control Purchase Price shall be paid by the Paying Agent to such Holder promptly following the later of (x) the Change of Control Purchase Date with respect to such Securities (*provided* the conditions in this Article 10 have been satisfied) and (y) the time of delivery or book-entry transfer of such Securities to the Paying Agent by the Holder thereof in the manner required by Section 10.01.

A Change of Control Purchase Notice may be withdrawn by means of a written notice of withdrawal delivered to the office of the Paying Agent at any time prior to 5:00 p.m., New York City time, on the Business Day prior to the Change of Control Purchase Date to which it relates, specifying:

(i) the principal amount of the Securities with respect to which such notice of withdrawal is being submitted;

(ii) if certificated, the certificate number of the Securities in respect of which such notice of withdrawal is being submitted, or, if not certificated, the written notice of withdrawal must comply with appropriate DTC procedures; and

(iii) the principal amount, if any, of such Securities which remains subject to the original Change of Control Purchase Notice and which has been or shall be delivered for purchase by the Company.

There shall be no purchase of any Securities pursuant to Section 10.01 if an Event of Default has occurred and is continuing (other than a default that is cured by the payment of the Change of Control Purchase Price). The Paying Agent shall promptly return to the respective Holders thereof any Securities (x) with respect to which a Change of Control Purchase Notice has been withdrawn in compliance with this Indenture, or (y) held by it during the continuance of an Event of Default (other than a default that is cured by the payment of the Change of Control Purchase Price) in which case, upon such return, the Change of Control Purchase Notice with respect thereto shall be deemed to have been withdrawn.

(c) *Securities Purchased in Part*. Any Securities that are to be purchased only in part shall be surrendered at the office of the Paying Agent (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or such Holder's attorney duly authorized in writing) and the Company shall execute and the Trustee or the Authenticating Agent shall authenticate and deliver to the Holder of such Securities, without service charge, a new Security or Securities, of any authorized denomination as requested by such Holder in aggregate principal amount equal to, and in exchange for, the portion of the principal amount of the Securities so surrendered which is not purchased.

(d) *Covenant to Comply with Securities Laws Upon Purchase of Securities*. In connection with any offer to purchase Securities under Section 10.01, the Company shall, to the extent applicable, (a) comply with Rules 13e-4 and 14e-1 (and any successor provisions thereto) under the Exchange Act, if applicable; (b) file the related Schedule TO (or any successor schedule, form or report) under the Exchange Act, if applicable; and (c) otherwise comply with all applicable federal and state securities laws so as to permit the rights and obligations under Section 10.01 to be exercised in the time and in the manner specified in Section 10.01.

(e) *Repayment to the Company*. Subject to applicable abandoned property laws, the Trustee and the Paying Agent shall return to the Company any cash or property that remains unclaimed, as provided in paragraph 8 of the Securities, together with interest that the Trustee or Paying Agent, as the case may be, has expressly agreed in writing to pay, if any, that is held by them for the payment of a Change of Control Purchase Price; *provided*, *however*, that to the extent that the aggregate amount of cash or property deposited by the Company pursuant to Section 10.01(c) exceeds the aggregate Change of Control Purchase Price of the Securities or portions thereof which the Company is obligated to purchase as of the Change of Control Purchase Date, then promptly on and after the Business Day following the Change of Control Purchase Date, the Trustee and the Paying Agent shall return any such excess to the Company together with interest that the Trustee or Paying Agent, as the case may be, has expressly agreed in writing to pay, if any.

(f) *Officers' Certificate*. At least five Business Days before the Company Notice Date, the Company shall deliver an Officers' Certificate to the Trustee specifying whether the Company desires the Trustee to give the Company Notice required by Section 10.02(a) herein.

Article 11
[RESERVED]

Article 12
GUARANTEES

Section 12.01 *Guarantee*.

(a) Subject to this Article 12, each of the Guarantors hereby, jointly and severally, unconditionally guarantees (a "**Guarantee**") to each Holder of a Security authenticated and delivered by the Trustee and to the Trustee and to the Collateral Agent and their successors and assigns, irrespective of the validity and enforceability of this Indenture, the Securities or the obligations of the Company hereunder or thereunder, that:

(i) the principal of and interest on the Securities will be promptly paid in full when due, whether at Stated Maturity, by acceleration, required repurchase or otherwise, and interest on the overdue principal of and interest on the Securities, if any, if lawful, and all other obligations of the Company to the Holders, the Trustee or the Collateral Agent hereunder or thereunder will be promptly paid in full, all in accordance with the terms hereof and thereof; and

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

Failing payment when due of any amount so guaranteed, for whatever reason, the Guarantors will be jointly and severally obligated to pay the same immediately. Each Guarantor agrees that this is a guarantee of payment and not a guarantee of collection.

(b) The Guarantors hereby agree that their obligations hereunder are unconditional, irrespective of the validity, regularity or enforceability of the Securities or this Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder of the Securities with respect to any provisions hereof or thereof; the recovery of any judgment against the Company, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a Guarantor. Each Guarantor hereby waives diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of the Company, any right to require a proceeding first against the Company, protest, notice and all demands whatsoever and covenant that this Guarantee will not be discharged except by complete performance of the obligations contained in the Securities and this Indenture.

(c) If any Holder, the Trustee or the Collateral Agent is required by any court or otherwise to return to the Company, the Guarantors or any custodian, trustee, liquidator or other

similar official acting in relation to either the Company or the Guarantors, any amount paid either to the Trustee, the Collateral Agent or such Holder, this Guarantee, to the extent theretofore discharged, will be reinstated in full force and effect.

(d) Each Guarantor agrees that it will not be entitled to any right of subrogation in relation to the Holders in respect of any obligations guaranteed hereby until payment in full of all obligations guaranteed hereby. Each Guarantor further agrees that, as between the Guarantors, on the one hand, and the Holders, the Trustee and the Collateral Agent, on the other hand, (1) the maturity of the obligations guaranteed hereby may be accelerated as provided in Article 6 hereof for the purposes of this Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (2) in the event of any declaration of acceleration of such obligations as provided in Article 6 hereof, such obligations (whether or not due and payable) will forthwith become due and payable by the Guarantors for the purpose of this Guarantee. The Guarantors will have the right to seek contribution from any non-paying Guarantor so long as the exercise of such right does not impair the rights of the Holders under the Guarantee.

Section 12.02 *Limitation on Guarantor Liability*.

Each Guarantor, and by its acceptance of Securities, each Holder, hereby confirms that it is the intention of all such parties that the Guarantee of such Guarantor not constitute a fraudulent transfer or conveyance for purposes of the Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state law to the extent applicable to any Guarantee. To effectuate the foregoing intention, the Trustee, the Holders and the Guarantors hereby irrevocably agree that the obligations of such Guarantor will be limited to the maximum amount that will, after giving effect to such maximum amount and all other contingent and fixed liabilities of such Guarantor that are relevant under such laws, and after giving effect to any collections from, rights to receive contribution from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under this Article 12, result in the obligations of such Guarantor under its Guarantee not constituting a fraudulent transfer or conveyance.

Section 12.03 *Execution and Delivery of Guarantee*.

To evidence its Guarantee set forth in Section 12.01 hereof, each Guarantor hereby agrees that a notation of such Guarantee substantially in the form attached as Exhibit D hereto will be endorsed by an Officer of such Guarantor on each Security authenticated and delivered by the Trustee and that either this Indenture or a supplemental indenture substantially in the form attached as Exhibit E will be executed on behalf of such Guarantor by one of its Officers.

