

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of The Securities and Exchange Act of 1934

Date of Report (Date of earliest event reported): November 20, 2018

HC2 HOLDINGS, INC.

Delaware

(State or other jurisdiction
of incorporation)

001-35210

(Commission File Number)

54-1708481

(IRS Employer
Identification No.)

450 Park Avenue, 30th Floor

New York, NY 10022

(Address of principal executive offices)

(212) 235-2690

(Registrant's telephone number, including area code)

Not Applicable

(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Emerging growth company

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

Item 1.01 Entry Into a Material Definitive Agreement

On November 20, 2018, HC2 Holdings, Inc., a Delaware corporation (the “Company”), issued \$470 million aggregate principal amount of 11.500% senior secured notes due 2021 (the “Secured Notes”) and \$55 million aggregate principal amount of 7.5% convertible senior notes due 2022 (the “Convertible Notes”, and together with the Secured Notes, the “Notes”). The Secured Notes were issued under an indenture dated November 20, 2018, by and among the Company, the guarantors party thereto and U.S. Bank National Association, a national banking association (“U.S. Bank”), as trustee (the “Secured Indenture”). The Secured Notes were issued at 98.75% of par. The Convertible Notes were issued under a separate indenture dated November 20, 2018, between the Company and U.S. Bank, as trustee (the “Convertible Indenture”). The Convertible Notes were issued at 100% of par.

Secured Notes Terms and Conditions

Certain terms and conditions of the Secured Notes are as follows:

Maturity. The Secured Notes mature on December 1, 2021.

Interest. The Secured Notes accrue interest at a rate of 11.500% per year. Interest on the Secured Notes is paid semi-annually on December 1 and June 1 of each year.

Issue Price. The issue price of the Secured Notes is 98.75% of par.

Ranking. The notes and the note guarantees will be the Company’s and certain of its direct and indirect domestic subsidiaries’ (the “Subsidiary Guarantors”) general senior secured obligations. The notes and the note guarantees will rank: (i) senior in right of payment to all of the Company’s and the Subsidiary Guarantors’ future subordinated debt; (ii) equal in right of payment, subject to the priority of any First-Out Obligations (as defined in the Secured Indenture), with all of the Company’s and the Subsidiary Guarantors’ existing and future senior debt and effectively senior to all of its and the Subsidiary Guarantor’s unsecured debt to the extent of the value of the collateral; and (iii) effectively subordinated to all liabilities of its non-guarantor subsidiaries. The notes and the note guarantees will be secured on a first-priority basis by substantially all of the Company’s assets and the assets of the Subsidiary Guarantors, subject to certain exceptions and permitted liens.

Collateral. The Secured Notes are secured by a first priority lien on substantially all of the Company’s assets (except for certain “Excluded Assets,” and subject to certain “Permitted Liens,” each as defined in the Secured Indenture), including, without limitation:

all equity interests owned by the Company or a Subsidiary Guarantor (which, in the case of any equity interest in a foreign subsidiary, will be limited to 100% of the non-voting stock (if any) and 65% of the voting stock of such foreign subsidiary) and the related rights and privileges associated therewith (but excluding Equity Interests of Insurance Subsidiaries (as defined in the Secured Indenture), to the extent the pledge thereof is deemed a “change of control” under applicable insurance regulations);

all equipment, goods and inventory owned by the Company or a Subsidiary Guarantor;

all cash and investment securities owned by the Company or a Subsidiary Guarantor;

all documents, books and records, instruments and chattel paper owned by the Company or a Subsidiary Guarantor;

all general intangibles owned by the Company or a Subsidiary Guarantor; and

any proceeds and supporting obligations thereof.

The Secured Indenture permits the Company, under specified circumstances, to incur additional debt in the future that could equally and ratably share in the collateral. The amount of such debt is limited by the covenants contained in the Secured Indenture.

No Sinking Fund. The Company is not required to make any sinking fund payments with respect to the Secured Notes.

Optional Redemption. The Company has the option to redeem some or all of the Secured Notes prior to June 1, 2020, at a redemption price equal to 100% of the principal amount plus a “make-whole” premium and accrued and unpaid interest to the date of redemption. At any time on or after June 1, 2020, the Company may redeem some or all of the Secured Notes at certain fixed redemption prices set forth in the Secured Indenture expressed as percentages of the principal amount, plus accrued and unpaid interest. At any time prior to June 1, 2020, the Company may redeem the Secured Notes with net cash proceeds received by the Company from certain equity offerings at a price equal to 111.500% of the principal amount thereof, plus accrued and unpaid interest, if any, to the

redemption date, provided that at least 60% of the aggregate principal amount of the Secured Notes remains outstanding immediately thereafter.

Asset Sale Redemption / Offer. Upon certain asset sales, transfers or dispositions, the Company has the option to redeem the maximum aggregate principal amount of the notes that can be redeemed with the net proceeds therefrom, at a price of 104.5% (declining to 100% if such sale occurs on or after December 1, 2020) of the aggregate principal amount of the notes, plus accrued and unpaid interest to the date thereof. If the Company elects not to redeem the notes, the Company will be required to make an offer to purchase the maximum aggregate principal amount of notes that can be purchased with the net proceeds from such sale, transfer or disposition at the same purchase price as if the Company had so elected to redeem.

Change of Control. If a Change of Control (as defined in the Secured Indenture) occurs, each holder of Secured Notes may require the Company to repurchase all or a portion of its Secured Notes for cash at a price equal to 101% of the aggregate principal amount of such Secured Notes on the date of purchase, plus any accrued and unpaid interest to the date of repurchase.

Certain Covenants. The Secured Indenture contains covenants limiting, among other things, the ability of the Company, and, in certain cases, the Company's subsidiaries, to incur additional indebtedness; create liens; engage in sale-leaseback transactions; pay dividends or make distributions in respect of capital stock; make certain restricted payments; sell assets; engage in transactions with affiliates; or consolidate or merge with, or sell substantially all of its assets to, another person. These covenants are subject to a number of important exceptions and qualifications. The Company is also required to maintain compliance with certain financial tests, including minimum liquidity and collateral coverage ratios.

Events of Default. The Secured Indenture contains customary events of default which could, subject to certain conditions, cause the Secured Notes to become immediately due and payable, including, but not limited to defaults by the Company in the payment of the principal of any the Secured Notes when the same becomes due and payable at maturity, upon acceleration or redemption, or otherwise (other than pursuant to an offer to purchase by the Company) or in the payment of interest on any note when the same becomes due and payable, and the default continues for a period of 30 days; failure to comply with certain covenants in the Secured Indenture; failure to comply with certain agreements in the Secured Indenture for a period of 60 days following notice by U.S. Bank or the holders of at least 25% in aggregate principal amount of the Secured Notes then outstanding; failure to pay any debt within any applicable grace period after the final maturity or acceleration of such debt by the holders thereof because of a default, if the total amount of such debt unpaid or accelerated exceeds \$35 million; failure to pay final judgments entered by a court or courts of competent jurisdiction aggregating \$35 million or more (excluding amounts covered by insurance), which judgments are not paid, discharged or stayed, for a period of 60 days; and certain events of bankruptcy or insolvency.

This summary does not purport to be complete and is qualified in its entirety by reference to the Secured Indenture, which has been filed as an Exhibit hereto, copies of which are attached hereto or incorporated by reference herein as Exhibit 4.1. The text of the Secured Indenture is incorporated herein by reference. Interested parties should read these documents in their entirety.

Convertible Notes Terms and Conditions

Certain terms and conditions of the Convertible Notes are as follows:

Maturity. The Convertible Notes mature on June 1, 2022 unless earlier converted, redeemed or purchased.

Interest. The Convertible Notes accrue interest at a rate of 7.5% per year. Interest on the Convertible Notes is paid semi-annually on December 1 and June 1 of each year.

Issue Price. The issue price of the Convertible Notes is 100% of par.

Ranking. The notes will be the Company's general unsecured and unsubordinated obligations and will rank equally in right of payment with all of the Company's existing and future unsecured and unsubordinated indebtedness, and senior in right of payment to any of the Company's future indebtedness that is expressly subordinated to the notes. The notes will be effectively subordinated to all of the Company's existing and future secured indebtedness, including the Company's Secured Notes being offered concurrently herewith, to the extent of the value of the collateral securing that indebtedness, and structurally subordinated to all indebtedness and other liabilities of the Company's subsidiaries, including trade credit.

No Sinking Fund. The Company is not required to make any sinking fund payments with respect to the Convertible Notes.

Optional Redemption. The Company may not redeem the notes prior to June 1, 2020. On or after June 1, 2020, the Company may redeem for cash all of the notes if the last reported sale price of the Company's common stock has been at least 130% of the conversion price then in effect for at least 20 trading days (which need not be consecutive trading days) during any 30 consecutive trading-day period ending within five trading days prior to the date on which the Company provides notice of redemption. The redemption price will equal 100% of the principal amount of the notes being redeemed, plus accrued and unpaid interest, including additional interest, if any, to, but excluding, the redemption date.

Fundamental Change. If the Company undergoes a Fundamental Change (as defined in the Convertible Indenture), subject to certain conditions, the Company may be required to purchase all or any portion of the notes for cash. The Fundamental Change purchase price will be 100% of the principal amount of the notes to be purchased, plus any accrued and unpaid interest, including additional interest, if any, to, but excluding, the Fundamental Change Purchase Date (as defined in the Convertible Indenture). Notwithstanding anything to the contrary in the Convertible Indenture, a Specified Asset Sale (as defined in the Convertible Indenture) shall not constitute a Fundamental Change.

Conversion Rights. The Convertible Notes will be convertible into shares of the Company's common stock based on an initial conversion rate of 228.3105 shares of common stock per \$1,000 principal amount of Convertible Notes (equivalent to an initial conversion price of approximately \$4.38 per share of the Company's common stock), at any time prior to the close of business on the business day immediately preceding the maturity date, in principal amounts of \$1,000 or an integral multiple of \$1,000 in excess thereof. In addition, following a Make-Whole Fundamental Change (as defined in the Convertible Indenture) or the Company's delivery of a notice of redemption for the Convertible Notes, the Company will, in certain circumstances, increase the conversion rate for a holder who elects to convert its Convertible Notes in connection with (i) such Make-Whole Fundamental Change or (ii) such notice of redemption. However, to comply with certain listing standards of The New York Stock Exchange, the Company will settle in cash its obligation to increase the conversion rate in connection with a Make-Whole Fundamental Change or redemption until it has obtained the requisite stockholder approval.

Events of Default. The Convertible Indenture contains customary events of default which could, subject to certain conditions, cause the Convertible Notes to become immediately due and payable, including, but not limited to, default by the Company in any payment of interest on any Convertible Notes when due and payable where such default continues for a period of 30 consecutive days; default by the Company in the payment of the principal amount of any note when due and payable on the maturity date, any redemption date, upon required purchase in connection with a Fundamental Change, upon declaration of acceleration or otherwise; failure by the Company to comply with its obligation to convert the Convertible Notes in accordance with the Convertible Indenture upon exercise of a note holder's conversion right where such failure continues for three business days; failure by the Company to provide the Fundamental Change Company Notice (as defined in the Convertible Indenture) to note holders required pursuant to the Convertible Indenture; failure to comply with certain covenants in the Convertible Indenture relating to business combination transactions; failure to comply with certain agreements in the Convertible Indenture for a period of 60 days after receipt by the Company of a notice of default as provided in the Convertible Indenture; default by the Company or any Significant Subsidiaries (as defined in the Convertible Indenture) of the Company with respect to any indebtedness for borrowed money in excess of \$35 million in the aggregate of the Company and/or any Significant Subsidiary of the Company, whether such indebtedness now exists or shall hereafter be created, which default results (i) in such indebtedness becoming or being declared due and payable or (ii) from a failure to pay the principal of any such indebtedness when due and payable at its stated maturity, upon redemption, upon required purchase in connection with a fundamental change, upon declaration of acceleration or otherwise, in each case where such default is not cured or waived within 30 days after notice to the Company by the trustee or to the Company and the trustee by holders of at least 25% of the aggregate principal amount of Convertible Notes then outstanding (provided, however, that any such Event of Default shall be deemed cured and not continuing upon payment of such indebtedness or rescission of such declaration of acceleration); a final judgment for the payment of \$35 million or more (excluding any amounts covered by insurance or bond) rendered against the Company or any Significant Subsidiary of the Company by a court of competent jurisdiction, which judgment is not discharged, stayed, vacated, paid or otherwise satisfied within 60 days after (i) the date on which the right to appeal thereof has expired if no such appeal has commenced, or (ii) the date on which all rights to appeal have been extinguished; and certain events of bankruptcy or insolvency.

This summary does not purport to be complete and is qualified in its entirety by reference to the Convertible Indenture, which has been filed as an Exhibit hereto, copies of which are attached hereto or incorporated by reference herein as Exhibit 4.2. The text of the Convertible Indenture is incorporated herein by reference. Interested parties should read these documents in their entirety.

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

The information set forth in Item 1.01 is hereby incorporated by reference into this Item 2.03.

Item 3.02 Unregistered Sales of Equity Securities.

The information set forth under Items 1.01 and 2.03 is incorporated into this Item 3.02 by reference. The Convertible Notes were sold solely by means of private placements to qualified institutional buyers pursuant to Rule 144A under the Securities Act of 1933, as amended (the "Securities Act"). The offer and sale of the Convertible Notes and the shares of common stock issuable upon their conversion have not been and will not be registered under the Securities Act, and the Convertible Notes and such shares may not be offered or sold in the United States absent registration or an applicable exemption from the registration requirements of the Securities Act. The Convertible Notes were sold to the initial purchasers for cash in an amount equal to 97.000% of the

aggregate principal amount thereof. The initial maximum number of securities underlying the Convertible Notes, assuming the largest “make-whole” addition to the conversion rate under the Convertible Notes Indenture, and assuming that the Company has obtained the requisite stockholder approval referred to above, is 15,068,493 shares of the Company’s common stock.

Item 9.01 Financial Statements and Exhibits

The following exhibits are being filed with this Current Report on Form 8-K.

(d) Exhibits

Exhibit No.	
4.1	<u>Indenture, dated as of November 20, 2018, by and among HC2 Holdings, Inc., the guarantors party thereto and U.S. Bank National Association.</u>
4.2	<u>Indenture, dated as of November 20, 2018, by and among HC2 Holdings, Inc. and U.S. Bank National Association.</u>

SIGNATURES

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

HC2 Holdings, Inc.

Date: November 21, 2018

By: /s/ Michael J. Sena

Name: Michael J. Sena
Title: Chief Financial Officer

HC2 HOLDINGS, INC.

as Issuer

AND

U.S. Bank National Association

as Trustee

Indenture

Dated as of November 20, 2018

7.5% Convertible Senior Notes due 2022

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INDENTURE, dated as of November 20, 2018 between HC2 Holdings, Inc., a company duly incorporated and existing under the laws of Delaware, United States of America, and having its principal office at 450 Park Avenue, 30th Floor, New York, NY 10022, as Issuer (the “**Company**”) and U.S. Bank National Association, a national banking association, as Trustee (the “**Trustee**”).

RECITALS OF THE COMPANY

WHEREAS, the Company has duly authorized the creation of an issue of 7.5% Convertible Senior Notes due 2022 (each a “**Note**” and collectively, the “**Notes**”) of the tenor and amount hereinafter set forth, and to provide therefor the Company has duly authorized the execution and delivery of this Indenture; and

WHEREAS, all things necessary to make the Notes, when executed by the Company and authenticated and delivered hereunder and duly issued by the Company, the valid and legally binding obligations of the Company, and to make this Indenture a valid and legally binding agreement of the Company, in accordance with the terms of the Notes and the Indenture, have been done.

NOW, THEREFORE, THIS INDENTURE WITNESSETH, for and in consideration of the premises and the purchases of the Notes by the Holders thereof, it is mutually agreed, for the benefit of the Company and the equal and proportionate benefit of all Holders of the Notes, as follows:

Article 1.
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 1.01 *Definitions.* For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

a) the terms defined in this Article 1 have the meanings assigned to them in this Article and include the plural as well as the singular;

b) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with GAAP; and

c) the words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

“**Act**,” when used with respect to any Holder, has the meaning specified in Section 1.04.

“**Additional Interest**” means all amounts, if any, payable pursuant to Section 9.03 hereof. Unless the context otherwise requires, all references in this Indenture to interest include Additional Interest, if any. Any express reference to Additional Interest in this Indenture shall not be construed as excluding Additional Interest in any other text where no such express reference is made.