Each Guarantor hereby agrees that its Guarantee set forth in Section 12.01 hereof will remain in full force and effect notwithstanding any failure to endorse on each Security a notation of such Guarantee.

If an Officer whose signature is on this Indenture or on the Guarantee no longer holds that office at the time the Trustee authenticates the Security on which a notation of Guarantee is endorsed, the Guarantee will be valid nevertheless.

The delivery of any Security by the Trustee, after the authentication thereof hereunder, will constitute due delivery of the Guarantee set forth in this Indenture on behalf of the Guarantors.

In the event that any of the Company's Subsidiaries (including a Foreign Subsidiary) that is not already a Guarantor guarantees any indebtedness of the Company or a Domestic Subsidiary after the date of this Indenture, the Company will cause such Subsidiary to comply with the provisions of Section 4.10 hereof and this Article 12, to the extent applicable.

Section 12.04 *Guarantors May Not Consolidate, Etc., Except on Certain Terms*.

No Guarantor may sell or otherwise dispose of all or substantially all of its assets to, or consolidate with or merge with or into (whether or not such Guarantor is the surviving Person) (i) another Person or (ii) the Company or another Guarantor, unless, in the case of this clause (ii), (a) immediately after giving effect to such transaction, no Default or Event of Default exists, (b) in the case of such consolidation, merger, sale or disposition by the Company, the conditions in Section 5.01 are satisfied, and, unless such Guarantor's Guarantee is subject to release under Section 12.05, (c) the Person acquiring the assets in any such sale or disposition or the Person formed by or surviving any such consolidation or merger assumes all the obligations of that Guarantor under this Indenture and its Guarantee pursuant to a supplemental indenture in form and substance reasonably satisfactory to the Trustee, on the terms set forth herein or therein.

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

Section 12.05 *Releases*. Each Guarantor shall be released:

(a) in connection with any sale of all the Capital Stock of the relevant Guarantor, in accordance with the provisions of this Indenture; or

(b) upon satisfaction and discharge of this Indenture in accordance with Section 8.01.

At the Company's request and expense, the Trustee shall promptly execute and deliver an appropriate instrument evidencing such release upon receipt of a request by the Company accompanied by an Officers' Certificate certifying as to the compliance with this Section 12.05. Any Guarantor not released from its obligations under its Guarantee as provided in this Section 12.05 will remain liable for the full amount of principal of, premium, if any, and interest on the

Securities and for the other obligations of any Guarantor under this Indenture as provided in this Article 12.

Article 13
COLLATERAL AND SECURITY

Section 13.01 *Pledge Agreement*.

The due and punctual payment of the principal of and interest, if any, on the Securities when and as the same shall be due and payable, whether on an interest payment date, at maturity, by acceleration, repurchase, redemption or otherwise, and interest on the overdue principal of and interest (to the extent permitted by law), if any, on the Securities and performance of all other obligations of the Company and any Restricted Subsidiaries of the Company to the Holders or the Trustee under this Indenture and the Securities, according to the terms hereunder and thereunder, are secured as provided in the Pledge Agreement which the Company and the Collateral Agent have entered into simultaneously with the execution of this Indenture. Each Holder of Securities, by its acceptance thereof, consents and agrees to the terms of the Pledge Agreement (including, without limitation, the provisions providing for foreclosure and release of Collateral and the non-recourse nature of the Pledge Agreement) as the same may be in effect or may be amended from time to time in accordance with its terms and authorizes and directs the Collateral Agent to enter into the Pledge Agreement and to perform its obligations and exercise its rights thereunder in accordance therewith. The Company and any applicable Subsidiaries of the Company will deliver to the Trustee and Collateral Agent copies of all documents delivered to the Collateral Agent pursuant to the Pledge Agreement, and will do or cause to be done all such acts and things as may be necessary or proper, or as may be required by the provisions of the Pledge Agreement, to assure and confirm to the Trustee and the Collateral Agent the security interest in the Collateral contemplated hereby, by the Pledge Agreement or any part thereof, as from time to time constituted, so as to render the same available for the security and benefit of this Indenture and of the Securities secured hereby, according to the intent and purposes herein expressed. The Company and any applicable Subsidiaries of the Company will take or cause to be taken, upon the reasonable request of the Trustee or Collateral Agent, any and all actions reasonably required to cause the Pledge Agreement to create and maintain, as security for the payment obligations of the Company and any Subsidiaries of the Company and any guarantors hereunder, a valid and enforceable perfected first priority Lien in and on all the Collateral, in favor of the Collateral Agent for the benefit of the Holders, superior to and prior to the rights of all third Persons and subject to no other Liens than Permitted Liens and Liens permitted pursuant to the terms of the Pledge Agreement.

Section 13.02 [Reserved].

Section 13.03 *Recording and Opinions*.

(a) The Company will furnish to the Trustee simultaneously with the execution and delivery of this Indenture an Opinion of Counsel either:

(i) stating that, in the opinion of such counsel, all action has been taken with respect to the recording, registering and filing of this Indenture, financing statements or

other instruments necessary to make effective the Lien intended to be created by the Pledge Agreement, and reciting with respect to the security interests in the Collateral, the details of such action; or

(ii) stating that, in the opinion of such counsel, no such action is necessary to make such Lien effective.

(b) The Company will furnish to the Collateral Agent and the Trustee on January 1 in each year beginning with January 1, 2021, an Opinion of Counsel, dated as of such date, either:

(i) (A) stating that, in the opinion of such counsel, all action has been taken with respect to the recording, registering, filing, re-recording, re-registering and re-filing of all supplemental indentures, financing statements, continuation statements or other instruments of further assurance as is necessary to maintain the Lien of the Pledge Agreement and reciting with respect to the security interests in the Collateral the details of such action or referring to prior Opinions of Counsel in which such details are given, and (B) stating that, in the opinion of such counsel, based on relevant laws as in effect on the date of such Opinion of Counsel, all financing statements and continuation statements have been executed and filed that are necessary as of such date and during the succeeding 12 months fully to preserve and protect, to the extent such protection and preservation are possible by filing, the rights of the Holders and the Collateral Agent and the Trustee hereunder and under the Pledge Agreement with respect to the security interests in the Collateral; or

(ii) stating that, in the opinion of such counsel, no such action is necessary to maintain such Lien and assignment.

(c) The Company will otherwise comply with the provisions of TIA § 314(b).

Section 13.04 *Release of Collateral*.

(a) Upon the full and final payment in cash of all obligations of the Company under this Indenture and the Securities, the Liens granted to secure the payment obligations of the Company and the Guarantors under this Indenture and the Securities will be released. Subject to paragraphs (b), (c) and (d) of this Section 13.04, Collateral may be released from the Lien and security interest created by the Pledge Agreement at any time or from time to time in accordance with the provisions of the Pledge Agreement, as provided hereby. In addition, upon the request of the Company pursuant to an Officers' Certificate certifying that all conditions precedent hereunder have been met and stating whether or not such release is in connection with a sale, transfer, disbursement or other disposition and (at the sole cost and expense of the Company) the Collateral Agent will release from the Lien created by this Indenture and the Pledge Agreement: (1) Collateral that is sold, transferred, disbursed or otherwise disposed of in compliance with the provisions of this Indenture and the Pledge Agreement; *provided* any products or proceeds received by any pledger under the Pledge Agreement in respect of the Collateral so sold, transferred, disbursed or otherwise disposed of shall continue to constitute Collateral; (2) Collateral that is released with the consent of the holders of at least 90% of the aggregate principal amount of the outstanding Securities as provided in this Indenture; and (3) all Collateral

upon a Legal Defeasance or Covenant Defeasance of the Securities pursuant to this Indenture or discharge of this Indenture; *provided* that the funds deposited with the Trustee, in trust, for the benefit of the Holders of the Securities as required by such provisions shall not be released other than in accordance with such provisions. Upon receipt of such Officers' Certificate the Collateral Agent shall execute, deliver or acknowledge any necessary or proper instruments of termination, satisfaction or release to evidence the release of any Collateral permitted to be released pursuant to this Indenture or the Pledge Agreement.

(b) No Collateral may be released from the Lien and security interest created by the Pledge Agreement pursuant to the provisions of the Pledge Agreement unless the certificate required by this Section 13.04 has been delivered to the Collateral Agent.

(c) At any time when a Default or Event of Default has occurred and is continuing and the maturity of the Securities has been accelerated (whether by declaration or otherwise) and the Trustee has delivered a notice of acceleration to the Collateral Agent, no release of Collateral pursuant to the provisions of the Pledge Agreement will be effective as against the Holders.

(d) The release of any Collateral from the terms of this Indenture and the Pledge Agreement will not be deemed to impair the security under this Indenture in contravention of the provisions hereof if and to the extent the Collateral is released pursuant to the terms of the Pledge Agreement. To the extent applicable, the Company will cause TIA §313(b), relating to reports, and TIA §314(d), relating to the release of property or securities from the Lien and security interest of the Pledge Agreement and relating to the substitution therefor of any property or securities to be subjected to the Lien and security interest of the Pledge Agreement, to be complied with. Any certificate or opinion required by TIA §314(d) may be made by an Officer of the Company except in cases where TIA §314(d) requires that such certificate or opinion be made by an independent Person, which Person will be an independent engineer, appraiser or other expert selected or approved by the Trustee and the Collateral Agent in the exercise of reasonable care.

Section 13.05 *Certificates of the Company*.

The Company will furnish to the Trustee and the Collateral Agent, prior to each proposed release of Collateral pursuant to the Pledge Agreement:

(1) all documents required by TIA § 314(d); and

(2) an Opinion of Counsel, which may be rendered by internal counsel to the Company, to the effect that such accompanying documents constitute all documents required by TIA § 314(d).

The Trustee may, to the extent permitted by Sections 7.01 and 7.02 hereof, accept as conclusive evidence of compliance with the foregoing provisions the appropriate statements contained in such documents and such Opinion of Counsel.

Section 13.06 *Certificates of the Trustee*.

In the event that the Company wishes to release Collateral in accordance with the Pledge Agreement and has delivered the certificates and documents required by the Pledge Agreement and Sections 13.04 and 13.05 hereof, the Trustee will, based on the Opinion of Counsel delivered pursuant to Section 13.05(2) hereof, deliver a certificate to the Collateral Agent setting forth such determination.

Section 13.07 *Authorization of Actions to Be Taken by the Trustee Under the Pledge Agreement*.

Subject to the provisions of Sections 7.01 and 7.02 hereof, the Trustee may, in its sole discretion and without the consent of the Holders, direct, on behalf of the Holders, the Collateral Agent to, take all actions it deems necessary or appropriate in order to:

(1) enforce any of the terms of the Pledge Agreement; and

(2) collect and receive any and all amounts payable in respect of the obligations of the Company hereunder.

The Trustee will have power to institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Collateral by any acts that may be unlawful or in violation of the Pledge Agreement or this Indenture, and such suits and proceedings as the Trustee may deem expedient to preserve or protect its interests and the interests of the Holders in the Collateral (including power to institute and maintain suits or proceedings to restrain the enforcement of or compliance with any legislative or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid if the enforcement of, or compliance with, such enactment, rule or order would impair the security interest hereunder or be prejudicial to the interests of the Holders or of the Trustee).

Section 13.08 *Authorization of Receipt of Funds by the Trustee Under the Pledge Agreement*.

The Trustee is authorized to receive any funds for the benefit of the Holders distributed under the Pledge Agreement, and to make further distributions of such funds to the Holders according to the provisions of this Indenture.

Section 13.09 *Termination of Security Interest*.

Upon the full and final payment of all obligations of the Company and any Subsidiaries of the Company under this Indenture and the Securities, or upon Legal Defeasance or Covenant Defeasance, the Trustee will, at the request of the Company, deliver a certificate to the Collateral Agent stating that such obligations have been paid in full, and instruct the Collateral Agent to release the Liens pursuant to this Indenture and the Pledge Agreement.

Section 13.10 *Limitation on Duty of Trustee in Respect of Collateral*.

(a) Beyond the exercise of reasonable care in the custody thereof, the Trustee and the Collateral Agent shall have no duty as to any Collateral in its possession or control or in the possession or control of any agent or bailee or any income thereon or as to preservation of rights against prior parties or any other rights pertaining thereto and the Trustee and the Collateral Agent shall not be responsible for filing any financing or continuation statements or recording any documents or instruments in any public office at any time or times or otherwise perfecting or maintaining the perfection of any security interest in the Collateral. The Trustee and the Collateral Agent shall be deemed to have exercised reasonable care in the custody of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which it accords its own property and shall not be liable or responsible for any loss or diminution in the value of any of the Collateral, by reason of the act or omission of any carrier, forwarding agency or other agent or bailee selected by the Trustee and the Collateral Agent in good faith.

(b) The Trustee and the Collateral Agent shall not be responsible for the existence, genuineness or value of any of the Collateral or for the validity, perfection, priority or enforceability of the Liens in any of the Collateral, whether impaired by operation of law or by reason of any action or omission to act on its part hereunder, except to the extent such action or omission constitutes gross negligence, bad faith or willful misconduct on the part of the Trustee and the Collateral Agent, for the validity or sufficiency of the Collateral or any agreement or assignment contained therein, for the validity of the title of the Company or any Subsidiary of the Company to the Collateral, for insuring the Collateral or for the payment of taxes, charges, assessments or Liens upon the Collateral or otherwise as to the maintenance of the Collateral.

Article 14
MISCELLANEOUS

Section 14.01 *Notices*.

Any notice or communication shall be in writing in the English language (including telecopy or e-mail promptly confirmed in writing) and delivered in person or mailed by first-class mail addressed as follows:

if to the Company and/or any Guarantor:

Hornbeck Offshore Services, Inc.
103 Northpark Boulevard
Suite 300
Covington, Louisiana 70433
Attention: Chief Financial Officer
General Counsel
Fax: (985) 727-2006

With a copy to:

Kirkland & Ellis LLP
609 Main Street

Houston, TX 77002
Attention: Matthew R. Pacey, P.C.
Bryan D Flannery
Fax: (713) 836-3601

if to the Trustee or the Collateral Agent:

WILMINGTON SAVINGS FUND SOCIETY, FSB
500 Delaware
Wilmington, DE 19801
Attention: Global Capital Markets

With a copy to:

Stroock & Stroock & Lavan LLP
180 Maiden Lane
New York, NY 10038
Attention: Jayme T. Goldstein
Gabriel Sasson
Fax: (212) 806-6006

The Company, any Guarantor, the Trustee or the Collateral Agent by notice to the other may designate additional or different addresses (including email addresses) for subsequent notices or communications.

Any notice or communication mailed to a registered Holder shall be mailed to the Holder at the Holder's address as it appears on the Securities Register and shall be sufficiently given if so mailed within the time prescribed; *provided* that notices given to Holders holding Securities in book-entry form may be given through facilities of DTC or any successor depositary.

Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders. If a notice or communication is mailed in the manner provided above, it is duly given, whether or not the addressee receives it, except that notices to the Trustee and Collateral Agent shall be effective only upon receipt.

Section 14.02 *Certificate and Opinion as to Conditions Precedent*.

Upon any request or application by the Company to the Trustee to take or refrain from taking any action under this Indenture, the Company shall furnish to the Trustee:

(a) an Officers' Certificate in form and substance reasonably satisfactory to the Trustee stating that, in the opinion of the signers, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and

(b) an Opinion of Counsel in form and substance reasonably satisfactory to the Trustee stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

Section 14.03 *Statements Required in Certificate or Opinion*.

Each certificate or opinion with respect to compliance with a covenant or condition provided for in this Indenture shall include:

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

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

(c) a statement that, in the opinion of such individual, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) a statement as to whether or not, in the opinion of such individual, such covenant or condition has been complied with.

In giving such Opinion of Counsel, counsel may rely as to factual matters on an Officers' Certificate or on certificates of public officials.

Section 14.04 *When Securities Are Disregarded*.

In determining whether the Holders of the required principal amount of Securities have concurred in any direction, waiver or consent, (i) any Securities owned by the Company or any of its Restricted Subsidiaries shall be cancelled immediately upon receipt and (ii) any Securities owned by an Unrestricted Subsidiary shall be disregarded for purposes of determining whether any such required principal amount of Securities has been reached; except that, for the purpose of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Securities which a Trust Officer of the Trustee actually knows are so owned shall be so cancelled or disregarded. Also, subject to the foregoing, only Securities outstanding at the time shall be considered in any such determination.

Section 14.05 *Rules by Trustee, Paying Agent and Registrar*.

The Trustee may make reasonable rules for action by, or a meeting of, Holders. The Registrar and the Paying Agent may make reasonable rules for their functions.

Section 14.06 *Legal Holidays*.

A "**Legal Holiday**" is a Saturday, a Sunday or other day on which commercial banking institutions are authorized or required to be closed in New York City or New Orleans, Louisiana. If a payment date is a Legal Holiday, payment shall be made on the next succeeding day that is not a Legal Holiday, and no interest shall accrue for the intervening period. If a Regular Record Date is a Legal Holiday, such Regular Record Date shall not be affected.

Section 14.07 *Governing Law*.

THIS INDENTURE, THE PLEDGE AGREEMENT, THE SECURITIES AND THE GUARANTEES SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

Section 14.08 *No Recourse Against Others*.

An incorporator, director, officer, employee, Affiliate or stockholder of the Company or a Guarantor, solely by reason of this status, shall not have any liability for any obligations of the Company or any Guarantor under the Securities, this Indenture, the Guarantees or for any claim based on, in respect of or by reason of such obligations or their creation. By accepting a Security, each Holder shall waive and release all such liability; *provided*, *however*, the parties acknowledge that such waiver may not be effective to waive liability under federal securities laws. The waiver and release shall be part of the consideration for the issue of the Securities.

Section 14.09 *Successors*.

All agreements of the Company in this Indenture and the Securities shall bind its successors. All agreements of the Trustee and the Collateral Agent in this Indenture shall bind their successors. All agreements of each Guarantor in this Indenture shall bind its successors, except as otherwise provided in Section 12.05.

Section 14.10 *Multiple Originals*.

The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. One signed copy is enough to prove this Indenture. The exchange of copies of this Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

Section 14.11 *Table of Contents; Headings*.

The table of contents, cross-reference sheet and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not intended to be considered a part hereof and shall not modify or restrict any of the terms or provisions hereof.

Section 14.12 *Severability Clause*.

In case any provision in this Indenture shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby and such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability.

Section 14.13 *Calculations*.

Except as otherwise provided herein, the Company will be responsible for making all calculations called for under this Indenture and the Securities. The Company will make all such

calculations in good faith and, absent manifest error, its calculations will be final and binding on Holders. The Company upon request will provide a schedule of its calculations to the Trustee, and the Trustee is entitled to rely conclusively upon the accuracy of the Company's calculations without independent verification. The Trustee will deliver a copy of such schedule to any Holder upon the request of such Holder.

Section 14.14 *Consent to Jurisdiction*.

Each of the Company and the Guarantors irrevocably submit to the non-exclusive jurisdiction of any competent New York state or U.S. federal court located in the Borough of Manhattan in the City and State of New York over any suit, action or proceeding arising out of or relating to this Indenture, the Securities or any Guarantee. Each of the Company and each Guarantor irrevocably waives, to the fullest extent permitted by law, any objection which it may have to the laying of the venue of any such suit, action or proceeding brought in such a court and any claim that any such suit, action or proceeding brought in such a court has been brought in any inconvenient forum.

Nothing in this Section shall limit the right of the Trustee or any Holder to bring proceedings against the Company or any Guarantor in the courts of any other jurisdiction.

Section 14.15 *U.S.A. PATRIOT Act.*

The parties hereto acknowledge that in accordance with Section 326 of the U.S.A. PATRIOT Act, the Trustee, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The parties to this Indenture agree that they will provide the Trustee with such information as it may request in order for the Trustee to satisfy the requirements of the U.S.A. PATRIOT Act.

[*Remainder of the page intentionally left blank*]

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

HORNBECK OFFSHORE SERVICES, INC.

By: _____
Name:
Title:

GUARANTORS:

By: _____
Name:
Title:

WILMINGTON SAVINGS FUND SOCIETY, FSB,
as Trustee

By: _____
Name:
Title:

WILMINGTON SAVINGS FUND SOCIETY, FSB,
as Collateral Agent

By: _____
Name:
Title:

SCHEDULE A

LOW-SPEC OFFSHORE VESSELS

VESSEL NAME	OFFICIAL NUMBER
HOS BEAUFORT	1076186
HOS BRIGADOON	1077123
HOS CORNERSTONE	1091051
HOS CROSSFIRE	1073262
HOS DAKOTA	1077124
HOS DEEPWATER	1088301
HOS DOMINATOR	1122403
HOS DOUGLAS	1088475
HOS EXPLORER	1076230
HOS HAWKE	1076185
HOS INNOVATOR	1108573
HOS NAVEGANTE	2247
HOS NOME	1097128
HOS PIONEER	1091418
HOS SAYLOR	8230
HOS SUPER H	1075422
HOS THUNDERFOOT	XCAR5
HOS VOYAGER	1065076

EXHIBIT A

[FORM OF FACE OF SECURITY]

[Restricted Securities Legend, if applicable]
[Global Security Legend, if applicable]

No. [ ] Principal Amount $[ ], as revised by the Schedule of Increases and Decreases in Global Security attached hereto.

CUSIP NO.: [ ]
ISIN: [ ]

5.50% Senior Notes due 2025

Hornbeck Offshore Services, Inc., a Delaware corporation, promises to pay to [ ], or registered assigns, the principal sum of [ ] Dollars, as revised by the Schedule of Increases and Decreases in Global Security attached hereto, on September 30, 2025.

Interest Payment Dates: March 30 and September 30

Regular Record Dates: March 15 and September 15

Additional provisions of this Security are set forth on the attached "Terms of Securities."

Dated: [ ]

HORNBECK OFFSHORE SERVICES, INC.

By: _____
Name:
Title:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

WILMINGTON SAVINGS FUND SOCIETY, FSB
as Trustee, certifies that this is one of the Securities
referred to in the Indenture.