“**Additional Notes**” means any Notes (other than the Initial Notes) issued under this Indenture in accordance with Section 3.01 hereof, with the same terms as the Initial Notes (other than issue price and, in some cases, the date from which interest shall accrue).

“**Additional Shares**” has the meaning specified in Section 7.07(a).

“**Affiliate**” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For 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.

“**Agent Members**” has the meaning specified in Section 3.06(b).

“**Applicable Conversion Price**” means the Conversion Price in effect at any given time.

“**Applicable Conversion Rate**” means the Conversion Rate in effect at any given time.

“**Applicable Procedures**” means, with respect to any transfer or transaction involving a Global Note or any beneficial interest therein, the rules and procedures of the Depository for such Note, in each case to the extent applicable to such transfer or transaction and as in effect from time to time.

“**Board of Directors**” means, with respect to any Person, either the board of directors of such Person or any duly authorized committee of that board.

“**Board Resolution**” means, with respect to any Person, a copy of a resolution certified by the Secretary or an Assistant Secretary or the General Counsel of such Person to have been duly adopted by the

Board of Directors and to be in full force and effect on the date of such certification, and delivered to the Trustee.

“**Business Combination Event**” has the meaning specified in Section 10.01.

“**Business Day**” means any day other than a Saturday, a Sunday or a day on which the Federal Reserve Bank of New York is authorized or required by law or executive order to close or be closed.

“**Capital Stock**” means, with respect to any Person, any and all shares of stock of a corporation, partnership interests or other equivalent interests (however designated, whether voting or non-voting) in such Person’s equity, entitling the holder to receive a share of the profits and losses, and a distribution of assets, after liabilities, of such Person.

“**Close of Business**” means 5:00 p.m. New York City time.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Commission**” means the Securities and Exchange Commission, as from time to time constituted, created under the Exchange Act.

“**Common Stock**” means the shares of common stock, \$0.001 par value per share, of the Company as they exist on the date of this Indenture, subject to the provisions of Section 7.05.

“**Common Stock Change Event**” has the meaning specified in Section 7.05.

“**Company**” means the Person named as the “Company” in the first paragraph of this instrument until a successor Person shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Company” shall mean such successor Person.

“**Company Order**” means a written request or order signed in the name of the Company (a) by its Chief Executive Officer, its President, or its Chief Financial Officer or any of its Vice Presidents, and (b) by its Treasurer, any Assistant Treasurer, its Secretary, any Assistant Secretary or any of its Vice Presidents, and delivered to the Trustee.

“**Conversion Agent**” means the Trustee or such other office or agency designated by the Company where Notes may be presented for conversion.

“**Conversion Date**” has the meaning specified in Section 7.02(b).

“**Conversion Notice**” shall have the meaning specified in Section 7.02(b).

“**Conversion Price**” means, per share of Common Stock, \$1,000 *divided by* the Applicable Conversion Rate.

“**Conversion Rate**” means initially 228.3105 shares of Common Stock per \$1,000 Principal Amount of Notes (equivalent to an initial Conversion Price of approximately \$4.38), subject to adjustment as set forth herein.

“**Corporate Trust Office**” means the office of the Trustee at which the corporate trust business of the Trustee with respect to this Indenture shall, at any particular time, be principally administered, which office is, at the date as of which this Indenture is dated, located at 60 Livingston Avenue, St. Paul, MN

55107-2292, Attention: Rick Prokosch, or such other address in the United States as the Trustee may designate from time to time by notice to the Holders and the Company, or the principal corporate trust office in the United States of any successor Trustee (or such other address in the United States as such successor Trustee may designate from time to time by notice to the Holders and the Company).

“**Default**” means any event that is or with the passage of time or the giving of notice or both would become an Event of Default.

“**Deferral Exception**” has the meaning specified in 7.04(i).

“**Depository**” means DTC until a successor Depository shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Depository” shall mean such successor Depository.

“**Distributed Property**” has the meaning specified in Section 7.04(c).

“**DTC**” means The Depository Trust Company.

“**Effective Date**” has the meaning specified in Section 7.07(b).

“**Event of Default**” has the meaning specified in Section 9.01.

“**Ex-Dividend Date**” means the first date on which the shares of Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question, from the Company or, if applicable, from the seller of the shares of Common Stock on such exchange or market (in the form of due bills or otherwise) as determined by such exchange or market.

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

“**Free Trade Date**” means the date that is one year after the last date of original issuance of the Notes.

“**Freely Tradable**” means, with respect to any Notes, that such Notes are eligible to be sold by a Person who is not an Affiliate of the Company (within the meaning of Rule 144) and has not been an Affiliate of the Company (within the meaning of Rule 144) during the immediately preceding 90 days without any volume or manner of sale restrictions under the Securities Act.

“**Free Transferability Certificate**” means a certificate substantially in the form of Exhibit B.

“**Fundamental Change**” means the occurrence of any of the following events at any time after the Notes are originally issued:

(1) a “person” or “group” within the meaning of Section 13(d) of the Exchange Act other than the Company or the Company’s Subsidiaries has become the direct or indirect “beneficial owner,” as defined in Rule 13d-3 under the Exchange Act, of the Company’s common equity representing more than 50% of the voting power of all outstanding classes of the Company’s common equity entitled to vote generally in the election of the Company’s directors;

(2) consummation of (A) any share exchange, consolidation or merger involving the Company pursuant to which the Common Stock will be converted into cash, securities or other property or (B) any sale, lease or other transfer in one transaction or a series of transactions of all

or substantially all of the consolidated assets of the Company and the Company's Subsidiaries, taken as a whole, to any person other than one or more of the Company's Subsidiaries; *provided, however*, that neither (a) a transaction described in clause (A) in which the holders of all classes of the Company's common equity immediately prior to such transaction own, directly or indirectly, more than 50% of the voting power of all classes of the Company's common equity of the continuing or surviving corporation or transferee or the parent thereof immediately after such transaction in substantially the same proportions as such ownership immediately prior to such transaction nor (b) any merger primarily for the purpose of changing the jurisdiction of incorporation of the Company to another state within the United States of America or the District of Columbia and resulting in a reclassification, conversion or exchange of outstanding shares of the Common Stock into shares of common stock of the surviving entity shall be a Fundamental Change pursuant to this clause (2);

(3) the Company's stockholders approve any plan or proposal for the liquidation or dissolution of the Company; or

(4) the Common Stock (or other Capital Stock into which the Notes are then convertible pursuant to the terms of this Indenture) ceases to be listed or quoted on any of The New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or any of their respective successors).

Notwithstanding the foregoing, a Fundamental Change as a result of clauses (1) or (2) above will not be deemed to have occurred if at least 90% of the consideration received or to be received by holders of shares of Common Stock (excluding cash payments for fractional shares and cash payments made pursuant to dissenters' appraisal rights) in connection with the transaction or transactions constituting the Fundamental Change consists of Publicly Traded Securities and as a result of such transaction or transactions, the Notes become convertible into such Publicly Traded Securities, excluding cash payments for fractional shares. Notwithstanding anything to the contrary in the foregoing, a Specified Asset Sale shall not constitute a fundamental change hereunder. "**Specified Asset Sale**" means the sale, transfer or other disposition by the Company or its subsidiaries of all or substantially all of the assets of the Global Marine Business (as described in the Offering Memorandum) (including pursuant to a sale of all or substantially all of the Equity Interests of Global Marine Holdings Limited). For the avoidance of doubt, a sale of all or substantially all of the assets of the Global Marine Business may be deemed a Specified Asset Sale even in the event Global Marine Holdings Limited's interest in Huawei Marine (as described in the Offering Memorandum) is not included in such sale.

"**Fundamental Change Company Notice**" has the meaning specified in Section 8.01(b).

"**Fundamental Change Purchase Date**" has the meaning specified in Section 8.01(a).

"**Fundamental Change Purchase Notice**" has the meaning specified in Section 8.01(a).

"**Fundamental Change Purchase Price**" has the meaning specified in Section 8.01(a).

"**GAAP**" means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board, in each case, as in effect in the United States on the date hereof.

“**Global Note**” means a Note in global form registered in the Register in the name of a Depositary or a nominee thereof.

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

“**Indebtedness**” means, at any date, without duplication, all of the Company’s obligations for borrowed money and any guarantee by the Company of obligations of another Person for borrowed money.

“**Indenture**” means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof, including, for all purposes of this instrument and any such supplemental indenture.

“**Initial Notes**” has the meaning specified in Section 3.01.

“**Initial Purchaser**” means Jefferies LLC.

“**Interest Payment Date**” means each June 1 and December 1 of each year, beginning June 1, 2019.

“**Issue Date**” means the date the Notes are originally issued as set forth on the face of the Note under this Indenture.

“**Last Reported Sale Price**” means, on any Trading Day, the closing sale price per share of Common Stock (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and/or the average ask prices) of the Common Stock on that Trading Day as reported in composite transactions for the principal United States national or regional securities exchange on which the Common Stock is traded. If the Common Stock is not listed for trading on a United States national or regional securities exchange on the relevant Trading Day, the “Last Reported Sale Price” will be the last quoted bid price per share of Common Stock in the over-the-counter market on the relevant Trading Day as reported by OTC Markets Group Inc. or similar organization selected by the Company. If the Common Stock is not so quoted, the “Last Reported Sale Price” will be the average of the mid-point of the last bid and ask prices per share of Common Stock on the relevant date from each of at least three nationally recognized independent investment banking firms selected by the Company for this purpose.

“**Legal Holiday**” is a Saturday, a Sunday or other day on which the Federal Reserve Bank of New York is authorized or required by law or executive order to close or be closed.

“**Maturity Date**” means June 1, 2022.

“**Make-Whole Fundamental Change**” means any transaction or event that would constitute a Fundamental Change (determined after giving effect to any exceptions or exclusions to such definition, but (x) without regard to the exception contained in the proviso in clause (2) of the definition thereof and (y) excluding clause (4) of the definition thereof).

“**Notes**” has the meaning specified in the first paragraph of the Recitals of the Company, and includes any Note or Notes, as the case may be, authenticated and delivered under this Indenture, including any Global Note. The Initial Notes and the Additional Notes shall be governed by the same terms and for purposes of this Indenture.

“Notice of Default” means written notice provided to the Company by the Trustee or to the Company and the Trustee by the Holders of not less than 25% in aggregate Principal Amount of Notes outstanding of a Default by the Company, which notice must specify the Default, demand that it be remedied and expressly state that such notice is a “Notice of Default.”

“Notice of Redemption” has the meaning specified in Section 5.02.

“Offering Memorandum” means the preliminary offering memorandum dated November 12, 2018, as supplemented by the pricing term sheet dated November 14, 2018, relating to the offering and sale of the Notes.

“Officer’s Certificate” means a certificate signed by the Chief Executive Officer, the President, the Chief Financial Officer or any of the Vice Presidents of the Company and delivered to the Trustee.

“Open of Business” means 9:00 a.m., New York City time.

“Opinion of Counsel” means a written opinion of counsel, who may be external or in-house counsel for the Company.

“outstanding” when used with reference to Notes, shall, subject to the provisions of Section 15.05, mean, as of any particular time, all Notes authenticated and delivered by the Trustee under this Indenture, except:

- (1) Notes theretofore canceled by the Trustee or accepted by the Trustee for cancellation;
- (2) Notes, or portions thereof, that have become due and payable and in respect of which monies in the necessary amount shall have been deposited in trust with the Trustee or with any Paying Agent (other than the Company) or shall have been set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent);
- (3) Notes that have been paid pursuant to Section 3.09 and Notes in lieu of which, or in substitution for which, other Notes shall have been authenticated and delivered pursuant to the terms of Section 3.09 unless proof satisfactory to the Trustee is presented that any such Notes are held by protected purchasers in whose hands such Notes are valid obligations of the Company; and
- (4) Notes converted pursuant to Article 7 and required to be cancelled pursuant to Section 3.12.

“Paying Agent” means any Person (including the Company) authorized by the Company to pay the Principal Amount of, interest on, including Additional Interest, the Redemption Price or the Fundamental Change Purchase Price of, any Notes on behalf of the Company. U.S. Bank National Association shall initially be the Paying Agent.

“Person” means any individual, corporation, partnership, limited liability company, joint venture, trust, unincorporated organization or government or any agency or political subdivision thereof.

“Physical Notes” means permanent certificated Notes in registered form issued in denominations of integral \$1,000 Principal Amount and integral multiples of \$1,000 in excess thereof.

“Principal Amount” of a Note means the principal amount as set forth on the face of the Note.

“**Publicly Traded Securities**” means shares of Capital Stock that are listed or quoted on any of The New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or any of their respective successors) or which will be so listed or quoted when issued or exchanged in connection with the transaction that would otherwise be a Fundamental Change.

“**Purchase Agreement**” means the Purchase Agreement, dated November 14, 2018, entered into by the Company and the Initial Purchaser in connection with the sale of the Notes.

“**Qualified Institutional Buyer**” shall have the meaning specified in Rule 144A.

“**Record Date**” means, with respect to any dividend, distribution or other transaction or event in which the holders of the Common Stock (or other applicable security) have the right to receive any cash, securities or other property or in which the Common Stock (or other applicable security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of holders of the Common Stock (or other applicable security) entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors or a duly authorized committee thereof, statute, contract or otherwise).

“**Redemption**” has the meaning specified in Section 5.01(a).

“**Redemption Date**” means, when used with respect to any Note to be redeemed, the date fixed for redemption pursuant to this Indenture.

“**Redemption Price**” means, when used with respect to any Note to be redeemed, the price at which it is to be redeemed pursuant to this Indenture.

“**Reference Property**” has the meaning specified in Section 7.05.

“**Register**” and “**Registrar**” have the respective meanings specified in Section 3.06.

“**Regular Record Date**” means, with respect to the payment of interest on the Notes (including Additional Interest, if any) Close of Business on May 15 and November 15, as the case may be, immediately preceding the relevant Interest Payment Date.

“**Requisite Stockholder Approval**” means the stockholder approval contemplated by NYSE Listing Standard Rule 312.03(c) with respect to the issuance of shares of Common Stock upon conversion of the Notes in excess of the limitations imposed by such rule; *provided, however*, that the Requisite Stockholder Approval will be deemed to be obtained if, due to any amendment or binding change in the interpretation of the applicable listing standards of The New York Stock Exchange, such stockholder approval is no longer required for the Company to settle all conversions of the Notes in shares of Common Stock at the maximum Conversion Rate set forth in the last paragraph of Section 7.07(d).

“**Resale Restriction Termination Date**” has the meaning specified in Section 3.08(b).

“**Restricted Global Note**” has the meaning specified in Section 3.08(b).

“**Restricted Note**” has the meaning specified in Section 3.07(a).

“**Restricted Stock**” has the meaning specified in Section 3.07(b).

“**Restricted Stock Legend**” means a legend substantially in the form set forth in Exhibit A hereto.

“**Rule 144**” means Rule 144 under the Securities Act (including any successor rule thereto), as the same may be amended from time to time.

“**Rule 144A**” means Rule 144A under the Securities Act (including any successor rule thereto), as the same may be amended from time to time.

“**Rule 144A Information**” has the meaning specified in the Notes.

“**Scheduled Trading Day**” means a day that is scheduled to be a Trading Day on the principal U.S. national or regional securities exchange or market on which the Common Stock is listed or admitted for trading. If the Common Stock is not listed or admitted for trading, “Scheduled Trading Day” means a Business Day.

“**Secured Notes**” means the \$470,000,000 in aggregate principal amount of 11.500% Senior Secured Notes due 2021.

“**Securities Act**” means the U.S. Securities Act of 1933, as amended, and the rules and regulations of the Commission promulgated thereunder.

“**Share Price**” has the meaning specified in Section 7.07(b).

“**Significant Subsidiary**” means any Subsidiary, or group of Subsidiaries, that would, taken together, be a “significant subsidiary” as defined in Article 1, Rule 1-02 (w)(2) or (3) of Regulation S-X promulgated under the Securities Act, as such regulation is in effect on the Issue Date of the Notes, substituting 20 percent for 10 percent in the tests used therein to determine a significant subsidiary.

“**Spin-Off**” has the meaning specified in Section 7.04(c).

“**Subsidiary**” means, with respect to any Person, (1) any corporation, association or other business entity of which more than 50% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency and after giving effect to any voting agreement or stockholders’ agreement that effectively transfers voting power) to vote in the election of directors, managers or trustees of the corporation, association or other business entity is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person (or a combination thereof) and (2) any partnership or limited liability company of which (i) more than 50% of the capital accounts, distribution rights, total equity and voting interests or general and limited partnership interests, as applicable, are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof, whether in the form of membership, general, special or limited partnership interests or otherwise, and (ii) such Person or any Subsidiary of such Person is a controlling general partner or otherwise controls such entity.