By: _____
Authorized Signatory

TERMS OF SECURITIES

5.50% Senior Notes due 2025

The Company issued this Security under an Indenture dated as of [•], 2020 (as it may be amended or supplemented from time to time in accordance with the terms thereof, the "Indenture"), among the Company, the guarantors party thereto, the Trustee and the Collateral Agent, to which reference is hereby made for a description of the rights, limitations of rights, obligations, duties and immunities thereunder of the Trustee, the Collateral Agent, the Company and the Holders. Additional Securities may be issued under the Indenture in an unlimited aggregate principal amount subject to certain conditions specified in the Indenture.

1. Interest

Hornbeck Offshore Services, Inc., a Delaware corporation (such corporation, and its successors and assigns under the Indenture hereinafter referred to, being herein called the "Company"), promises to pay interest on the unpaid principal amount of this Security at the rate of 5.5% per annum.

For any interest period ending other than at Stated Maturity, the Company may elect to pay all or any portion of interest in kind on the then outstanding principal amount of this Security by increasing the principal amount of the outstanding Securities or by issuing additional Securities ("PIK Interest Securities") in a principal amount equal to such interest ("PIK Interest") or, at the election of the Company, payable in cash. The Company will pay interest semiannually on March 30 and September 30 of each year (each, an "Interest Payment Date") commencing September 30, 2020. Interest on the Securities will accrue from the most recent date to which interest has been paid on the Securities or, if no interest has been paid, from [•], 2020. Interest will be computed on the basis of a 360-day year of twelve 30-day months.

For U.S. federal and state income tax purposes only, (a) the first "accrual period" (as defined in Section 1272(a)(5) of the Internal Revenue Code of 1986, as amended (the "Code") and Treas. Reg. § 1.1272-1(b)(1)(ii)) beginning on the Issue Date shall end on March 30, 2020, (b) each successive accrual period until September 30, 2024 shall be a semiannual accrual period ending on an Interest Payment Date, and (c) the accrual period beginning October 1, 2024 shall end on the Stated Maturity. For U.S. federal and state income tax purposes only, consistent with Treas. Reg. § 1.1272-1(c)(5), for purposes of determining the yield of the Securities the Company shall be deemed to elect to pay PIK Interest on each Interest Payment Date. This paragraph is intended to prevent this Security from having "significant original issue discount" (as defined in Code Section 163(i)) and being classified as an "applicable high yield discount obligation" (as defined in Code Section 163(i)), and shall be interpreted consistently therewith.

2. Method of Payment

By no later than 11:00 a.m. (New York City time) on the date on which any principal of, interest or premium, if any, on any Security is due and payable, the Company shall deposit with the Paying Agent money sufficient to pay such amount. The Company will pay principal, premium and interest in money of the United States that at the time of payment is legal tender for payment of public and private debts. Payments in respect of Securities represented by a Global

Security (including principal, interest and premium, if any) will be made by wire transfer of immediately available funds to the accounts specified by DTC. The Company will pay principal of Definitive Securities at the office or agency designated by the Company for such purpose. Interest, on Definitive Securities will be payable (i) to Holders having an aggregate principal amount of $5,000,000 or less, by check mailed to the Holders of these Securities and (ii) to Holders having an aggregate principal amount of more than $5,000,000, either by check mailed to each Holder or, upon application by a Holder to the Registrar not later than the relevant record date, by wire transfer in immediately available funds to that Holder's account within the United States, which application shall remain in effect until the Holder notifies, in writing, the Registrar to the contrary.

In connection with the payment of PIK Interest in respect of the Securities, the Company shall be entitled, without the consent of the Holders thereof (and without regard to any restrictions or limitations set forth in Section 4.11 of the Indenture), to make such PIK Payments by (i) issuing PIK Interest Securities or (ii) increasing the outstanding principal amount of the then authenticated Global Security.

Notwithstanding anything to the contrary, the payment of accrued interest in connection with any redemption or repurchase of the Securities as described under Sections 3.07, 3.09, 10.01 and 10.02 of the Indenture or at Stated Maturity will be made solely in cash. If the Company elects to pay interest on the Securities as a combination of Cash Interest and as PIK Interest, Cash Interest and PIK Interest shall be paid on the Securities to the Holders on a *pro rata* basis.

PIK Interest on the Securities will be payable (a) with respect to Securities represented by one or more Global Securities registered in the name of, or held by, DTC or its nominee on the relevant record date, by increasing the principal amount of such Global Security by an amount equal to the amount of PIK Interest for the applicable interest period (rounded up to the nearest whole dollar) as provided in writing by an Officer of the Company to the Trustee and, upon receipt of such written order of the Company, the Trustee shall increase such Global Security by the amount of PIK Interest and (b) with respect to Definitive Securities, by issuing PIK Interest Securities in certificated form in an aggregate principal amount equal to the amount of PIK Interest for the applicable period (rounded up to the nearest whole dollar), and the Trustee shall, at the request of the Company and upon receipt of an authentication order, authenticate and deliver such PIK Interest Securities in certificated form for original issuance to the Holders on the relevant record date, as shown by the records of the register of Holders. Following an increase in the principal amount of the outstanding Global Securities as a result of a payment of PIK Interest, the Global Securities shall bear interest on such increased principal amount from and after the date of such payment. Any PIK Interest Securities issued in certificated form shall be dated as of the applicable Interest Payment Date and shall bear interest from and after such date. All PIK Interest Securities issued pursuant to a payment of PIK Interest shall be governed by, and subject to the terms, provisions and conditions of, the Indenture and shall have the same rights and benefits as the Securities issued on the Issue Date. Any certificated PIK Interest Securities shall be issued with the description "PIK" on the face of such PIK Interest Securities.

3. No Sinking Fund; Optional Redemption.

No sinking fund is provided for the Securities. The Securities are not subject to redemption at the Company's option as specified in the Indenture.

4. Purchase by the Company at the Option of the Holder Upon a Change of Control.

If a Change of Control shall occur at any time, each Holder shall have the right, at such Holder's option and subject to the terms and conditions of the Indenture, to require the Company to purchase all or a portion of its Securities at a Change of Control Purchase Price specified in the Indenture.

5. Denominations; Transfer; Exchange

The Securities are in registered form without coupons in denominations of principal amount of $1.00 and multiples of $1.00. A Holder may transfer or exchange Securities in accordance with the Indenture. The Registrar may require a Holder, among other things, to furnish appropriate endorsements or transfer documents and to pay any taxes and fees required by law or permitted by the Indenture.

6. Persons Deemed Owners

The registered Holder of this Security may be treated as the owner of it for all purposes.

7. Unclaimed Money

If money for the payment of principal, premium, if any, or interest remains unclaimed for two years, the Trustee or Paying Agent shall pay the money back to the Company, subject to applicable abandoned property laws. After any such payment, Holders entitled to the money must look only to the Company and not to the Trustee for payment.

8. Amendment, Waiver

Subject to certain exceptions, the Indenture contains provisions permitting an amendment of the Indenture, the Guarantees or the Securities with the written consent of the Holders of at least a majority in principal amount of the then outstanding Securities and the waiver of any Event of Default (other than with respect to nonpayment or in respect of a provision that cannot be amended without the written consent of each Holder affected) or noncompliance with any provision with the written consent of the Holders of a majority in principal amount of the then outstanding Securities.

In addition, the Indenture permits an amendment of the Indenture, the Guarantees or the Securities without the consent of any Holder under certain circumstances specified in the Indenture.

9. Defaults and Remedies

Subject to the following paragraph, if an Event of Default specified in the Indenture occurs and is continuing, the Trustee or the Holders of at least 25% in principal amount of the Securities may declare all the Securities by notice to the Company to be due and payable immediately. In addition, certain specified Events of Default will cause the Securities to become immediately due and payable without further action by the Holders.

Holders may not enforce the Indenture or the Securities except as provided in the Indenture. The Trustee may refuse to enforce the Indenture or the Securities unless it receives reasonable indemnity or security. Subject to certain limitations, Holders of a majority in principal amount of the Securities may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Holders notice of any continuing Default or Event of Default (except a Default or Event of Default in payment of principal, interest or premium, if any) if it determines that withholding notice is in their interest.

10. Trustee Dealings with the Company

Subject to certain limitations set forth in the Indenture, the Trustee under the Indenture, in its individual or any other capacity, may become the owner or pledgee of Securities and may collect obligations owed to it by the Company or its Affiliates and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not Trustee.

11. No Recourse Against Others

An incorporator, director, officer, employee, Affiliate or stockholder of the Company or a Guarantor, solely by reason of this status, shall not have any liability for any obligations of the Company or any Guarantor under the Securities, the Indenture, the Guarantees or for any claim based on, in respect of or by reason of such obligations or their creation. By accepting a Security, each Holder waives and releases all such liability. The waiver and release are part of the consideration for the issue of the Securities.

12. Authentication

This Security shall not be valid until an authorized signatory of the Trustee manually authenticates this Security.

13. Abbreviations

Customary abbreviations may be used in the name of a Holder or an assignee, such as TEN COM (=tenants in common), TEN ENT (=tenants by the entirety), JT TEN (=joint tenants with rights of survivorship and not as tenants in common), CUST (=custodian) and U/G/M/A (=Uniform Gift to Minors Act).

14. CUSIP Numbers

Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Company has caused CUSIP numbers to be printed on the Securities. No representation is made as to the accuracy of such numbers either as printed on the Securities and reliance may be placed only on the other identification numbers placed thereon.

15. Governing Law

This Security, the Indenture and the Guarantees shall be governed by, and construed in accordance with, the laws of the State of New York.

The Company will furnish to any Holder upon written request and without charge to the Holder a copy of the Indenture which has in it the text of this Security. Requests may be made to:

Hornbeck Offshore Services, Inc.
103 Northpark Boulevard
Suite 300
Covington, Louisiana, 70433
Attention: Chief Financial Officer
Fax: (985) 727-2006

ASSIGNMENT FORM

To assign this Security, fill in the form below:
I or we assign and transfer this Security to

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

_____
(Insert assignee's soc. sec. or tax I.D. No.)

and irrevocably appoint agent to transfer this Security on the books of the Company. The agent may substitute another to act for him.

_____

Date: _____ Your Signature: _____

Signature Guarantee: _____
(Signature must be guaranteed)

_____
Sign exactly as your name appears on the other side of this Security.

The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions) with membership in an approved signature guarantee medallion program, pursuant to S.E.C. Rule 17Ad-15.

_____
Signature:

Signature Guarantee:

_____ _____
(Signature must be guaranteed) Signature:

The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions) with membership in an approved signature guarantee medallion program, pursuant to S.E.C. Rule 17Ad-15.

_____
Dated:

OPTION OF HOLDER TO ELECT PURCHASE

If you want to elect to have this Security purchased by the Company pursuant to Section 3.09 or Section 10.01 of the Indenture, check the box below:

☐ Section 3.09 ☐ Section 10.01

If you want to elect to have only part of the Security purchased by the Company pursuant to Section 3.09 or Section 10.01 of the Indenture, state the amount you elect to have purchased: $_____

Date: _____

Your Signature: _____
(Sign exactly as your name appears on the Security)

Soc. Sec. or Tax Identification No.: _____

Signature Guarantee: _____

(Signature must be guaranteed by a financial institution that is a member of the Securities Transfer Agent Medallion Program ("STAMP"), the Stock Exchange Medallion Program ("SEMP"), the New York Stock Exchange, Inc. Medallion Signature Program ("MSP") or such other signature guarantee program as may be determined by the Security Registrar in addition to, or in substitution for, STAMP, SEMP or MSP, all in accordance with the Securities Exchange Act of 1934, as amended.)

[TO BE ATTACHED TO GLOBAL SECURITIES]

SCHEDULE OF INCREASES OR DECREASES IN GLOBAL SECURITY

The following increases or decreases in this Global Security have been made:

Date	Amount of decrease in Principal Amount of this Global Security	Amount of increase in Principal Amount of this Global Security	Principal Amount of this Global Security following such decrease or increase	Signature of authorized signatory of Trustee or Securities Custodian

EXHIBIT B-1

FORM OF CERTIFICATE FOR TRANSFER OF BENEFICIAL INTEREST FROM RESTRICTED GLOBAL SECURITY TO REGULATION S GLOBAL SECURITY

(Pursuant to Section 2.08(a)(i) of the Indenture)

Wilmington Savings Fund Society
as Trustee and Registrar
500 Delaware
Wilmington, DE 19801
Telephone No.: [●]
Fax Not.: [●]
Email: [●]

Re: 5.50% Senior Notes due 2025 of Hornbeck Offshore Services, Inc.

Reference is hereby made to the Indenture, dated as of [●], 2020 (the "Indenture"), among Hornbeck Offshore Services, Inc. (the "Company"), the guarantors party thereto (the "Guarantors") and Wilmington Savings Fund Society, as trustee (the "Trustee") and collateral agent. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

This letter relates to $ principal amount of Securities which are evidenced by one or more Restricted Global Securities and held with the depository for the Global Securities in the name of (the "Transferor"). The Transferor has requested a transfer of such beneficial interest in the Securities to a Person who will take delivery thereof in the form of an equal principal amount of Securities evidenced by one or more Regulation S Global Securities, which amount, immediately after such transfer, is to be held with the Depository.

In connection with such request and in respect of such Securities, the Transferor hereby certifies that such transfer has been effected in compliance with the transfer restrictions set forth in the legend in Section 2.03(i) of the Indenture and pursuant to and in accordance with Rule 903 or Rule 904 under the United States Securities Act of 1933, as amended (the "Securities Act"), and accordingly the Transferor hereby further certifies that:

(1) The offer of the Securities was not made to a person in the United States;

(2) either:

(a) at the time the buy order was originated, the transferee was outside the United States or the Transferor and any person acting on its behalf reasonably believed and believes that the transferee was outside the United States; or

(b) the transaction was executed in, on or through the facilities of a designated offshore securities market and neither the Transferor nor any person acting on its behalf knows that the transaction was prearranged with a buyer in the United States;

(3) no directed selling efforts have been made in contravention of the requirements of Rule 904(b) of Regulation S; and

(4) the transaction is not part of a plan or scheme to evade the registration provisions of the Securities Act.

Upon giving effect to this request to exchange a beneficial interest in a Restricted Global Security for a beneficial interest in a Regulation S Global Security, the resulting beneficial interest shall be subject to the restrictions on transfer applicable to Regulation S Global Securities pursuant to the Indenture and the Securities Act.

This certificate and the statements contained herein are made for your benefit and the benefit of the Company and the Guarantors. Terms used in this certificate and not otherwise defined in the Indenture have the meanings set forth in Regulation S under the Securities Act.

[Insert Name of Transferor]

By_____
Name:
Title:

Dated:

cc:Hornbeck Offshore Services, Inc.