“**Successor Corporation**” has the meaning specified in Section 10.01.

“**Trading Day**” means a day during which (i) trading in securities generally occurs on the principal United States national or regional securities exchange on which the Common Stock is then listed or admitted for trading or, if the Common Stock is not then listed or admitted for trading on a United States national or regional securities exchange, on the principal other market on which the Common Stock is then traded, and (ii) a Last Reported Sale Price for the Common Stock is available on such securities exchange or market. If the Common Stock is not so listed or traded, “Trading Day” means a Business Day.

“**Trustee**” means the Person named as the “**Trustee**” in the first paragraph of this Indenture until a successor Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “**Trustee**” shall mean such successor Trustee.

“**Trust Indenture Act**” means the Trust Indenture Act of 1939, as amended, as it was in force at the date of execution of this Indenture; *provided, however*, that in the event the Trust Indenture Act of 1939 is amended after the date hereof, the term “Trust Indenture Act” shall mean, to the extent required by such amendment, the Trust Indenture Act of 1939, as so amended.

“**Trust Officer**” shall mean, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such person's knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

“**U.S.**” means the United States of America.

“**Valuation Period**” has the meaning set forth in Section 7.04(c).

“**Vice President**” means any vice president, whether or not designated by a number or a word or words added before or after the title “vice president.”

Section 1.02 *Compliance Certificates and Opinions*. Upon any application or request by the Company to the Trustee to take any action under any provision of this Indenture, the Company shall furnish to the Trustee such certificates and opinions as may be required pursuant to Section 15.04.

Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture shall include:

- a) a statement that each individual signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;
- 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 each such individual, such individual has made such examination or investigation as is necessary to enable such individual 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, in the opinion of each such individual, such condition or covenant has been complied with.

In giving such Opinion of Counsel, counsel may rely as to factual matters on an Officers Certificate or certificates of public officials.

Section 1.03 *Form of Documents Delivered to Trustee*. In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some

matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of an officer of the Company may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion is based are erroneous. Any such certificate or Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company stating that the information with respect to such factual matters is in the possession of the Company, unless such counsel knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to such matters are erroneous.

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

Section 1.04 *Acts of Holders; Record Dates.*

a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by their agents duly appointed in writing and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as an “**Act**” of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and (subject to Section 11.01) conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section.

b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by a signer acting in a capacity other than his individual capacity, such certificate or affidavit shall also constitute sufficient proof of his authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner which the Trustee reasonably deems sufficient.

c) The Company may, in the circumstances permitted by this Indenture, fix any day as the Record Date for the purpose of determining the Holders entitled to give or take any request, demand, authorization, direction, notice, consent, waiver or other action, or to vote on any action, authorized or permitted to be given or taken by Holders. If not set by the Company prior to the first solicitation of a Holder made by any Person in respect of any such action, or, in the case of any such vote, prior to such vote, the Record Date for any such action or vote shall be the 30th day (or, if later, the date of the most recent list of Holders required to be provided pursuant to Section 12.01) prior to such first solicitation or vote, as the case may be. With regard to any Record Date, only the Holders on such date (or their duly designated proxies) shall be entitled to give or take, or vote on, the relevant action.

d) The ownership of Notes shall be proved by the Register.

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

Section 1.05 *Notices, Etc., to Trustee and Company.* Any request, demand, authorization, direction, notice, consent, waiver or Act of Holders or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with:

(1) the Trustee by any Holder or by the Company shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing to or with the Trustee at its applicable Corporate Trust Office; or

(2) the Company by the Trustee or by any Holder shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to the Company addressed to it at the address of its principal office specified in the first paragraph of this instrument, with a copy to the address specified in Section 15.02, or at any other address previously furnished in writing to the Trustee by the Company, Attention: Chief Financial Officer.

Section 1.06 *Notice to Holders; Waiver.* Where this Indenture provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to each Holder affected by such event, at such Holder's address as it appears in the Register, not later than the latest date (if any), and not earlier than the earliest date (if any), prescribed for the giving of such notice. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders. Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver. Notwithstanding anything to the contrary in this Indenture, notices given to Holders of Global Notes may be given electronically through the facilities of the Depositary.

In case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice by mail, then such notification as shall be made with the approval of the Trustee shall constitute a sufficient notification for every purpose hereunder.

Whenever under this Indenture the Trustee is required to provide any notice by mail, in all cases the Trustee may alternatively provide notice by overnight courier or by facsimile, with confirmation of transmission.

Section 1.07 *[Reserved.]*.

Section 1.08 *Effect of Headings and Table of Contents.* The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof, and all Article

and Section references are to Articles and Sections, respectively, of this Indenture unless otherwise expressly stated.

Article 2.
SECURITY FORMS

Section 2.01 *Forms Generally*. The Notes and the Trustee's certificates of authentication shall be in substantially the forms set forth in this Article, with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture, and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may be required to comply with the rules of any securities exchange or Depository therefor, the Code and regulations thereunder, or as may, consistently herewith, be determined by the officers executing such Notes, as evidenced by their execution thereof.

The Notes shall initially be issued in the form of permanent Global Notes in registered form in substantially the form set forth in this Article. The aggregate Principal Amount of the Global Notes may from time to time be increased or decreased by adjustments made on the records of the Trustee, as custodian for the Depository, as hereinafter provided.

Section 2.02 *Form of Face of Note*.

NO AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF THE COMPANY OR PERSON THAT HAS BEEN AN AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF HC2 HOLDINGS, INC. DURING THE IMMEDIATELY PRECEDING 90 DAYS MAY PURCHASE, OTHERWISE ACQUIRE OR HOLD THIS NOTE OR A BENEFICIAL INTEREST HEREIN.

Include the following legend for Global Notes only (the "**Global Notes Legend**"):

THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE THEREOF. THIS SECURITY MAY NOT BE EXCHANGED IN WHOLE OR IN PART FOR A SECURITY REGISTERED, AND NO TRANSFER OF THIS SECURITY IN WHOLE OR IN PART MAY BE REGISTERED, IN THE NAME OF ANY PERSON OTHER THAN SUCH DEPOSITARY OR A NOMINEE THEREOF, EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY ("DTC"), A NEW YORK CORPORATION, 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 IN AS MUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

BY ACCEPTANCE OF A NOTE, EACH HOLDER WILL BE DEEMED TO HAVE REPRESENTED AND WARRANTED THAT EITHER (A) NO PORTION OF THE ASSETS USED BY SUCH HOLDER TO ACQUIRE OR HOLD THE NOTES CONSTITUTES THE ASSETS OF ANY EMPLOYEE BENEFIT PLAN THAT IS SUBJECT TO TITLE I OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED (“ERISA”), A PLAN, INDIVIDUAL RETIREMENT ACCOUNT OR OTHER ARRANGEMENT THAT IS SUBJECT TO SECTION 4975 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE “CODE”) OR PROVISIONS UNDER ANY OTHER FEDERAL, STATE, LOCAL, NON-U.S. OR OTHER LAWS, RULES OR REGULATIONS THAT ARE SIMILAR TO SUCH PROVISIONS OF ERISA OR THE CODE “SIMILAR LAWS”), OR ENTITY WHOSE UNDERLYING ASSETS ARE CONSIDERED TO INCLUDE “PLAN ASSETS” OF ANY SUCH PLAN, ACCOUNT OR ARRANGEMENT OR (B) THE PURCHASE AND HOLDING OF THE NOTES BY SUCH HOLDER WILL NOT CONSTITUTE A NON-EXEMPT PROHIBITED TRANSACTION UNDER SECTION 406 OF ERISA OR SECTION 4975 OF THE CODE OR A VIOLATION UNDER ANY APPLICABLE SIMILAR LAWS..

*Include the following legend on all Notes that are Restricted Notes (the “**Restricted Notes Legend**”):*

THE SECURITY EVIDENCED BY THIS CERTIFICATE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR ANY STATE SECURITIES LAWS, AND MAY NOT BE OFFERED OR SOLD EXCEPT AS SET FORTH IN THE FOLLOWING SENTENCE. BY ACQUISITION HEREOF OR A BENEFICIAL INTEREST HEREIN, THE HOLDER:

(1) REPRESENTS THAT IT IS A “QUALIFIED INSTITUTIONAL BUYER” AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT;

(2) AGREES THAT IT WILL NOT PRIOR TO THE DATE ONE YEAR, OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THEREUNDER, AFTER THE LAST DATE OF ORIGINAL ISSUANCE OF THE 7.5% CONVERTIBLE SENIOR NOTES DUE 2022 OF HC2 HOLDINGS, INC. (THE “COMPANY”) RESELL OR OTHERWISE TRANSFER THE SECURITY EVIDENCED HEREBY OR ANY COMMON STOCK THAT MAY BE ISSUABLE UPON CONVERSION OF SUCH SECURITY EXCEPT (A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, (B) TO A PERSON IT REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, (C) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT AND WHICH CONTINUES TO BE EFFECTIVE AT THE TIME OF SUCH TRANSFER, OR (D) PURSUANT TO ANY OTHER EXEMPTION FROM THE REGISTRATION REQUIREMENTS UNDER THE SECURITIES ACT, INCLUDING UNDER RULE 144, IF AVAILABLE, SUBJECT (IN THE CASE OF CLAUSE (D)) TO THE COMPANY’S AND THE TRUSTEE’S RIGHT PRIOR TO ANY SUCH TRANSFER, TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATIONS AND/OR OTHER INFORMATION SATISFACTORY TO THE COMPANY AND THE TRUSTEE; AND

(3) AGREES THAT IT WILL DELIVER TO EACH PERSON TO WHOM THE SECURITY EVIDENCED HEREBY IS TRANSFERRED (OTHER THAN A TRANSFER PURSUANT TO CLAUSES 2(A) OR (C) ABOVE) A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND.

7.5% Convertible Senior Notes due 2022

No. [] U.S. \$[]

CUSIP NO. []

ISIN NO. []

HC2 Holdings, Inc., a company duly incorporated and validly existing under the laws of the state of Delaware in the United States of America (herein called the “**Company**”), which term includes any successor corporation under the Indenture referred to on the reverse hereof), for value received hereby promises to pay to [], or registered assigns, the principal sum of [] UNITED STATES DOLLARS (U.S. \$[]) (which amount may from time to time be increased or decreased by adjustments made on the records of the Trustee, as custodian for the Depository, in accordance with the rules and procedures of the Depository and in accordance with the below referred Indenture) on June 1, 2022. The Principal Amount of Physical Notes and interest thereon, as provided on the reverse hereof, shall be payable at the Corporate Trust Office and at any other office or agency maintained by the Company for such purpose. The Paying Agent will pay principal of any Global Note and interest thereon, as provided on the reverse hereof, in immediately available funds to The Depository Trust Company or its nominee, as the case may be, as the registered holder of such global note, on each Interest Payment Date, Redemption Date, Fundamental Change Purchase Date or other payment date, as the case may be.

Reference is made to the further provisions of this Note set forth on the reverse hereof, including, without limitation, provisions giving the Holder the right to convert this Note into shares of Common Stock of the Company and to the ability and obligation of the Company to purchase this Note upon certain events, in each case, on the terms and subject to the limitations referred to on the reverse hereof and as more fully specified in the Indenture. Such further provisions shall for all purposes have the same effect as though fully set forth at this place. Capitalized terms used but not defined herein shall have such meanings as are ascribed to such terms in the Indenture. In the case of any conflict between this Note and the Indenture, the provisions of the Indenture shall control.

This Note shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been manually signed by the Trustee or a duly authorized authenticating agent under the Indenture.

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed.

HC2 HOLDINGS, INC.

By: _____
Name:
Title:
Date:

Section 2.03 *Form of Reverse of Note.*

HC2 HOLDINGS, INC.

7.5% Convertible Senior Notes due 2022

This Note is one of a duly authorized issue of Notes of the Company, designated as its 7.5% Convertible Senior Notes due 2022 (the “Notes”), initially limited in aggregate principal amount to \$55,000,000, which amount may from time to time be increased or decreased by adjustments made on the records of the Trustee, as custodian for the Depositary, in accordance with the rules and procedures of the Depositary and in accordance with the below referred Indenture) all issued or to be issued under and pursuant to an Indenture dated as of November 20, 2018 (the “**Indenture**”) between the Company and U.S. Bank National Association, as Trustee (the “**Trustee**”), to which Indenture and all indentures supplemental thereto reference is hereby made for a description of the rights, limitations of rights, obligations, duties and immunities thereunder of the Trustee, the Company and the Holders of the Notes. The Indenture provides that Additional Notes may be issued thereunder, if certain conditions are met. In the event of a conflict or inconsistency between this Note and the Indenture, the Indenture shall govern.

Interest. The Notes will bear interest at a rate of 7.5% per year. Interest on the Notes will accrue from, and including, November 20, 2018, or from the most recent date to which interest has been paid or duly provided for. Interest will be payable semiannually in arrears on each Interest Payment Date, beginning June 1, 2019. Pursuant to Section 9.03 of the Indenture, in certain circumstances, the Holders of Notes shall be entitled to receive Additional Interest.

Interest will be paid to the person in whose name a Note is registered at the Close of Business on the May 15 and November 15 (whether or not such date is a Business Day), as the case may be, immediately preceding the relevant Interest Payment Date. Interest on the Notes will be computed on the basis of a 360-day year composed of twelve 30-day months.

Interest will cease to accrue on a Note upon its maturity, conversion, redemption or repurchase in connection with a Fundamental Change.

Ranking. The Notes constitute a general unsecured and unsubordinated obligation of the Company.

Redemption at the Option of the Company. No sinking fund is provided for the Notes. The Notes are redeemable as a whole at the Redemption Price, at any time commencing on or after June 1, 2020 at the option of the Company if the Last Reported Sale Price of the Company’s Common Stock has been at least 130% of the Conversion Price then in effect for at least 20 Trading Days (whether or not consecutive) during any 30 consecutive Trading Day period ending within five Trading Days prior to the date on which the Company provides a Notice of Redemption as provided under Article 5 of the Indenture.

Purchase at the Option of the Holder Upon a Fundamental Change. Subject to the terms and conditions of the Indenture, the Company shall become obligated, at the option of the Holder, to repurchase the Notes if a Fundamental Change occurs at any time prior to the Maturity Date at 100% of the Principal Amount together with accrued and unpaid interest to, but excluding, the Fundamental Change Purchase Date, which amount will be paid in cash.

Withdrawal of Fundamental Change Purchase Notice. Holders have the right to withdraw, in whole or in part, any Fundamental Change Purchase Notice by delivering to the Paying Agent a written notice of withdrawal in accordance with the provisions of the Indenture. The right to withdraw the Fundamental

Change Purchase Notice will terminate at the Close of Business on the Business Day immediately preceding the relevant Fundamental Change Purchase Date.

Payment of Redemption Price and Fundamental Change Purchase Price. If money sufficient to pay the Redemption Price or Fundamental Change Purchase Price, as the case may be, of all Notes or portions thereof to be redeemed or purchased on a Redemption Date or on a Fundamental Change Purchase Date, respectively, is deposited with the Paying Agent on the Redemption Date or the Fundamental Change Purchase Date, respectively, such Notes will cease to be outstanding and interest will cease to accrue on such Notes (or portions thereof) immediately after such Redemption Date or immediately after the Close of Business on such Fundamental Change Purchase Date, as the case may be, and the Holder thereof shall have no other rights as such (other than the right to receive the Redemption Price or Fundamental Change Purchase Price, as the case may be, upon surrender of such Note).

Conversion. Subject to and upon compliance with the provisions of the Indenture (including without limitation the conditions of conversion of this Note set forth in Article 7 thereof), the Holder hereof has the right, at its option, to convert the Principal Amount hereof or any portion of such principal which is \$1,000 or an integral multiple of \$1,000 in excess thereof, into shares of Common Stock at the Applicable Conversion Rate. The Conversion Rate is initially 228.3105 shares of Common Stock per \$1,000 Principal Amount of Notes (equivalent to an initial Conversion Price of approximately \$4.38), subject to adjustment in certain events described in the Indenture. Upon conversion, the Company will deliver shares of Common Stock as set forth in the Indenture, subject to the provisions of Section 7.07(f) for conversions in connection with a Make-Whole Fundamental Change or a Redemption Notice. No fractional shares will be issued upon any conversion, but a payment in cash will be made, as provided in the Indenture, in respect of any fraction of a share which would otherwise be issuable upon the surrender of any Notes for conversion. Notes in respect of which a Holder is exercising its right to require repurchase on a Fundamental Change Purchase Date may be converted only if such Holder validly withdraws the related election to exercise such right in accordance with the terms of the Indenture.

In the event of a deposit or withdrawal of an interest in this Note, including an exchange, transfer, repurchase or conversion of this Note in part only, the Trustee, as custodian of the Depositary, shall make an adjustment on its records to reflect such deposit or withdrawal in accordance with the rules and procedures of the Depositary.

Acceleration of Maturity. Subject to certain exceptions in the Indenture, if an Event of Default shall occur and be continuing, the Principal Amount plus interest through such date on all the Notes may be declared due and payable in the manner and with the effect provided in the Indenture.

Supplement Indentures with Consent of Holders; Waiver of Past Defaults. The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the Notes under the Indenture at any time by the Company and the Trustee with the consent of the Holders of not less than a majority in aggregate Principal Amount of the outstanding Notes. The Indenture also contains provisions permitting the Holders of specified percentages in aggregate Principal Amount of the outstanding Notes, on behalf of the Holders of all the Notes, to waive compliance by the Company with certain provisions of the Indenture and certain past Defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of any provision of or applicable to this Note shall be conclusive and binding upon such Holder and upon all future Holders of

this Note and of any Note issued upon the registration of transfer hereof or in exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Note.

Registration of Transfer and Exchange. As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Note is registrable in the Register, upon surrender of this Note for registration of transfer at the office or agency of the Company in the United States, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Registrar duly executed by, the Holder hereof or his attorney duly authorized in writing, and thereupon one or more new Notes, of authorized denominations and for the same aggregate Principal Amount, will be issued to the designated transferee or transferees.

No service charge shall be made for any such registration of transfer or exchange, but the Company and the Registrar may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

Prior to due presentment of this Note for registration of transfer, the Company, the Trustee and the Registrar and any agent of the Company or the Trustee may treat the Person in whose name this Note is registered as the owner hereof for all purposes, whether or not this Note be overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

Denominations. The Notes are issuable only in registered form in denominations of \$1,000 and any integral multiple of \$1,000 in excess thereof, as provided in the Indenture and subject to certain limitations therein set forth. Notes are exchangeable for a like aggregate Principal Amount of Notes of a different authorized denomination, as requested by the Holder surrendering the same.

This Note and any claim, controversy or dispute arising under or related to this Note and the Indenture shall be governed by and construed in accordance with the laws of the State of New York.

All terms used in this Note that are defined in the Indenture shall have the meanings assigned to them in the Indenture.

ASSIGNMENT FORM

For value received _____ hereby sell(s), assign(s) and transfer(s) unto _____ (Please insert social security or Taxpayer Identification Number of assignee) the within Note, and hereby irrevocably constitutes and appoints _____ attorney to transfer the said Note on the books of the Company, with full power of substitution in the premises.

In connection with any transfer of the within Note occurring prior to the Resale Restriction Termination Date, as defined in the Indenture governing such Note, the undersigned confirms that such Note is being transferred:

- To HC2 Holdings, Inc. or a subsidiary thereof; or
- Under, and in accordance with, a registration statement that is effective under the Securities Act at the time of such transfer; or

- To an investor that the undersigned reasonably believes to be a qualified institutional buyer in compliance with Rule 144A under the Securities Act (if available); or
- Under any other available exemption from, or in a transaction not subject to, the registration requirements of the Securities Act (including, if available, the exemption provided by Rule 144 under the Securities Act).

TO BE COMPLETED BY PURCHASER IF THE THIRD BOX ABOVE IS CHECKED

The undersigned represents and warrants that it is purchasing this Note for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Company as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon the undersigned’s foregoing representations in order to claim the exemption from registration provided by Rule 144A.

Date: _____ Signed: _____

Unless one of the above boxes is checked, the Trustee will refuse to register any of the Notes evidenced by this certificate in the name of any Person other than the registered Holder thereof, *provided that* if the fourth box is checked, the Company or the Trustee may require, prior to registering any such transfer of the Notes, in its sole discretion, such legal opinions, certifications and other information as the Company or the Trustee may reasonably request 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.

If none of the foregoing boxes is checked, the Trustee or Registrar shall not be obligated to register this Note in the name of any Person other than the Holder hereof unless and until the conditions to any such transfer of registration set forth herein and in Section 3.11 of the Indenture shall have been satisfied.

Dated: _____

 Signature(s)

 Signature Guarantee

Signature(s) must be guaranteed by an eligible Guarantor Institution (banks, stock brokers, savings and loan associations and credit unions) with membership in an approved signature guarantee medallion program pursuant to Securities and Exchange Commission Rule 17Ad-15 if Notes are to be delivered, other than to and in the name of the registered holder.

NOTICE: The signature on the assignment must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

CONVERSION NOTICE

If you want to convert this Note into Common Stock of the Company, check the box:

To convert only part of this Note, state the Principal Amount to be converted (which must be \$1,000 or an integral multiple of \$1,000 in excess thereof):

\$ _____

If you want the share certificate, if any, made out in another person's name, fill in the form below:

(Insert other person's social security or tax ID no.)

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

Signature Guarantee: _____

Note: Signatures must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

[Form of Fundamental Change Repurchase Notice]

To: U.S. Bank National Association
Global Corporate Trust Services
Mailcode: EP MN WS3C
60 Livingston Avenue
St. Paul, MN 55107-2292
Facsimile No.: (651) 466-4730
Attention: Rick Prokosch

The undersigned registered owner of this Note hereby acknowledges receipt of a notice from HC2 Holdings, Inc. (the "**Company**") as to the occurrence of a Fundamental Change with respect to the Company and specifying the Fundamental Change Purchase Date and requests and instructs the Company to pay to the registered holder hereof in accordance with the applicable provisions of the Indenture referred to in this Note (1) the entire principal amount of this Note, or the portion thereof (that is \$1,000 principal amount or an integral multiple thereof) below designated, and (2) if such Fundamental Change Purchase Date does not fall during the period after a Regular Record Date and on or prior to the corresponding Interest Payment Date, accrued and unpaid interest, if any, thereon to, but excluding, such Fundamental Change Purchase Date.

In the case of Physical Notes, the certificate numbers of the Notes to be repurchased are as set forth below:

Dated: _____

Signature(s)

Social Security or Other Taxpayer
Identification Number

Principal amount to be repaid (if less than all): \$ _____,000

NOTICE: The above signature(s) of the Holder(s) hereof must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

Article 3.
THE SECURITIES

Section 3.01 *Title and Terms; Payments*. The aggregate Principal Amount of Notes that may be authenticated and delivered under this Indenture is initially limited to \$55,000,000 (the “**Initial Notes**”), except for Notes authenticated and delivered upon registration or transfer of, or in exchange for, or in lieu of, other Notes pursuant to Sections 3.05, 3.06, 3.07, 3.08, 3.09, 3.11, 3.12 or 8.04. The Company may, from time to time after the execution of this Indenture, execute and deliver to the Trustee for authentication Additional Notes of an unlimited aggregate principal amount, and the Trustee shall thereupon authenticate and deliver said Additional Notes to or upon the written order of the Company, without any further action by the Company hereunder; *provided, however*, that no such Additional Notes may be issued unless fungible with the Initial Notes under U.S. securities laws and for U.S. federal income tax purposes. Additional Notes shall have the same terms as Initial Notes (other than issue price, and in some cases, the date from which interest shall accrue).

The Notes shall be known and designated as the “7.5% Convertible Senior Notes due 2022” of the Company. The Principal Amount shall be payable on the Maturity Date.

The Principal Amount of, and interest on, Physical Notes shall be payable at the Corporate Trust Office and at any other office or agency maintained by the Company for such purpose in the continental United States of America. Interest on Physical Notes will be payable (i) to Holders having an aggregate Principal Amount of \$1,000,000 or less of Notes, by check mailed to such Holders at the address set forth in the Register and (ii) to Holders having an aggregate Principal Amount of more than \$1,000,000 of Notes, either by check mailed to such Holders or, upon application by a Holder to the Registrar not later than the relevant Regular Record Date for such interest payment, 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 the Registrar to the contrary in writing. The Company will pay principal of, interest on Global Notes in immediately available funds to The Depository Trust Company or its nominee, as the case may be, as the registered holder of such global note, on each Interest Payment Date, Redemption Date, Fundamental Change Purchase Date or other payment date, as the case may be.

Any Notes repurchased by the Company will be retired and no longer outstanding hereunder.

Section 3.02 *Ranking*. The Notes constitute a general unsecured and unsubordinated obligation of the Company.

Section 3.03 *Denominations*. The Notes shall be issuable only in registered form without coupons and in minimum denominations of \$1,000 and any integral multiple of \$1,000 in excess thereof.

Section 3.04 *Execution, Authentication, Delivery and Dating*. The Notes shall be executed on behalf of the Company by at least one Officer of the Company.

Notes bearing the manual or facsimile signatures of individuals who were at any time the proper officers of the Company shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Notes or did not hold such offices at the date of such Notes.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Notes executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Notes. The Company Order shall specify the amount of Notes to be authenticated, and shall further specify the amount of such Notes to be issued as a Global Notes or as Physical Notes. The Trustee in accordance with such Company Order shall authenticate and deliver such Notes as in this Indenture provided and not otherwise.

Each Note shall be dated the date of its authentication.

No Note shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Note a certificate of authentication substantially in the form provided for herein executed by the Trustee by manual signature, and such certificate upon any Note shall be conclusive evidence, and the only evidence, that such Note has been duly authenticated and delivered hereunder.

Section 3.05 *Temporary Notes*. Pending the preparation of definitive Notes, the Company may execute, and upon Company Order the Trustee shall authenticate and deliver, temporary Notes that are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Notes in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Notes may determine, as evidenced by their execution of such Notes; *provided*, that any such temporary Notes shall bear legends on the face of such Notes as set forth in Section 2.02.

If temporary Notes are issued, the Company will cause definitive Notes to be prepared without unreasonable delay. After the preparation of definitive Notes, the temporary Notes shall be exchangeable for definitive Notes upon surrender of the temporary Notes at any office or agency of the Company designated pursuant to Section 4.02, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Notes, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a like Principal Amount of Physical Notes of authorized denominations. Until so exchanged, the temporary Notes shall in all respects be entitled to the same benefits under this Indenture as Physical Notes.

Section 3.06 *Registration; Registration of Transfer and Exchange*.

a) The Company shall cause to be kept at the applicable Corporate Trust Office of the Trustee a register (the register maintained in such office and in any other office or agency designated pursuant to Section 4.02 being herein sometimes collectively referred to as the “**Register**”) in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Notes and of transfers of Notes. The Trustee is hereby appointed “**Registrar**” (the “**Registrar**”) for the purpose of registering Notes and transfers of Notes as herein provided.

Upon surrender for registration of transfer of any Note at an office or agency of the Company designated pursuant to Section 4.02 for such purpose, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Notes of any authorized denominations and of a like aggregate Principal Amount and tenor, each such Note bearing such restrictive legends as may be required by this Indenture (including Sections 2.02, 3.07 and 3.11).

At the option of the Holder and subject to the other provisions of Section 3.07 and to Section 3.11, Notes may be exchanged for other Notes of any authorized denominations and of a like aggregate Principal Amount and tenor, upon surrender of the Notes to be exchanged at such office or agency. Whenever any

Notes are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Notes which the Holder making the exchange is entitled to receive.

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

Every Note presented or surrendered for registration of transfer or for exchange shall (if so required by the Company or the Trustee) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company and the Registrar duly executed, by the Holder thereof or his attorney duly authorized in writing. As a condition to the registration of transfer of any Restricted Notes, the Company or the Trustee may require evidence satisfactory to them as to the compliance with the restrictions set forth in the legend on such Notes.

No service charge shall be made for any registration of transfer or exchange of Notes, but the Company and the Registrar may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Notes, other than exchanges pursuant to Section 3.05 not involving any transfer.

Neither the Company nor the Registrar shall be required to exchange or register a transfer of any Note in the circumstances set forth in Section 3.11(a).

b) Neither any members of, or participants in, the Depositary (collectively, the “**Agent Members**”) nor any other Persons on whose behalf any Agent Member may act shall have any rights under this Indenture with respect to any Global Note registered in the name of the Depositary or any nominee thereof, or under any such Global Note, and the Depositary or such nominee, as the case may be, may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner and Holder of such Global Note for all purposes whatsoever. The Trustee shall have no responsibility or obligation to any Agent Members or any other Person on whose behalf Agent Members may act with respect to (i) any ownership interests in the Global Note, (ii) the accuracy of the records of the Depositary or its nominee, (iii) any notice required hereunder or (iv) any payments under or with respect to the Global Note. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depositary or such nominee, as the case may be, or impair, as between the Depositary, its Agent Members and any other Person on whose behalf an Agent Member may act, the operation of customary practices of such Persons governing the exercise of the rights of a Holder of any Note. The registered Holder of a Global Note may grant proxies and otherwise authorize any Person, including Agent Members and persons that may hold interests through Agent Members, to take any action that a Holder is entitled to take under this Indenture or the Notes.

Section 3.07 *Transfer Restrictions.*

a) Restricted Notes.

Every Note (and all securities issued in exchange therefor or substitution thereof, except any shares of Common Stock issued upon conversion thereof) that bears, or that is required under this Section 3.07 to bear, the Restricted Notes Legend will be deemed to be a “**Restricted Note.**” Each Restricted Note will be subject to the restrictions on transfer set forth in this Indenture (including in the Restricted Notes Legend)

and will bear the restricted CUSIP number for the Notes unless such restrictions on transfer are eliminated or otherwise waived by written consent of the Company, and each Holder of a Restricted Note, by such Holder's acceptance of such Restricted Note, will be deemed to be bound by the restrictions on transfer applicable to such Restricted Note.

Until the Resale Restriction Termination Date, any Note (or any security issued in exchange therefor or substitution thereof, except any shares of Common Stock issued upon the conversion thereof) will bear the Restricted Notes Legend unless:

(1) such Note, since last held by the Company or an affiliate of the Company (within the meaning of Rule 144), if ever, was transferred (1) to a Person other than (x) the Company or (y) an affiliate of the Company (within the meaning of Rule 144) or a Person that was an affiliate of the Company within the 90 days immediately preceding such transfer and (2) pursuant to a registration statement that was effective under the Securities Act at the time of such transfer;

(2) such Note was transferred (1) to a Person other than (x) the Company or (y) an affiliate of the Company (within the meaning of Rule 144) or a Person that was an affiliate of the Company within the 90 days immediately preceding such transfer and (2) pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act; or

(3) the Company delivers written notice to the Trustee and the Registrar stating that the Restricted Notes Legend may be removed from such Note.

In addition, until the Resale Restriction Termination Date:

(1) no transfer of any Note will be registered by the Registrar prior to the Resale Restriction Termination Date unless the transferring Holder delivers the form of assignment set forth on the Note, with the appropriate box checked, to the Trustee; and

(2) the Registrar will not register any transfer of any Note that is a Restricted Note to a Person that is an affiliate of the Company or has been an affiliate of the Company (within the meaning of Rule 144) within the 90 days immediately preceding the date of such proposed transfer.

On and after the Resale Restriction Termination Date, any Note (or any security issued in exchange therefor or substitution thereof, except any shares of Common Stock issued upon the conversion thereof) will bear the Restricted Notes Legend at any time the Company reasonably determinates that, to comply with law, such Note (or such securities issued in exchange for or substitution of a Note) must bear the Restricted Notes Legend.

b) Restricted Stock.

Every share of Common Stock that bears, or that is required under this Section 3.07 to bear, the Restricted Stock Legend will be deemed to be "**Restricted Stock**." Each share of Restricted Stock will be subject to the restrictions on transfer set forth in this Indenture (including in the Restricted Stock Legend) and will bear a restricted CUSIP number unless such restrictions on transfer are eliminated or otherwise waived by written consent of the Company, and each Holder of Restricted Stock, by such Holder's acceptance

of Restricted Stock, will be deemed to be bound by the restrictions on transfer applicable to such Restricted Stock.

Until the Resale Restriction Termination Date, any share of Common Stock issued upon the conversion of a Note will be issued in definitive form and will bear the Restricted Stock Legend unless:

(1) such share of Common Stock was transferred (1) to a Person other than (x) the Company or (y) an affiliate of the Company (within the meaning of Rule 144) or a Person that was an affiliate of the Company within the 90 days immediately preceding such transfer and (2) pursuant to a registration statement that was effective under the Securities Act at the time of such conversion;

(2) such share of Common Stock was transferred (1) to a Person other than (x) the Company or (y) an affiliate of the Company (within the meaning of Rule 144) or a Person that was an affiliate of the Company within the 90 days immediately preceding such transfer and (2) pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act;

(3) such Note, regardless of whether bearing the Restricted Notes Legend, was not, at the time of its conversion, required to bear the Restricted Notes Legend pursuant to Section 3.07(a) and such Common Stock was issued to a Person other than (1) the Company or (2) an affiliate of the Company; or

(4) the Company delivers written notice to the Trustee, the Registrar and the transfer agent for the Common Stock stating that such share of Common Stock need not bear the Restricted Stock Legend.