EXHIBIT B-2

FORM OF CERTIFICATE FOR TRANSFER OF BENEFICIAL INTEREST FROM RESTRICTED GLOBAL SECURITY TO 144A GLOBAL SECURITY OR IAI GLOBAL SECURITY

(Pursuant to Section 2.08(a)(ii) or (iii) of the Indenture)

Wilmington Savings Fund Society
as Trustee and Registrar
500 Delaware
Wilmington, DE 19801
Telephone No.: [●]
Fax Not.: [●]
Email: [●]

Re: 5.50% Senior Notes due 2025 of Hornbeck Offshore Services, Inc.

Reference is hereby made to the Indenture, dated as of [●], 2020 (the "Indenture"), among Hornbeck Offshore Services, Inc. (the "Company"), the guarantors party thereto (the "Guarantors") and Wilmington Savings Fund Society, as trustee (the "Trustee") and collateral agent. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

This letter relates to $ principal amount of Securities which are evidenced by one or more Restricted Global Securities held with the depository for the Global Securities in the name of (the "Transferor"). The Transferor has requested a transfer of such beneficial interest in the Securities to a Person who will take delivery thereof in the form of an equal principal amount of Securities evidenced by one or more 144A Global Securities or IAI Global Securities, to be held with the Depository.

In connection with such request and in respect of such Securities, the Transferor hereby certifies that:

[CHECK ONE]

☐ such transfer is being effected pursuant to and in accordance with Rule 144A under the United States Securities Act of 1933, as amended (the "Securities Act"), and, accordingly, the Transferor hereby further certifies that the Securities are being transferred to a Person that the Transferor reasonably believes is purchasing the Securities for its own account, or for one or more accounts with respect to which such Person exercises sole investment discretion, and such Person and each such account is a "qualified institutional buyer" within the meaning of Rule 144A in a transaction meeting the requirements of Rule 144A;

or

☐ such transfer is being effected pursuant to an exemption under the Securities Act other than Rule 144A, Rule 144 or Rule 903 or 904 of Regulation S to Person who is an Institutional Accredited Investor and the Transferor further certifies that the transfer complies with the transfer restrictions applicable to Securities bearing the legend set forth in Section 2.03(i) of the Indenture and the requirements of the exemption claimed, which certification is supported by a certificate executed by the transferee in the form of Exhibit C to the Indenture;

and such Securities are being transferred in compliance with any applicable blue sky securities laws of any state of the United States or any other applicable jurisdiction.

Upon giving effect to this request to exchange a beneficial interest in Restricted Global Securities for a beneficial interest in 144A Global Securities or IAI Global Securities, the resulting beneficial interest shall be subject to the restrictions on transfer applicable to 144A Global Securities or IAI Global Securities, as the case may be, pursuant to the Indenture and the Securities Act.

This certificate and the statements contained herein are made for your benefit and the benefit of the Company and the Guarantors.

[Insert Name of Transferor]

By_____
Name:
Title:

Dated:

cc:Hornbeck Offshore Services, Inc.

EXHIBIT B-3

FORM OF CERTIFICATE FOR TRANSFER OF BENEFICIAL INTEREST FROM RESTRICTED GLOBAL SECURITY TO UNRESTRICTED GLOBAL SECURITY OR FOR EXCHANGE OR REGISTRATION OF TRANSFER OF DEFINITIVE NOTES

(Pursuant to Section 2.08(a)(iv) or 2.08(b)(b) of the Indenture)

Wilmington Savings Fund Society
as Trustee and Registrar
500 Delaware
Wilmington, DE 19801
Telephone No.: [●]
Fax Not.: [●]
Email: [●]

Re: 5.50% Senior Notes due 2025 of Hornbeck Offshore Services, Inc.

Reference is hereby made to the Indenture, dated as of [●], 2020 (the "Indenture"), among Hornbeck Offshore Services, Inc. (the "Company"), the guarantors party thereto (the "Guarantors") and Wilmington Savings Fund Society, as trustee (the "Trustee") and collateral agent. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

This relates to $ principal amount of Securities which are evidenced by one or more (i) Restricted Global Securities held with the depository for the Global Securities or (ii) Definitive Securities, in either case in the name of (the "Transferor"). The Transferor has requested either:

☐ a transfer of its beneficial interest in such Restricted Global Securities to a Person who will take delivery thereof in the form of an equal principal amount of Securities evidenced by one or more Unrestricted Securities

or

☐ an exchange or transfer of such Definitive Securities in the form of an equal principal amount of Securities evidenced by one or more Definitive Securities, to be delivered to the Transferor or, in the case of a transfer of such Securities, to such Person as the Transferor instructs the Trustee.

In connection with such request and in respect of such Securities, the Transferor hereby certifies that:

[CHECK ONE]

☐ the Securities are being acquired for the Transferor's own account, without transfer;

or

☐ the Securities are being transferred to the Company or one of its Subsidiaries;

or

☐ the Securities are being transferred pursuant to and in accordance with Rule 144A under the United States Securities Act of 1933, as amended (the "Securities Act"), and, accordingly, the Transferor hereby further certifies that the Securities are being transferred to a Person that the Transferor reasonably believes is purchasing the Securities for its own account, or for one or more accounts with respect to which such Person exercises sole investment discretion, and such Person and each such account is a "qualified institutional buyer" within the meaning of Rule 144A, in each case in a transaction meeting the requirements of Rule 144A;

or

☐ the Securities are being transferred in a transaction permitted by Rule 144 under the Securities Act;

or

☐ the Securities are being transferred pursuant to an exemption under the Securities Act other than Rule 144A, Rule 144 or Rule 903 or 904 of Regulation S to Person who is an Institutional Accredited Investor, which certification is supported by a certificate executed by the transferee in the form of Exhibit C to the Indenture;

or

☐ the Securities are being transferred pursuant to an effective registration statement under the Securities Act;

and the Securities are being transferred in compliance with any applicable blue sky securities laws of any state of the United States or any other applicable jurisdiction.

This certificate and the statements contained herein are made for your benefit and the benefit of the Company and the Guarantors.

[Insert Name of Transferor]

By_____
Name:
Title:

Dated:

cc:Hornbeck Offshore Services, Inc.

EXHIBIT C

FORM OF CERTIFICATE TO BE DELIVERED BY INSTITUTIONAL ACCREDITED INVESTORS

(Pursuant to Section 2.08(a)(iii) or 2.08(b) of the Indenture)

Wilmington Savings Fund Society
as Trustee and Registrar
500 Delaware
Wilmington, DE 19801
Telephone No.: [●]
Fax Not.: [●]
Email: [●]

Ladies and Gentlemen:

We are delivering this letter in connection with our purchase of 5.000% Senior Notes due 2021 (the "Securities") of Hornbeck Offshore Services, Inc. (the "Company"). We hereby confirm that:

(i) we are an "accredited investor" within the meaning of Rule 501(a)(1), (2), (3) or (7) under the Securities Act of 1933, as amended (the "Securities Act"), or an entity in which all of the equity owners are accredited investors within the meaning of Rule 501(a)(1), (2), (3) or (7) under the Securities Act (an "Institutional Accredited Investor");

(ii) any purchase of Securities by us will be for our own account or, if we are buying for one or more institutional accounts for which we are acting as fiduciary or agent and we are not a bank (as defined in Section 3(a)(2) of the Securities Act) or a savings and loan association or other institution (as defined in Section 3(a)(5)(A) of the Securities Act), each such account is an Institutional Accredited Investor;

(iii) we have such knowledge and experience in financial and business matters that we are capable of evaluating the merits and risks of purchasing Securities and we, and any accounts for which we are acting, are able to bear the economic risks of its or their investment;

(iv) we are not acquiring Securities with a view to any distribution thereof in a transaction that would violate the Securities Act or the securities laws of any State of the United States or any other applicable jurisdiction; *provided*, *however*, that the disposition of our property and the property of any accounts for which we are acting as fiduciary shall remain at all times within our control; and

(v) we acknowledge that we have had access to such financial and other information, and have been afforded the opportunity to ask such questions of representatives of the Company and receive answers thereto, as we deem necessary in connection with our decision to purchase Securities.