On and after the Resale Restriction Termination Date, any share of Common Stock will be issued in definitive form and will bear the Restricted Stock Legend at any time the Company reasonably determines that, to comply with law, such share of Common Stock must bear the Restricted Stock Legend.

c) As used in this Section 3.07, the term “**transfer**” means any sale, pledge, transfer, loan, hypothecation or other disposition whatsoever of any Restricted Note, any interest therein or any Restricted Stock.

Section 3.08 *Expiration of Restrictions.*

a) **Physical Notes.** Any Physical Note (or any security issued in exchange or substitution therefor) that does not constitute a Restricted Note may be exchanged for a new Note or Notes of like tenor and aggregate Principal Amount that do not bear the Restricted Notes Legend required by Section 3.07. To exercise such right of exchange, the Holder of such Note must surrender such Note in accordance with the provisions of Section 3.11 and deliver any additional documentation reasonably required by the Company, the Trustee or the Registrar in connection with such exchange.

b) **Global Notes; Resale Restriction Termination Date.**

If, on the Free Trade Date, or the next succeeding Business Day if the Free Trade Date is not a Business Day, any Notes are represented by a Global Note that is a Restricted Note (any such Global Note, a “**Restricted Global Note**”), as promptly as practicable, the Company will automatically exchange every

beneficial interest in each Restricted Global Note for beneficial interests in Global Notes that are not subject to the restrictions set forth in the Restricted Notes Legend and in Section 3.07 hereof.

To effect such automatic exchange, the Company will (A) deliver to the Depository an instruction letter for the Depository's mandatory exchange process at least 15 days immediately prior to the Free Trade Date and (B) deliver to each of the Trustee and the Registrar a duly completed Free Transferability Certificate and a Company Order promptly after the Free Trade Date, but not an Opinion of Counsel. The first date on which both the Trustee and the Registrar have received the Free Transferability Certificate will be known as the "**Resale Restriction Termination Date.**"

Immediately upon receipt of the Free Transferability Certificate by each of the Trustee and the Registrar, the restrictive legend will be deemed removed from the Notes.

Promptly after the Resale Restriction Termination Date, the Company will provide Bloomberg LLP with a copy of the Free Transferability Certificate and will use reasonable efforts to cause Bloomberg LLP to adjust its screen page for the Notes to indicate that the Notes are no longer Restricted Notes and are now identified by an unrestricted CUSIP number.

Prior to the Company's delivery of the Free Transferability Certificate and afterwards, the Company and the Trustee will comply with the Applicable Procedures and otherwise use reasonable efforts to cause each Global Note to be identified by an unrestricted CUSIP number in the facilities of the Depository by the date the Free Transferability Certificate is delivered to the Trustee and the Registrar or as promptly as possible thereafter.

Notwithstanding anything to the contrary in Sections 3.08(b), the Company will not be required to deliver the Free Transferability Certificate if it reasonably believes that removal of the Restricted Notes Legend or the changes to the CUSIP numbers for the Notes could result in or facilitate transfers of the Notes in violation of applicable law.

Section 3.09 *Mutilated, Destroyed, Lost and Stolen Notes.* If any mutilated Note is surrendered to the Trustee, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a new Note of like tenor and Principal Amount and bearing a number not contemporaneously outstanding.

If there shall be delivered to the Company and the Trustee (i) evidence to their satisfaction of the destruction, loss or theft of any Note and (ii) such security or indemnity as may be required by them to save each of them and any agent of either of them harmless, then, in the absence of notice to the Company or the Trustee that such Note has been acquired by a bona fide purchaser, the Company shall execute and the Trustee shall authenticate and deliver, in lieu of any such destroyed, lost or stolen Note, a new Note of like tenor and Principal Amount and bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Note has become or is about to become due and payable, the Company in its discretion may, instead of issuing a new Note, pay such Note.

Upon the issuance of any new Note under this Section 3.09, the Company may require 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) connected therewith.

Every new Note issued pursuant to this Section 3.09 in lieu of any destroyed, lost or stolen Note shall constitute an original additional contractual obligation of the Company, whether or not the destroyed,

lost or stolen Note shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Notes duly issued hereunder.

The provisions of this Section 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 stolen Notes.

Section 3.10 *Persons Deemed Owners.* Prior to due presentment of a Note for registration of transfer, the Company, the Trustee, the Registrar and any agent of the Company, the Trustee or the Registrar may treat the Person in whose name such Note is registered as the owner of such Note for the purpose of receiving payment of the principal of such Note and for all other purposes whatsoever, whether or not such Note be overdue, and neither the Company, the Trustee, the Registrar nor any agent of the Company, the Trustee or the Registrar shall be affected by notice to the contrary.

Section 3.11 *Transfer and Exchange.*

a) Provisions Applicable to All Transfers and Exchanges.

Subject to the restrictions set forth in this Section 3.11, Physical Notes and beneficial interests in Global Notes may be transferred or exchanged from time to time as desired, and each such transfer or exchange will be noted by the Registrar in the Register.

All Notes issued upon any registration of transfer or exchange in accordance with this Indenture will be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture as the Notes surrendered upon such registration of transfer or exchange.

No service charge will be imposed on any Holder of a Physical Note or any owner of a beneficial interest in a Global Note for any exchange or registration of transfer, but each of the Company, the Trustee or the Registrar may require such Holder or owner of a beneficial interest to pay a sum sufficient to cover any transfer tax, assessment or other governmental charge imposed in connection with such registration of transfer or exchange.

Unless the Company specifies otherwise, none of the Company, the Trustee, the Registrar or any co-Registrar will be required to exchange or register a transfer of any Note (i) that has been surrendered for conversion, (ii) that has been called for redemption or (iii) as to which a Fundamental Change Purchase Notice has been delivered and not withdrawn, in each case, except to the extent any portion of such Note is not subject to the foregoing.

The Trustee will 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 Note (including any transfers between or among Depositary participants or beneficial owners of interests in any Global Note) 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. Neither the Trustee nor any Agent shall have any responsibility or liability for any actions taken or not taken by the Depositary.

b) In General; Transfer and Exchange of Beneficial Interests in Global Notes. So long as the Notes are eligible for book-entry settlement with the Depository, unless otherwise required by law, except to the extent required by Section 3.11(c):

(1) all Notes will be represented by one or more Global Notes;

(2) every transfer and exchange of a beneficial interest in a Global Note will be effected through the Depository in accordance with the Applicable Procedures and the provisions of this Indenture (including the restrictions on transfer set forth in Section 3.07); and

(3) each Global Note may be transferred only as a whole and only (A) by the Depository to a nominee of the Depository, (B) by a nominee of the Depository to the Depository or to another nominee of the Depository, or (C) by the Depository or any such nominee to a successor Depository or a nominee of such successor Depository.

c) Transfer and Exchange of Global Notes.

Notwithstanding any other provision of this Indenture, each Global Note will be exchanged for Physical Notes if the Depository delivers notice to the Company that:

(1) the Depository is unwilling or unable to continue to act as Depository; or

(2) the Depository is no longer registered as a clearing agency under the Exchange Act;

(3) and, in each case, the Company promptly delivers a copy of such notice to the Trustee and the Company fails to appoint a successor Depository within 90 days after receiving notice from the Depository.

In each such case, each Global Note will be deemed surrendered to the Trustee for cancellation, and the Trustee will cause each Global Note to be cancelled in accordance with the Applicable Procedures, and the Company, in accordance with Section 3.04, will promptly execute, and, upon receipt of a Company Order, the Trustee, in accordance with Section 3.04, will promptly authenticate and deliver, for each beneficial interest in each Global Note so exchanged, an aggregate principal amount of Physical Notes equal to the aggregate principal amount of such beneficial interest, registered in such names and in such authorized denominations as the Depository specifies, and bearing any legends that such Physical Notes are required to bear under Section 3.07.

In addition, if (x) the Company, in its sole discretion, determines that any Global Note will be exchangeable for Physical Notes or (y) an Event of Default has occurred and is continuing, in each case, any owner of a beneficial interest in a Global Note may exchange such beneficial interest for Physical Notes by delivering a written request to the Registrar.

In such case, (A) the Registrar will deliver notice of such request to the Company and the Trustee, which notice will identify the owner of the beneficial interest to be exchanged, the aggregate principal amount of such beneficial interest and the CUSIP of the relevant Global Note; (B) the Company will, in accordance with Section 3.04, promptly execute, and, upon receipt of a Company Order, the Trustee, in accordance with Section 3.04, will promptly authenticate and deliver, to such owner, for the beneficial interest so exchanged

by such owner, Physical Notes registered in such owner's name having an aggregate principal amount equal to the aggregate principal amount of such beneficial interest and bearing any legends that such Physical Notes are required to bear under Section 3.07, and (C) the Registrar, in accordance with the Applicable Procedures, will cause the principal amount of such Global Note to be decreased by the aggregate principal amount of the beneficial interest so exchanged. If all of the beneficial interests in a Global Note are so exchanged, such Global Note will be deemed surrendered to the Trustee for cancellation, and the Trustee will cause such Global Note to be cancelled in accordance with the Applicable Procedures.

d) Transfer and Exchange of Physical Notes.

If Physical Notes are issued, a Holder may transfer a Physical Note by: (A) surrendering such Physical Note for registration of transfer to the Registrar, together with any endorsements or instruments of transfer required by any of the Company, the Trustee or the Registrar; (B) if such Physical Note is a Restricted Note, delivering any documentation that the Company, the Trustee or the Registrar reasonably require to ensure that such transfer complies with Section 3.07 and any applicable securities laws; and (C) satisfying all other requirements for such transfer set forth in this Section 3.11 and Section 3.07. Upon the satisfaction of conditions (A), (B) and (C), the Company, in accordance with Section 3.04, will promptly execute and deliver to the Trustee, and the Trustee, upon receipt of a Company Order, will, in accordance with Section 3.04, promptly authenticate and deliver, in the name of the designated transferee or transferees, one or more new Physical Notes, of any authorized denominations, having like Page aggregate Principal Amount and bearing any restrictive legends required by Section 3.07.

If Physical Notes are issued, a Holder may exchange a Physical Note for other Physical Notes of any authorized denominations and aggregate Principal Amount equal to the aggregate Principal Amount of the Notes to be exchanged by surrendering such Notes, together with any endorsements or instruments of transfer required by any of the Company, the Trustee or the Registrar, at any office or agency maintained by the Company for such purposes pursuant to Section 4.02. Whenever a Holder surrenders Notes for exchange, the Company, in accordance with Section 3.04, will promptly execute and deliver to the Trustee, and the Trustee, upon receipt of a Company Order, will, in accordance with Section 3.04, promptly authenticate and deliver the Notes that such Holder is entitled to receive, bearing registration numbers not contemporaneously outstanding and any restrictive legends that such Physical Notes are to bear under Section 3.07.

If Physical Notes are issued, a Holder may transfer or exchange a Physical Note for a beneficial interest in a Global Note by (A) surrendering such Physical Note for registration of transfer or exchange, together with any endorsements or instruments of transfer required by any of the Company, the Trustee or the Registrar, at any office or agency maintained by the Company for such purposes pursuant to Section 4.02; (B) if such Physical Note is a Restricted Note, delivering any documentation the Company, the Trustee or the Registrar reasonably require to ensure that such transfer complies with Section 3.07 and any applicable securities laws; (C) satisfying all other requirements for such transfer set forth in this Section 3.11 and Section 3.07; and (D) providing written instructions to the Trustee to make, or to direct the Registrar to make, an adjustment in its books and records with respect to the applicable Global Note to reflect an increase in the aggregate Principal Amount of the Notes represented by such Global Note, which instructions will contain information regarding the Depository account to be credited with such increase. Upon the satisfaction of conditions (A), (B), (C) and (D), the Trustee will cancel such Physical Note and cause, or direct the Registrar to cause, in accordance with the Applicable Procedures, the aggregate Principal Amount of Notes represented by such Global Note to be increased by the aggregate Principal Amount of such Physical Note, and will credit or cause to be credited the account of the Person specified in the instructions provided by the exchanging

Holder in an amount equal to the aggregate Principal Amount of such Physical Note. If no Global Notes are then outstanding, the Company, in accordance with Section 3.04, will promptly execute and deliver to the Trustee, and the Trustee, upon receipt of a Company Order, will, in accordance with Section 3.04, authenticate, a new Global Note in the appropriate aggregate Principal Amount.

Section 3.12 *Cancellation.* The Company at any time may deliver to the Trustee for cancellation any Notes previously authenticated and delivered hereunder that the Company may have acquired in any manner whatsoever, and may deliver to the Trustee for cancellation any Notes previously authenticated hereunder which the Company has not issued and sold. The Trustee shall cancel all Notes surrendered for registration of transfer, exchange, payment, purchase, repurchase, conversion (pursuant to Article 7 hereof) or cancellation in accordance with its customary practices. If the Company shall acquire any of the Notes, such acquisition shall not operate as a Redemption or satisfaction of the indebtedness represented by such Notes unless and until the same are delivered to the Trustee for cancellation. The Notes so acquired, while held by or on behalf of the Company or any of its Subsidiaries, shall not entitle the Holder thereof to convert the Notes. The Company may not issue new Notes to replace Notes it has paid in full or delivered to the Trustee for cancellation.

The Registrar shall retain, in accordance with its customary procedures, copies of all letters, notices and other written communications received pursuant to this Section 3.12. 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 the giving of reasonable written notice to the Registrar.

Section 3.13 *CUSIP Numbers.* In issuing the Notes, the Company may use “CUSIP” numbers (if then generally in use), and, if so, the Trustee shall use “CUSIP” numbers in notices of redemption as a convenience to Holders; *provided* that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or as contained in any notice of a Redemption and that reliance may be placed only on the other identification numbers printed on the Notes, and any such redemption shall not be affected by any defect in or omission of such numbers. The Company will promptly notify the Trustee in writing of any change in the “CUSIP” numbers.

Article 4.

PARTICULAR COVENANTS OF THE COMPANY

Section 4.01 *Payment of Principal and Interest.* The Company covenants and agrees that it shall duly and punctually pay or cause to be paid the principal of and interest on each of the Notes at the places, at the respective times and in the manner provided herein and in the Notes. If any Interest Payment Date, the Maturity Date, any Redemption Date or any Fundamental Change Purchase Date is not a Business Day, payment will be made on the next succeeding Business Day, and no Additional Interest or penalty or default interest will accrue thereon for the intervening period in respect of such delay.

Section 4.02 *Maintenance of Office or Agency.* The Company shall maintain an office or agency in the United States, where the Notes may be surrendered for registration of transfer or exchange or for presentation for payment or for conversion and where notices and demands to or upon the Company in respect of the Notes and this Indenture may be served. The Company shall give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency not designated or appointed by the Trustee. 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 at the Corporate Trust Office, 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 co-Registrars and one or more offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations.

The Company will give prompt written notice of any such designation or rescission and of any change in the location of any such other office or agency.

The Company hereby initially designates the Trustee as Paying Agent, Registrar and Conversion Agent.

So long as the Trustee is the Registrar, the Trustee agrees to mail, or cause to be mailed, the notices set forth in Section 11.11(a) and the third paragraph of Section 11.12. If co-Registrars have been appointed in accordance with this Section, the Trustee shall mail such notices only to the Company and the Holders of Notes it can identify from its records.

Section 4.03 *Appointments to Fill Vacancies in Trustee's Office*. The Company, whenever necessary to avoid or fill a vacancy in the office of Trustee, will appoint, in the manner provided in Section 11.12, a Trustee, so that there shall at all times be a Trustee hereunder.

Section 4.04 *Provisions as to Paying Agent*.

a) The Company may designate additional Paying Agents, rescind the designation of any Paying Agent, or approve a change in the office through which any Paying Agent acts. If the Company shall appoint a Paying Agent other than the Trustee, or if the Trustee shall appoint such a Paying Agent, the Company will cause such Paying Agent to execute and deliver to the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provisions of this Section 4.04:

(1) that it will hold all sums held by it as such agent for the payment of the principal of or interest on the Notes (whether such sums have been paid to it by the Company or by any other obligor on the Notes) in trust for the benefit of the Holders of the Notes;

(2) that it will give the Trustee notice of any failure by the Company (or by any other obligor on the Notes) to make any payment of the principal of or interest on the Notes when the same shall be due and payable; and

(3) that at any time during the continuance of an Event of Default, upon request of the Trustee, it will forthwith pay to the Trustee all sums so held in trust.

The Company shall, on or before each due date of the principal of or interest on the Notes, deposit with the Paying Agent a sum (in funds which are immediately available on the due date for such payment) sufficient to pay such principal or interest, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of any failure to take such action; *provided, however*, that if such deposit is made on the due date, such deposit shall be received by the Paying Agent by 12:00 p.m. noon New York City time, on such date. In the event that the Paying Agent receives funds in advance of the due date, the Paying Agent shall be entitled to invest such funds in the U.S. Bank Money Market Deposit Account, any earnings on which shall be for the account of the Company

b) If the Company shall act as its own Paying Agent, it will, on or before each due date of the principal of or interest on the Notes, set aside, segregate and hold in trust for the benefit of the Holders of the Notes a sum sufficient to pay such principal or interest so becoming due and will promptly notify the Trustee of any failure to take such action and of any failure by the Company (or any other obligor under the Notes) to make any payment of the principal of or interest on the Notes when the same shall become due and payable. Upon any Event of Default under Sections 9.01(i) or 9.01(j), the Trustee shall automatically be the Paying Agent.

c) Anything in this Section 4.04 to the contrary notwithstanding, the Company may, at any time, for the purpose of obtaining a satisfaction and discharge of this Indenture, or for any other reason, pay or cause to be paid to the Trustee all sums held in trust by the Company or any Paying Agent hereunder as required by this Section 4.04, such sums to be held by the Trustee upon the trusts herein contained and upon such payment by the Company or any Paying Agent to the Trustee, the Company or such Paying Agent shall be released from all further liability with respect to such sums.

d) Anything in this Section 4.04 to the contrary notwithstanding, the agreement to hold sums in trust as provided in this Section 4.04 is subject to Section 13.03 and Section 13.04.

The Trustee shall not be responsible for the actions of any other Paying Agents (including the Company if acting as its own Paying Agent) and shall have no control of any funds held by such other Paying Agents.

Section 4.05 *Existence*. Subject to Article 10, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its existence and rights (charter and statutory); *provided, however*, that the Company shall not be required to preserve any such right if the Company shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company.

Section 4.06 *[Reserved]*.

Section 4.07 *[Reserved]*.

Section 4.08 *Rule 144A Information Requirement*. The Company covenants and agrees that it shall, during any period in which it is not subject to Section 13 or 15(d) under the Exchange Act, so long as any of the Notes or shares of Common Stock delivered upon conversion of the Notes will, at such time, constitute “restricted securities” within the meaning of Rule 144(a)(3) under the Securities Act, promptly provide to the Trustee and will, upon written request, provide to any Holder or beneficial owner of such Notes or such shares of Common Stock and any prospective purchaser of such Notes or such shares of Common Stock, the information required pursuant to Rule 144A(d)(4) under the Securities Act to facilitate the resale of such Notes or such shares of Common Stock pursuant to Rule 144A under the Securities Act, and it will take such further action as any Holder or beneficial owner of such Notes or such shares of Common Stock may reasonably request from time to time to enable such Holder or beneficial owner to sell such Notes or such shares of Common Stock in accordance with Rule 144A, as such rule may be amended from time to time.

Section 4.09 *Resale of Certain Notes*. The Company shall not, and shall not permit any of its Subsidiaries to, resell any Notes that have been reacquired by the Company or any such Subsidiary. The Trustee shall have no responsibility in respect of the Company’s performance of its agreement in the preceding sentence.

Section 4.10 *Commission Filings and Reports*. The Company covenants that any documents or reports that the Company is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act shall be filed by the Company with the Trustee within 15 calendar days after the same is filed with the Commission pursuant to its rules and regulations (giving effect to any grace period provided by Rule 12b-25 under the Exchange Act); *provided that* in each case the delivery of materials to the Trustee by electronic means or filing of documents pursuant to the Commission's "EDGAR" system (or any successor electronic filing system) shall be deemed to constitute "filing" with the Trustee for purposes of this Section 4.10. Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officer's Certificates). The Trustee shall have no responsibility to determine whether any such filings have been made.

Section 4.11 *Book-Entry System*. If the Notes cease to trade in the Depository's book-entry settlement system, the Company covenants and agrees that it shall use reasonable efforts to make such other book entry arrangements that it determines are reasonable for the Notes.

Section 4.12 *Additional Interest*. If at any time Additional Interest become payable by the Company pursuant to Section 9.03, the Company shall promptly deliver to the Trustee a certificate to that effect and stating (i) the amount of such Additional Interest that is payable and (ii) the date on which such Additional Interest is payable. Unless and until a Trust Officer of the Trustee receives such a certificate, the Trustee may assume without inquiry that no Additional Interest is payable. If the Company has paid Additional Interest directly to the Persons entitled to such Additional Interest, the Company shall deliver to the Trustee a certificate setting forth the particulars of such payment.

Section 4.13 *[RESERVED]*.

Section 4.14 *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 or other law which would prohibit or forgive the Company from paying all or any portion of the principal of or interest on the Notes as contemplated herein, wherever enacted, now or at any time hereafter in force, or which may affect the covenants or the performance of this Indenture and the Company (to the extent it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

Section 4.15 *Compliance Certificate*. The Company shall deliver to the Trustee, within one hundred twenty (120) days after the end of each fiscal year of the Company (commencing with the fiscal year ending 2013), an Officer's Certificate, stating whether or not to the knowledge of the signer thereof the Company is in default in the performance and observance of any of the terms, provisions and conditions of this Indenture (without regard to any period of grace or requirement of notice provided hereunder) and, if the Company shall be in default, specifying all such defaults and the nature and the status thereof of which the signer may have knowledge.

The Company shall deliver to the Trustee, within 30 days after the Company becomes aware of the occurrence of any Event of Default or an event which, with notice or the lapse of time or both, would constitute

an Event of Default, an Officer's Certificate setting forth the details of such Event of Default or Default, its status and the action which the Company proposes to take with respect thereto.

Any notice required to be given under this Section 4.15 shall be delivered to a Trust Officer of the Trustee at its Corporate Trust Office.

Section 4.16 *Anti-layering Covenant.* The Company shall not, and will not permit any guarantor of the Company's Indebtedness to, incur, directly or indirectly, or otherwise become liable for any Indebtedness which is subordinated or junior in right of payment to any other Indebtedness of the Company or any such guarantor (including the Secured Notes (or any refinancing indebtedness in respect thereof) and the guarantees thereof) or secured on a junior lien basis to the Secured Notes (or any refinancing indebtedness in respect thereof) unless such Indebtedness is also subordinated or junior in right of payment to the Notes on substantially identical terms or the Notes are secured on an equal and ratable basis with such junior lien securing such other Indebtedness. No Indebtedness shall be deemed to be subordinated or junior in right of payment to any other Indebtedness solely by virtue of being unsecured.

Article 5. REDEMPTION

Section 5.01 *Right to Redeem.*

a) The Notes may be redeemed in whole at the option of the Company on or after June 1, 2020, if the Last Reported Sale Price of the Common Stock has been greater than or equal to 130% of Conversion Price then in effect for at least 20 Trading Days (whether or not consecutive) during any 30 consecutive Trading Day period ending within five Trading Days prior to the date on which the Company provides notice of such redemption (such redemption, a "**Redemption**").

b) If the Company elects to redeem the Notes pursuant to a Redemption, the Redemption Price shall be payable in cash and shall be equal to (i) 100% of the Principal Amount of Notes redeemed, *plus* (ii) accrued and unpaid interest, including Additional Interest, if any, to, but excluding, the Redemption Date. If the Notes are redeemed on a date that is after a Regular Record Date and prior to the corresponding Interest Payment Date, the accrued interest payable in respect of such Interest Payment Date shall not be payable to Holders of the Notes to whom the Principal Amount of the Notes being redeemed pursuant to the Redemption is paid, and shall instead pay the full amount of the relevant interest payment on such Interest Payment Date to the Holder of record on the relevant Regular Record Date for the corresponding Interest Payment Date.

c) No Notes may be redeemed by the Company pursuant to a Redemption if the Principal Amount of the Notes has been accelerated, and such acceleration has not been rescinded, on or prior to the Redemption Date.

d) Except as provided in this Section 5.01, the Notes shall not be redeemable by the Company.

e) To the extent a Holder converts its Notes "in connection with" the Company's election to redeem the Notes, the Company will increase the Conversion Rate as described in Section 7.07.

Section 5.02 *Notice of Redemption.* At least 30 days but not more than 60 days before a Redemption Date in connection with a Redemption, the Company shall mail a written notice of redemption

(a “**Notice of Redemption**”) by first-class mail, postage prepaid, to the Trustee, the Paying Agent and each Holder of Notes to be redeemed. At the time that Notice of Redemption is provided, the Company will publish a notice containing the information required in the Notice of Redemption in a newspaper of general circulation in the City of New York or publish the information on the Company’s website or through such other public medium as the Company may use at that time.

The Notice of Redemption shall specify the Notes to be redeemed and shall state:

- a) the Redemption Date;
- b) the Redemption Price
- c) the Applicable Conversion Rate and Applicable Conversion Price;
- d) the name and address of the Paying Agent and Conversion Agent;
- e) that Notes called for redemption may be converted at any time before the Close of Business on the Business Day immediately preceding the Redemption Date unless the Company fails to pay the Redemption Price;
- f) that Holders who want to convert Notes must satisfy the requirements set forth therein and in this Indenture;
- g) that Notes called for redemption must be surrendered to the Paying Agent for cancellation to collect the Redemption Price;
- h) that, unless the Company defaults in making payment of such Redemption Price, interest will cease to accrue on and after the Redemption Date; and
- i) the CUSIP number of the Notes.

At the Company’s written request delivered at least 5 days prior to the date such Notice of Redemption is to be given (unless a shorter time period shall be acceptable to the Trustee), the Trustee shall give the Notice of Redemption to each Holder of Notes to be redeemed in the Company’s name and at the Company’s expense.

Section 5.03 *Effect of Notice of Redemption.* Once a Notice of Redemption is given, Notes called for redemption become due and payable on the Redemption Date and at the Redemption Price stated in the Notice of Redemption except for Notes that are converted in accordance with the terms of this Indenture. Upon surrender to the Paying Agent, such Notes shall be paid at the Redemption Price stated in the Notice of Redemption.

Section 5.04 *Deposit of Redemption Price.* Prior to 12:00 p.m. noon (New York City time) on a Redemption Date in connection with a Redemption, the Company shall deposit with the Paying Agent (or if the Company or a Subsidiary or an Affiliate of either of them is the Paying Agent, shall segregate and hold in trust) money sufficient to pay the Redemption Price of all Notes to be redeemed on that date other than Notes or portions of Notes called for redemption which on or prior thereto have been delivered by the Company to the Trustee for cancellation or have been converted. The Paying Agent shall as promptly as practicable return to the Company any money not required for that purpose because of conversion of Notes

pursuant to Article 7. If such money is then held by the Company in trust and is not required for such purpose it shall be discharged from such trust.

If the Paying Agent holds money sufficient to pay the Redemption Price with respect to any Notes for which a Notice of Redemption has been given, then, immediately on and after the Redemption Date, interest on such Notes shall cease to accrue, whether or not the Notes are delivered to the Paying Agent, and all other rights of the Holders of such Notes shall terminate, other than the right to receive the Redemption Price of such Note. Nothing herein shall preclude the withholding of any taxes required by law to be withheld or deducted.

Article 6.
[RESERVED]

Article 7.
CONVERSION

Section 7.01 *Right to Convert.*

a) Subject to and upon compliance with the provisions of this Indenture, each Holder shall have the right, at such Holder's option, at any time prior to the Close of Business on the Business Day immediately preceding the Maturity Date, to convert the Principal Amount of any such Notes, or any portion of such Principal Amount, into shares of Common Stock, provided that any portion of such Principal Amount that a Holder elects to convert is equal to \$1,000 or an integral multiple of \$1,000 in excess thereof.

b) Notwithstanding the foregoing, if a Holder's Note is called for redemption under Article 5, such Holder may surrender such Note for conversion at any time prior to the Close of Business on the Business Day immediately preceding the Redemption Date for such Note unless the Company fails to pay the Redemption Price. If a Holder has already delivered a Fundamental Change Purchase Notice with respect to a Note under Section 8.01, such Holder may convert such Note only if such Holder first validly withdraws the related Fundamental Change Purchase Notice pursuant to Section 8.03. If a Holder has surrendered such Holder's Note for purchase in connection with a Fundamental Change, such Holder's right to withdraw the related Fundamental Change Purchase Note and convert each Note that is subject thereto will terminate at the Close of Business on the Business Day prior to the relevant Fundamental Change Purchase Date. The Company shall in certain cases increase the Conversion Rate for Holders who elect to convert their notes in connection with the delivery of a Notice of Redemption as set forth under Section 7.07.

c) Provisions of this Indenture that apply to conversion of all of a Note also apply to conversion of a portion of a Note.

d) A Holder of Notes is not entitled to any rights of a holder of shares of Common Stock until such Holder has converted its Notes, and only to extent such Notes are deemed to have been converted into shares of Common Stock pursuant to this Article 7.

Section 7.02 *Conversion Procedure.*

a) Each Note shall be convertible at the office of the Conversion Agent.

b) In order to exercise the conversion right with respect to any interest in Global Notes, the Holder must complete the appropriate instruction form for conversion pursuant to the Depository's book-entry conversion program, furnish appropriate endorsements and transfer documents if required by the Company or the Trustee or Conversion Agent, and pay the funds, if any, required by Section 7.03(c) and any transfer taxes or duties if required pursuant to Section 7.08. However, no service charge will be imposed by the Company, the Trustee or the Registrar for any registration of transfer or exchange of notes except in compliance with the below provisions governing exercise of conversion rights. In order to exercise the conversion right with respect to any Physical Notes, the Holder of any such Notes to be converted, in whole or in part, shall:

- (1) complete and manually sign the conversion notice provided on the back of the Note (the "**Conversion Notice**") or facsimile of the conversion notice;
- (2) deliver the Conversion Notice, which is irrevocable, and the Note to the Conversion Agent;
- (3) if required, furnish appropriate endorsements and transfer documents,
- (4) if required pursuant to Section 7.08, pay any transfer taxes or duties; and
- (5) if required, pay funds equal to interest payable on the next Interest Payment Date to which the Holder is not entitled as required by Section 7.03(c).

The date on which the Holder satisfies all of the applicable requirements set forth above is the "**Conversion Date.**"

c) On the second Business Day immediately following the Conversion Date, the Company shall issue and shall deliver to the converting Holder at the office of the Conversion Agent, a certificate or certificates for the number of full shares of Common Stock issuable in respect of such conversion in accordance with the provisions of this Article 7. In case any Notes of a denomination greater than \$1,000 shall be surrendered for partial conversion, the Company shall execute and the Trustee shall authenticate and deliver to the Holder of the Notes so surrendered, without charge to such Holder, new Notes in authorized denominations in an aggregate Principal Amount equal to the unconverted portion of the surrendered Notes.

Each conversion shall be deemed to have been effected as to any such Notes (or portion thereof) surrendered for conversion on the Conversion Date for such Notes (or portion thereof) and the converting Holder shall be deemed to have become the record holder of any shares of Common Stock due upon such conversion as of the Close of Business on the relevant Conversion Date.

d) Upon the conversion of an interest in a Global Note, the Trustee (or other Conversion Agent appointed by the Company) shall make a notation on such Global Note as to the reduction in the Principal Amount represented thereby. The Company shall notify the Trustee in writing of any conversions of Notes effected through any Conversion Agent other than the Trustee.

e) Each share certificate representing Common Stock issued upon conversion of the Notes that are Restricted Notes shall bear the Restricted Stock Legend as set forth in Section 3.07.