We understand that the Securities were offered in a transaction not involving any public offering within the meaning of the Securities Act and that the Securities have not been registered under the Securities Act, and we agree, on our own behalf and on behalf of each account for

which we acquire any Securities, that such Securities may be offered, resold, pledged or otherwise transferred only (i) to a person whom we reasonably believe to be a qualified institutional buyer (as defined in Rule 144A under the Securities Act) in a transaction meeting the requirements of Rule 144A under the Securities Act, (ii) in a transaction meeting the requirements of Rule 144 under the Securities Act, (iii) outside the United States in a transaction meeting the requirements of Rule 903 or 904 under the Securities Act, or in accordance with another exemption from the registration requirements of the Securities Act (and based upon an opinion of counsel if the Company so requests), (iv) to the Company or any of its subsidiaries or (v) pursuant to an effective registration statement, and, in each case, in accordance with any applicable securities laws of any State of the United States or any other applicable jurisdiction, and we will, and each subsequent holder of the Securities is required to, notify any subsequent purchaser from us or it of the resale restrictions set forth in clause (i) above. We acknowledge that the Securities will bear legends substantially to the foregoing effect. We understand that the registrar will not be required to accept for registration of transfer any Securities, except upon presentation of evidence satisfactory to the Company that the foregoing restrictions on transfer have been complied with.

We acknowledge that you and the Company will rely upon our confirmations, acknowledgments and agreements set forth herein, and we agree to notify you promptly in writing if any of our representations or warranties herein ceases to be accurate and complete.

THIS LETTER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

_____

[Name of Purchaser]

By_____

Name:
Title:
Address:

EXHIBIT D

[Date]

FORM OF NOTATION OF GUARANTEE

For value received, each Guarantor (which term includes any successor Person under the Indenture) has, jointly and severally, unconditionally guaranteed, to the extent set forth and subject to the provisions in the Indenture (the "Indenture"), dated as of [•], 2020, among Hornbeck Offshore Services, Inc., the guarantors party thereto and WILMINGTON SAVINGS FUND SOCIETY, FSB, as trustee (the "Trustee"), and as collateral agent (the "Collateral Agent"), (a) the due and punctual payment of the principal of, premium, if any, and interest on, the Securities, whether at Stated Maturity, by acceleration, required repurchase or otherwise, and the due and punctual payment of interest on overdue principal of, premium, if any, and interest on the Securities, if any, if lawful, and (b) in case of any extension of time of payment or renewal of any Securities or any of such other obligations, that the same will be promptly paid in full when due, whether at Stated Maturity, by acceleration or otherwise. The obligations of the Guarantors to the Holders of Securities and to the Trustee pursuant to the Guarantee and the Indenture are expressly set forth in Article 12 of the Indenture and reference is hereby made to the Indenture for the precise terms of the Guarantee. Each Holder of a Security, by accepting the same, (a) agrees to and shall be bound by such provisions and (b) appoints the Trustee attorney-in-fact of such Holder for such purpose.

Capitalized terms used but not defined herein have the meanings given to them in the Indenture.

[Signature Page Follows]

[NAME OF GUARANTOR(S)]

By:_____
Name:
Title:

EXHIBIT E

FORM OF SUPPLEMENTAL INDENTURE
TO BE DELIVERED BY SUBSEQUENT GUARANTORS

SUPPLEMENTAL INDENTURE (this "Supplemental Indenture"), dated as of [•], among (the "Guaranteeing Subsidiary"), a subsidiary of Hornbeck Offshore Services, Inc. (or its permitted successor), a Delaware corporation (the "Company"), the Company, the other Guarantors (as defined in the Indenture referred to herein) and WILMINGTON SAVINGS FUND SOCIETY, FSB, as trustee under the Indenture referred to below (the "Trustee") and as collateral agent under the Indenture (the "Collateral Agent").

WITNESSETH

WHEREAS, the Company has heretofore executed and delivered to the Trustee and Collateral Agent an Indenture, dated as of [•], 2020 (the "Indenture"), providing for the issuance of 5.50% Senior Notes due 2025 (the "Securities");

WHEREAS, the Indenture provides that under certain circumstances the Guaranteeing Subsidiary shall execute and deliver to the Trustee and Collateral Agent a supplemental indenture pursuant to which the Guaranteeing Subsidiary shall unconditionally guarantee all of the Company's obligations under the Securities and the Indenture on the terms and conditions set forth herein (the "Guarantee"); and

WHEREAS, pursuant to Section 4.08 of the Indenture, the Trustee and Collateral Agent are authorized to execute and deliver this Supplemental Indenture.

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

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

2. *Agreement to Guarantee*. The Guaranteeing Subsidiary hereby agrees to provide an unconditional Guarantee on the terms and subject to the conditions set forth in the Guarantee and in the Indenture including but not limited to Article 12 thereof.

3. *No Recourse Against Others*. No past, present or future director, officer, employee, incorporator, stockholder or agent of the Guaranteeing Subsidiary (other than the Company or a Guarantor in its capacity as a stockholder of a Subsidiary), as such, shall have any liability for any obligations of the Company or any Guaranteeing Subsidiary under the Securities, any Guarantees, the Indenture or this Supplemental Indenture or for any claim based on, in respect of or by reason of, such obligations or their creation. Each Holder of the Securities by accepting a Security waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Securities. Such waiver may not be effective to waive liabilities

under the federal securities laws and it is the view of the SEC that such a waiver is against public policy.

4. *New York Law to Govern*. THE INTERNAL LAW OF THE STATE OF NEW YORK SHALL GOVERN AND BE USED TO CONSTRUE THIS SUPPLEMENTAL INDENTURE.

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

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

7. *The Trustee and the Collateral Agent*. Neither the Trustee nor the Collateral Agent shall be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made solely by the Guaranteeing Subsidiary and the Company.

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

Dated: , 20

[GUARANTEEING SUBSIDIARY]

By: _____
Name:
Title:

HORNBECK OFFSHORE SERVICES, INC.

By: _____
Name:
Title:

[EXISTING GUARANTORS]

By: _____
Name:
Title:

WILMINGTON SAVINGS FUND SOCIETY, FSB,
as Trustee

By: _____
Name:
Title:

EXHIBIT F

FORM OF NON-RECOURSE PLEDGE AGREEMENT

EXHIBIT G

FORM OF REGISTRATION RIGHTS AGREEMENT

EXHIBIT H

FORM OF CONTINGENT PREFERRED WARRANTS

EXHIBIT I

FORM OF AUTOMATIC CONVERSION WARRANTS

EXHIBIT J

FORM OF CONTINGENT PREFERRED WARRANT AGREEMENT

EXHIBIT K

FORM OF AUTOMATIC CONVERSION WARRANT AGREEMENT

EXHIBIT L

SECTION 3.14 OF THE COMPANY'S FIFTH RESTATED BYLAWS

EXHIBIT M

DETERMINATION NOTICE

EXHIBIT N

RESOLUTIONS REGARDING RIGHTS AGREEMENT WAIVER AND DELAWARE GENERAL CORPORATION LAW SECTION 203