Section 7.03 *Settlement upon Conversion.*

a) With respect to any conversion of Notes, other than a conversion of Notes subject to the provisions of Section 7.07(f) hereof, the Company shall, subject to the provisions of this Article 7, deliver, no later than the second Business Day immediately following the relevant Conversion Date, to converting Holders, in respect of each \$1,000 Principal Amount of Notes being converted, a number of shares of Common Stock equal to the Applicable Conversion Rate as of such Conversion Date, together with cash in lieu of any fractional shares of Common Stock pursuant to Section 7.03(d).

b) Upon conversion, Holders shall not receive any separate cash payment for accrued and unpaid interest unless such conversion occurs between a Regular Record Date and the Interest Payment Date to which it relates and the converting Holder was the Holder on the relevant Regular Record Date.

c) If Notes are converted after the Close of Business on a Regular Record Date for the payment of interest, Holders of such Notes at the Close of Business on such Regular Record Date will receive the interest payable on such Notes on the corresponding Interest Payment Date notwithstanding the conversion. Notes surrendered for conversion during the period from the Close of Business on any Regular Record Date to the Open of Business on the immediately following Interest Payment Date, must be accompanied by funds equal to the amount of interest payable on the Notes so converted; *provided* that no such payment need be made (i) for conversions following the Regular Record Date immediately preceding the Maturity Date; (ii) if the Company has delivered notice specifying a Redemption Date that is after a Regular Record Date and on or prior to the first Business Day immediately following the corresponding Interest Payment Date; (iii) if the Company has specified a Fundamental Change Purchase Date that is after a Regular Record Date and on or prior to the first Business Day immediately following the corresponding Interest Payment Date; or (iv) to the extent of any overdue interest, if any overdue interest exists at the time of conversion with respect to such Note.

d) The Company shall not issue fractional shares upon conversion of Notes. If multiple Notes shall be surrendered for conversion at one time by the same Holder, the number of full shares which shall be issuable upon conversion (and the number of fractional shares, if any, for which cash shall be delivered) shall be computed on the basis of the aggregate Principal Amount of the Notes (or specified portions thereof to the extent permitted hereby) so surrendered. If any fractional share would be issuable upon the conversion of any Notes, the Company shall make payment in an amount of cash based on the current market value of the fractional shares. The current market value of a fractional share shall be determined (calculated to the nearest 1/1000th of a share) by multiplying the closing sale price of the Common Stock on the relevant Conversion Date (or, if such Conversion Date is not a Trading Day, on the immediately preceding Trading Day) by such fractional share and rounding the product to the nearest whole cent.

e) By delivery to the Holder of the full number of shares of Common Stock, together with any cash payment for fractional shares, the Company will be deemed to satisfy in full its obligation to pay the Principal Amount of the Notes and all accrued and unpaid interest to, but excluding, the Conversion Date. Upon conversion of the Notes, all accrued and unpaid interest to, but excluding, the Conversion Date will be deemed to be paid in full rather than canceled, extinguished or forfeited, subject to Section 7.03(c) above.

Section 7.04 *Adjustment of Conversion Rate.* The Conversion Rate shall be adjusted from time to time by the Company if any of the following events occurs as described below, except that the Company

will not make any adjustment to the Conversion Rate if Holders of Notes participate (other than in the case of a share split or share combination), at the same time and on the same terms as holders of shares of Common Stock, solely as a result of holding the Notes, in any of the transactions described in this Section 7.04, without having to convert their Notes, as if such Holders held a number of shares of Common Stock equal to the Applicable Conversion Rate in effect immediately prior to the adjustment thereof in respect of such transaction, *multiplied by* the Principal Amount of Notes held by such Holders, *divided by* \$1,000.

a) If the Company issues solely shares of Common Stock as a dividend or distribution on the Common Stock, or the Company effects a share split or share combination (in each case excluding an issuance solely pursuant to a Common Stock Change Event, as to which the provisions described in Section 7.05 will apply), the Conversion Rate will be adjusted based on the following formula:

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

Where,

CR_0 = the Conversion Rate in effect immediately prior to the Close of Business on the Record Date of such dividend or distribution, or immediately prior to the Open of Business on the effective date of such share split or share combination, as applicable;

CR_1 = the Conversion Rate in effect immediately after the Close of Business on such Record Date or immediately after the Open of Business on such effective date, as applicable;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the Close of Business on such Record Date or immediately prior to the Open of Business on such effective date, as applicable; and

OS_1 = the number of shares of Common Stock outstanding immediately after the Close of Business on such Record Date or immediately after the Open of Business on such effective date, as applicable.

Any adjustment made pursuant to this Section 7.04(a) shall become effective immediately after the Close of Business on the Record Date for such dividend or distribution, or immediately after the Open of Business on the effective date for such share split or share combination, as applicable. If any dividend or distribution of the type described in this Section 7.04(a) is declared but not so paid or made, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution, to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared or announced.

b) If the Company distributes to all or substantially all holders of shares of Common Stock any rights, options or warrants entitling them for a period of not more than 45 calendar days after the date of such distribution to subscribe for or purchase shares of Common Stock, at a price per share less than the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading-Day period ending on, and including, the Trading Day immediately preceding the date of announcement of such distribution, the Conversion Rate will be increased based on the following formula:

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

where,

CR_0 = the Conversion Rate in effect immediately prior to the Close of Business on the Record Date for such distribution;

CR_1 = the Conversion Rate in effect immediately after the Close of Business on such Record Date;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the Close of Business on such Record Date;

X = the total number of shares of Common Stock issuable pursuant to such rights, options or warrants; and

Y = the number of shares of Common Stock equal to the aggregate price payable to exercise such rights, options or warrants *divided by* the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading-Day period ending on, and including, the Trading Day immediately preceding the date of announcement of the distribution of such rights, options or warrants.

The foregoing increase in the Conversion Rate shall be successively made whenever any such rights, options or warrants are distributed and shall become effective immediately after the Close of Business on the Record Date for such distribution. If such rights, options or warrants are not so distributed, the Conversion Rate will be immediately readjusted to the Conversion Rate that would then be in effect if such Record Date for such distribution had not been fixed. In addition, to the extent that shares of Common Stock are not delivered after the expiration of such rights, options or warrants, the Conversion Rate shall be immediately readjusted to the Conversion Rate that would then be in effect had the increase made for the distribution of such rights, options or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered.

In determining whether any rights, options or warrants entitle the holders of shares of Common Stock to subscribe for or purchase shares of Common Stock at less than such average of the Last Reported Sale Prices of Common Stock over the 10 consecutive Trading-Day period ending on, and including, the Trading Day immediately preceding the date of announcement of such distribution, and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable upon exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by the Board of Directors.

c) If the Company distributes shares of its Capital Stock, evidences of its indebtedness, other assets or property of the Company or rights, options or warrants to acquire the Company's Capital Stock or other securities (the "**Distributed Property**"), to all or substantially all holders of shares of Common Stock, excluding:

(1) dividends or distributions of Common Stock or rights, options or warrants as to which an adjustment is required (or would be required without regard to the Deferral Exception pursuant to Section 7.04(a) or Section 7.04(b), as the case may be;

(2) dividends or distributions paid exclusively in cash as to which an adjustment is required (or would be required without regard to the Deferral Exception) effected pursuant to Section 7.04(d);

(3) rights issued or otherwise distributed pursuant to a stockholder rights plan, except to the extent provided below;

(4) a distribution solely pursuant to a Common Stock Change Event, as to which provisions described in Section 7.05 will apply; and

(5) Spin-Offs to which the provisions set forth below in this Section 7.04(c) apply (or would apply but for the Deferral Exception);

then the Conversion Rate will be increased based on the following formula:

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

where,

CR_0 = the Conversion Rate in effect immediately prior to the Close of Business on the Record Date for such distribution;

CR_1 = the Conversion Rate in effect immediately after the Close of Business on such Record Date;

SP_0 = the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading-Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such distribution; and

FMV = the Fair Market Value (as determined by the Board of Directors) of the Distributed Property distributed with respect to each outstanding share of Common Stock on the Ex-Dividend Date for such distribution;

provided that if "FMV" as set forth above is equal to or greater than " SP_0 " as set forth above, in lieu of the foregoing increase, adequate provision will be made so that each Holder of a Note shall receive on the date on which the Distributed Property is distributed to holders of the Common Stock, for each \$1,000 Principal Amount of the Notes, the amount and kind of Distributed Property that such Holder would have received had such Holder owned a number of shares of Common Stock equal to the Conversion Rate on the Record Date for such distribution; *provided further* that if the Board of Directors determines "FMV" for purposes

of the foregoing increase by reference to the actual or when-issued trading market for any securities, it must in doing so consider the prices in such market over the same period used in computing the average of the Last Reported Sale Prices of the Common Stock for purposes of determining “SP0” as set forth above.

An increase in the Conversion Rate made pursuant to the immediately preceding paragraph shall become effective immediately after the Close of Business on the Record Date for such distribution.

With respect to an adjustment pursuant to this Section 7.04(c) where there has been a payment of a dividend or other distribution on the Common Stock of shares of Capital Stock of any class or series, or similar equity interest, of or relating to a Subsidiary, or other business unit or affiliate, of the Company, where such Capital Stock or similar equity interest is listed or quoted (or will be listed or quoted upon consummation of the Spin-Off) on a major U.S. or non-U.S. securities exchange (a “Spin-Off”), the Conversion Rate will be increased based on the following formula:

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

where

CR_0 = the Conversion Rate in effect immediately prior to the end of the Valuation Period;

CR_1 = the Conversion Rate in effect immediately after the end of the Valuation Period;

FMV_0 = the average of the Last Reported Sale Prices of the Capital Stock or similar equity interest distributed to holders of shares of Common Stock applicable to one share of Common Stock (determined for purposes of the definition of “Last Reported Sale Price” as if such Capital Stock or similar equity interest were Common Stock) over the first ten consecutive Trading-Day period after, and including, the effective date of the Spin-Off (the “Valuation Period”); and

MP_0 = the average of the Last Reported Sale Prices of the Common Stock over the Valuation Period.

The increase in the Conversion Rate under the preceding paragraph will be determined as of the Close of Business on the last Trading Day of the Valuation Period but will be given effect immediately after the Close of Business on the Record Date of the Spin-Off; *provided* that in respect of any conversion during the Valuation Period, references with respect to 10 consecutive Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed from, and including, and including the effective date of such Spin-Off to, and including, and the Conversion Date in determining the Applicable Conversion Rate. If any dividend or distribution that constitutes a Spin-Off is declared but not so paid or made, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution, to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared. For the avoidance of doubt, if the application of the foregoing formula would result in a decrease in the Conversion Rate, no adjustment to the Conversion Rate will be made (other than with respect to the Company’s right to readjust the Conversion Rate as described in the immediately preceding sentence).

d) If any cash dividend or distribution is paid or made to all or substantially all holders of shares of Common Stock, the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{SP_0}{SP_0 - C}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the Close of Business on the Record Date for such dividend or distribution;

CR_1 = the Conversion Rate in effect immediately after the Close of Business on the Record Date for such dividend or distribution;

SP_0 = the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such dividend or distribution; and

C = the amount in cash per share the Company distributes to holders of shares of Common Stock.

The increase in the Conversion Rate under this Section 7.04(d) will become effective immediately after the Close of Business on the Record Date for such dividend or distribution. If such dividend or distribution is not so paid or made, the Conversion Rate shall be immediately decreased to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared. For the avoidance of doubt, if the application of the foregoing formula would result in a decrease in the Conversion Rate, no adjustment to the Conversion Rate will be made (other than with respect to the Company's right to readjust the Conversion Rate as described in the immediately preceding sentence).

Notwithstanding the foregoing, if "C" (as defined above) is equal to or greater than "SP0" (as defined above), in lieu of the foregoing increase, each Holder of a Note shall receive, for each \$1,000 Principal Amount of Notes, at the same time and upon the same terms as holders of shares of Common Stock, the amount of cash that such Holder would have received if such Holder owned a number of shares of Common Stock equal to the Conversion Rate in effect on the Record Date for such dividend or distribution.

e) If the Company or any of its Subsidiaries makes a payment in respect of a tender offer or exchange offer for shares of Common Stock, to the extent that the cash and value of any other consideration included in the payment per share of Common Stock exceeds the average of the Last Reported Sale Prices of the Common Stock over the first 10 consecutive Trading-Day period immediately following, and including, the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender offer or exchange offer, the Conversion Rate will be increased based on the following formula:

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

where

CR_0 = the Conversion Rate in effect immediately prior to the Close of Business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender offer or exchange offer expires;

CR_1 = the Conversion Rate in effect immediately after the Close of Business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender offer or exchange offer expires;

AC = the aggregate value of all cash and any other consideration (as determined by the Board of Directors) paid or payable for shares of Common Stock purchased in such tender offer or exchange offer;

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

OS_1 = the number of shares of Common Stock outstanding immediately after the date such tender offer or exchange offer expires (after giving effect to the purchase of all shares of Common Stock accepted for purchase or exchange in such tender offer or exchange offer); and

SP_1 = the average of the Last Reported Sale Prices of Common Stock over the first 10 consecutive Trading-Day period immediately following, and including, on the Trading Day next succeeding the date such tender offer or exchange offer expires.

The increase in the Conversion Rate under this Section 7.04(e) shall occur at the Close of Business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender offer or exchange offer expires but will be given effect immediately after the Close of Business on the date such tender offer or exchange offer expires; *provided that* in respect of any conversion within the first 10 consecutive Trading-Day period immediately following, and including, the date any such tender offer or exchange offer expires, references to 10 consecutive Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed from, and including, the date such tender offer or exchange offer expires to, and including, the Conversion Date in determining the Applicable Conversion Rate.

f) Except as herein provided, the Company will not adjust the Conversion Rate for the issuance of shares of the Common Stock or any securities convertible into or exchangeable for shares of the Common Stock or the right to purchase shares of the Common Stock or such convertible or exchangeable securities. For the avoidance of doubt, if the application of the foregoing formulas would result in a decrease in the Conversion Rate, no adjustment to the Conversion Rate will be made (other than as a result of a reverse share split or share combination and subject to the Company's right to readjust the Conversion Rate as described in this Section 7.04).

g) In addition to those Conversion Rate adjustments required by Sections 7.04(a), 7.04(b), 7.04(c), 7.04(d) and 7.04(e), and to the extent permitted by applicable law and subject to the applicable rules of The New York Stock Exchange and, if applicable, any securities exchange on which the Company's securities are then listed, the Company from time to time (i) may increase the Conversion Rate by any amount

for a period of at least 20 Business Days if the Board of Directors determines that such increase would be in the Company's best interest and (ii) may also (but is not required to) increase the Conversion Rate to avoid or diminish any income tax to holders of shares of Common Stock or rights to purchase shares of Common Stock in connection with any dividend or distribution of shares of Common Stock (or rights to acquire shares of Common Stock) or similar event. Whenever the Conversion Rate is increased pursuant to this Section 7.04(g), the Company shall mail to Holders of record of the Notes a notice of the increase at least 5 days prior to the date the increased Conversion Rate takes effect, and such notice shall state the increased Conversion Rate and the period during which it will be in effect.

h) There is no requirement to adjust the Conversion Rate, except as provided herein. The Conversion Rate will not be adjusted, among other things:

(1) except as stated herein, upon the issuance of any shares of Common Stock or any securities convertible or exchangeable for shares of the Company's Common Stock or the right to purchase shares of the Company's Common Stock or such convertible or exchangeable securities;

(2) upon the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Company's securities and the investment of additional optional amounts in shares of Common Stock under any plan;

(3) upon the issuance of any shares of Common Stock or options or rights to purchase those shares pursuant to any present or future employee or director benefit plan or program of the Company, or assumed by the Company, or any of the Company's Subsidiaries;

(4) upon the issuance of any shares of Common Stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in clause (ii) above and outstanding as of the date the Notes were first issued, except as set forth in Section 7.12;

(5) for a change in the par value of the Common Stock; or

(6) for accrued and unpaid interest, and Additional Interest, if any.

i) Adjustments to the Conversion Rate under this Article 7 shall be calculated to the nearest cent or to the nearest one-ten thousandth (1/10,000th) of a share of Common Stock. However, no adjustment shall be made to the Conversion Rate unless such adjustment would require a change of at least 1% in the Applicable Conversion Rate. Any adjustment that would otherwise be required to be made shall be carried forward and taken into account in any future adjustment. Notwithstanding the foregoing, upon any conversion of the Notes (solely with respect to the Notes to be converted), the Company shall give effect to all adjustments that the Company otherwise has deferred pursuant to the immediately preceding sentence, and those adjustments will no longer be carried forward and taken into account in any future adjustment. The ability to defer adjustments pursuant to this Section 7.04(i) is known as the "**Deferral Exception**".

j) Whenever the Conversion Rate is adjusted as herein provided, the Company shall file with the Trustee and any Conversion Agent, as soon as reasonably practicable, an Officer's Certificate

setting forth the Conversion Rate after such adjustment and setting forth a brief statement of the facts requiring such adjustment. Unless and until a Trust Officer of the Trustee shall have received such Officer's Certificate, the Trustee shall not be deemed to have knowledge of any adjustment of the Conversion Rate and may assume without inquiry that the last Conversion Rate of which it has knowledge is still in effect. Promptly after delivery of such certificate, the Company shall prepare a notice of such adjustment of the Conversion Rate setting forth the adjusted Conversion Rate and the date on which each adjustment became effective and shall send such notice of such adjustment of the Conversion Rate to each Holder, within 20 days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of any such adjustment.

k) In any case in which this Section 7.04 provides that an adjustment shall become effective immediately after a Record Date for an event, the Company may defer until the occurrence of such event (i) issuing to the Holder of any Notes converted after such Record Date and before the occurrence of such event the additional shares of Common Stock issuable upon such conversion by reason of the adjustment required by such event over and above the Common Stock issuable upon such conversion before giving effect to such adjustment and (ii) paying to such Holder any amount in cash in lieu of any fraction pursuant to Section 7.03.

l) For purposes of this Section 7.04, the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Company, so long as the Company does not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company, but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock.

m) A Holder of Notes may, in some circumstances, including a distribution of cash dividends to holders of shares of the Common Stock, be deemed to have received a distribution subject to U.S. federal income tax as a result of an adjustment or the nonoccurrence of an adjustment to the Conversion Rate. To the extent the applicable withholding agent pays withholding taxes or backup withholding on behalf of a Holder or beneficial owner (for U.S. federal income tax purposes) of a Note, the applicable withholding agent may, at its option, set off such payments against payments on the Note (including upon conversion, repayment or maturity) or, in certain circumstances, from payments on the Common Stock received on any conversion of the Note or from sales proceeds subsequently paid or credited to the holder or beneficial owner or from other funds or assets of the holder or beneficial owner.

Section 7.05 *Effect of Reclassification, Consolidation, Merger or Sale.* In the case of (i) any recapitalization, reclassification or change of the Common Stock (other than changes resulting from a subdivision or combination), (ii) any consolidation, merger or combination involving the Company, (iii) any sale, lease or other transfer to a third party of the consolidated assets of the Company and its Subsidiaries substantially as an entirety, or (iv) any statutory share exchange, and in each case, as a result of which the Common Stock would be converted into, or exchanged for, stock, other securities, other property or assets (including cash or any combination thereof) (any such event, a "**Common Stock Change Event**"), then, at the effective time of the Common Stock Change Event, the Company shall execute with the Trustee a supplemental indenture permitted under Section 14.01 providing for the right to convert each \$1,000 Principal Amount of Notes into the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) that a holder of a number of shares of Common Stock equal to the Conversion Rate immediately prior to such Common Stock Change Event would have owned or been entitled to receive (the "**Reference Property**") upon such Common Stock Change Event. If such Common Stock Change Event causes the Common Stock to be converted into the right to receive more than a single

type of consideration (determined based in part upon any form of stockholder election), the Reference Property into which the Notes will be convertible will be deemed to be the weighted average of the types and amounts of consideration received by the holders of shares of Common Stock that affirmatively make such an election. The Company shall notify Holders of the Notes and the Trustee in writing of such weighted average as soon as practicable after such determination is made. The Company shall not become a party to any Common Stock Change Event unless its terms are consistent with the foregoing.

The Company shall cause notice of the execution of such supplemental indenture to be mailed to each Holder, at the address of such Holder as it appears on the register of the Notes maintained by the Registrar, within 20 days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of such supplemental indenture. The above provisions of this Section shall similarly apply to successive reclassifications, changes, consolidations, mergers, combinations, sales and conveyances. If this Section 7.05 applies to any event or occurrence, Section 7.04 shall not apply.

Section 7.06 *Adjustments of Prices.* Whenever any provision of this Indenture requires a calculation of the Last Reported Sale Prices over a span of multiple days (including with respect to the Share Price for purposes of a Make-Whole Fundamental Change), the Company will make appropriate adjustments determined by the Company or its agents to account for any adjustment to the Conversion Rate that becomes effective, or any event requiring an adjustment to the Conversion Rate where the Ex-Dividend Date, Record Date, effective date or expiration date, as the case may be, of the event occurs, at any time during the period during which such prices are to be calculated. Such adjustments will be effective as of the Ex-Dividend Date, Record Date, effective date or expiration date, as the case may be, of the event causing the adjustment to the Conversion Rate.

Section 7.07 *Adjustment upon Conversion in connection with (i) a Make-Whole Fundamental Change or (ii) the Delivery of a Notice of Redemption.*

a) If (i) a transaction that constitutes a Make-Whole Fundamental Change occurs or (ii) the Company delivers a Notice of Redemption and a Holder elects to convert its Notes in connection with (1) such Make-Whole Fundamental Change or (2) the delivery of such Notice of Redemption, then the Company will, under certain circumstances, increase the Conversion Rate for the Notes so surrendered for conversion by a number of additional shares of the Company's Common Stock (the "**Additional Shares**"), as described below. A conversion of notes will be deemed for these purposes to be "in connection with" (x) a Make-Whole Fundamental Change if the Notice of Conversion of the Notes is received by the Conversion Agent during the period from, and including, the Effective Date of the Make-Whole Fundamental Change up to, and including, the Business Day immediately prior to the related Fundamental Change Purchase Date (or, in the case of a Make-Whole Fundamental Change that would have been a Fundamental Change but for the proviso in clause (2) of the definition thereof, the 35th Trading Day immediately following the Effective Date of such Make-Whole Fundamental Change) or (y) the delivery of a Notice of Redemption if the Conversion Notice is received by the Conversion Agent from, and including, the date of any Notice of Redemption until the Close of Business on the Business Day immediately preceding the related Redemption Date as provided under Article 5.

b) The number of Additional Shares, if any, by which the Conversion Rate will be increased will be determined by reference to the table attached as Schedule A hereto, based on the date on which the Make-Whole Fundamental Change occurs or becomes effective (the "**Effective Date**") or the date of the Notice of Redemption, as applicable, and the price (the "**Share Price**") as determined in accordance

with the two immediately following sentences. If the holders of the shares of Common Stock receive only cash in a Make-Whole Fundamental Change described in clause (2) of the definition of Fundamental Change, then the Share Price shall be the cash amount paid per share of Common Stock. Otherwise, the Share Price shall be the average of the Last Reported Sale Prices of the Common Stock over the five consecutive Trading-Day period ending on, and including, the Trading Day immediately preceding the Effective Date of such Make-Whole Fundamental Change or the date of the Notice of Redemption, as applicable.

c) The Share Prices set forth in the column headings of the table in Schedule A hereto shall be adjusted as of any date on which the Conversion Rate of the Notes is otherwise adjusted pursuant to Section 7.04. The adjusted Share Prices shall equal the Share Prices immediately prior to such adjustment, *multiplied by* a fraction, the numerator of which is the Conversion Rate immediately prior to such adjustment giving rise to the Share Price adjustment and the denominator of which is the Conversion Rate as so adjusted. The number of Additional Shares set forth in such table shall be adjusted in the same manner as the Conversion Rate as set forth in Section 7.04.

d) The exact Share Prices and Effective Date or the date of the Notice of Redemption, as applicable, may not be set forth in the table in Schedule A, in which case:

(i) if the Share Price is between two Share Prices in the table or the relevant date is between two dates in the table, the number of Additional Shares will be determined by a straight-line interpolation between the number of Additional Shares set forth for the higher and lower Share Prices and the earlier and later dates, as applicable, based on a 365-day year;

(ii) if the Share Price is greater than \$20.00 per share (subject to adjustment in the same manner and as the Share Prices set forth in Schedule A), no Additional Shares will be added to the Conversion Rate; and

(iii) if the Share Price is less than \$3.65 per share (subject to adjustment in the same manner and at the same time as the Share Prices set forth in Schedule A), no Additional Shares will be added to the Conversion Rate.

Notwithstanding the foregoing, in no event will the Conversion Rate be increased on account of a Make-Whole Fundamental Change or a Redemption to exceed 273.9726 shares of Common Stock per \$1,000 Principal Amount of Notes, subject to adjustments in the same manner as the Conversion Rate is required to be adjusted as set forth in Section 7.04.

e) The Company shall notify Holders and the Trustee in writing of the Effective Date of any Make-Whole Fundamental Change no later than five Business Days after such effective Date.

f) If a Note is to be converted in connection with a Make-Whole Fundamental Change or a Notice of Redemption, the Company will settle such conversion in the manner set forth in Section 7.03, based on a conversion rate that reflects the Additional Shares, if any, added thereto pursuant to clauses (a) through (e) of this Section 7.07; *provided, however*, that if the Company has not obtained the Requisite Stockholder Approval as of the Effective Date of such Make-Whole Fundamental Change or the date of such Notice of Redemption, as applicable, then such conversion will be settled as follows:

(i) the Company will settle such conversion in the manner set forth in Section 7.03 without giving effect to the increase to the Conversion Rate, if any, pursuant to clauses (a) through (e) of this Section 7.07; and

(ii) in addition, the Company will settle the Additional Shares applicable to such conversion by delivering, no later than the second Business Day after the Conversion Date for such conversion, an amount of cash, per \$1,000 principal amount of such Note to be converted, equal to the product of the number of Additional Shares and the Share Price applicable to such Make-Whole Fundamental Change or Redemption Notice, as applicable.

Notwithstanding anything to the contrary set forth above, if the consideration for Common Stock in any Make-Whole Fundamental Change described in clause (2) of the definition of Fundamental Change is comprised entirely of cash, then the Company will settle the conversion of any Note following the Effective Date of such Make-Whole Fundamental Change by delivering, on or before the second Business Day after the Conversion Date for such conversion, an amount of cash, per \$1,000 principal amount of such Note to be converted, equal to the product of (i) the Share Price for such Make-Whole Fundamental Change; and (ii) the Applicable Conversion Rate (including any increase thereto as provided in this Section 7.07).

The Company will notify Holders, in the notice of the Make-Whole Fundamental Change or Redemption Notice, as applicable, whether the Requisite Stockholder Approval has been obtained (or is deemed obtained).

Section 7.08 *Taxes on Shares Issued*. Any issue of share certificates on conversions of Notes shall be made without charge to the converting Holder for any documentary, transfer, stamp or any similar tax in respect of the issue thereof, and the Company shall pay any and all documentary, stamp or similar issue or transfer taxes or duties that may be payable in respect of the issue or delivery of shares of Common Stock on conversion of Notes pursuant hereto. The Company shall not, however, be required to pay any such tax which may be payable in respect of any transfer involved in the issue and delivery of shares in any name other than that of the Holder of any Notes converted, and the Company shall not be required to issue or deliver any such share certificate unless and until the Person or Persons requesting the issue thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid.

Section 7.09 *Reservation of Shares; Shares to be Fully Paid; Compliance with Governmental Requirements*. The Company shall provide, free from preemptive rights, out of its authorized but unissued shares or shares held in treasury, sufficient shares of Common Stock to provide for the conversion of the Notes from time to time as such Notes are presented for conversion (assuming that, at the time of the computation of such number of shares or securities, all such Notes would be held by a single Holder).

Before taking any action that would cause an adjustment increasing the Conversion Rate to an amount that would cause the Conversion Price to be reduced below the then par value, if any, of the shares of Common Stock issuable upon conversion of the Notes, the Company will take all corporate action which may, in the opinion of its counsel, be necessary in order that the Company may validly and legally issue shares of such shares of Common Stock at such adjusted Conversion Price.

The Company covenants that all shares of Common Stock that may be issued upon conversion of Notes shall be newly issued shares or treasury shares, shall be duly authorized, validly issued, fully paid and non-assessable and shall be free from preemptive rights and free from any lien or adverse claim.

The Company shall use its reasonable efforts to list or cause to have quoted any shares of Common Stock to be issued upon conversion of Notes on each national securities exchange or over-the-counter or other domestic market on which the Common Stock is then listed or quoted.

Section 7.10 *Responsibility of Trustee and Conversion Agent.* The Trustee and any other Conversion Agent shall not at any time be under any duty or responsibility to any Holder to determine the Conversion Rate or whether any facts exist which may require any adjustment of the Conversion Rate, or with respect to the nature or extent or calculation of any such adjustment when made, or with respect to the method employed, or herein or in any supplemental indenture provided to be employed, in making the same. The Trustee and any other Conversion Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any Common Stock, or of any securities or property, which may at any time be issued or delivered upon the conversion of any Notes; and the Trustee and any other Conversion Agent make no representations with respect thereto. Neither the Trustee nor any Conversion Agent shall be responsible for any failure of the Company to issue, transfer or deliver any shares of Common Stock or share certificates or other securities or property or cash upon the surrender of any Notes for the purpose of conversion or to comply with any of the duties, responsibilities or covenants of the Company contained in this Article 7. Without limiting the generality of the foregoing, neither the Trustee nor any Conversion Agent shall be under any responsibility to determine the correctness of any provisions contained in any supplemental indenture entered into pursuant to Section 7.05 relating either to the kind or amount of shares of stock or securities or property (including cash) receivable by Holders upon the conversion of their Notes after any event referred to in such Section 7.05 or to any adjustment to be made with respect thereto, but, subject to the provisions of Section 11.01, may accept as conclusive evidence of the correctness of any such provisions, and shall be protected in relying upon, the Officer's Certificate (which the Company shall be obligated to file with the Trustee prior to the execution of any such supplemental indenture) with respect thereto.

Section 7.11 *Notice to Holders Prior to Certain Actions.* In case:

- a) the Company shall declare a dividend (or any other distribution) on Common Stock that would require an adjustment in the Conversion Rate pursuant to Section 7.04; or
- b) the Company shall authorize the granting to the holders of all or substantially all of the shares of Common Stock of options, rights or warrants to subscribe for or purchase any share of any class or any other options, rights or warrants; or
- c) of any reclassification or reorganization of the Common Stock (other than a subdivision or combination of its outstanding Common Stock, or a change in par value, or from par value to no par value, or from no par value to par value), or of any consolidation or merger to which the Company is a party and for which approval of any stockholders of the Company is required, or of the sale, lease or transfer of all or substantially all of the assets of the Company; or
- d) of the voluntary or involuntary dissolution, liquidation or winding up of the Company or any of its Significant Subsidiaries;

then, in each case, the Company shall cause to be filed with the Trustee and the Conversion Agent and to be mailed to each Holder at such Holder's address appearing on the list of Holders provided for in Section 3.06 of this Indenture, as promptly as practicable, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution or rights or warrants, or, if a record is not to be taken, the date as of which the holders of shares of Common Stock of record to be entitled to such dividend, distribution or rights are to be determined, or (y) the date on which such reclassification, reorganization, consolidation, merger, sale, lease, transfer, dissolution, liquidation or winding up is expected to become effective or occur, and the date as of which it is expected that holders of shares of Common Stock of record

shall be entitled to exchange their shares of Common Stock for securities or other property deliverable upon such reclassification, reorganization, consolidation, merger, sale, transfer, dissolution, liquidation or winding up. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such dividend, distribution, reclassification, reorganization, consolidation, merger, sale, transfer, dissolution, liquidation or winding up.

Section 7.12 *Stockholder Rights Plan*. Each share of Common Stock issued upon conversion of Notes pursuant to this Article 7 shall be entitled to receive the appropriate number of rights, if any, and the certificates representing the shares of Common Stock issued upon such conversion shall bear such legends, if any, in each case as may be provided by the terms of any current or subsequent stockholder rights agreement adopted by the Company, as any such agreement may be amended from time to time. Notwithstanding the foregoing, if prior to any conversion such rights have separated from the Common Stock in accordance with the provisions of the applicable stockholder rights agreement, the Conversion Rate shall be adjusted at the time of separation as if the Company had distributed, to all holders of the Common Stock, Distributed Property as described in Section 7.03(c) above, subject to readjustment in the event of the expiration, termination or redemption of such rights.

Section 7.13 *Company Determination Final*. Any determination that the Company or its Board of Directors must make pursuant to this Article 7 shall be conclusive if made in good faith and in accordance with the provisions of this Article 7, absent manifest error, and set forth in a Board Resolution.

Section 7.14 *Listing Standards*. Listing standards of The New York Stock Exchange generally require the Company to obtain approval of the Company's stockholders before entering into certain transactions that potentially result in the issuance of 20% or more of the Common Stock outstanding at the at the time the Notes are issued unless the Company obtains the Requisite Stockholder Approval of issuances in excess of such limitations. These restrictions will apply at any time when the Notes are outstanding, regardless of whether the Company then has a class of securities listed on The New York Stock Exchange. Except as provided in Section 7.07(f), the Company shall not enter into any transaction, or take any other action, that would require an increase in the Conversion Rate (whether under Section 7.04 or Section 7.07), that would result, in the aggregate, in the Notes becoming convertible for a number of shares of Common Stock in excess of any limitations imposed by the listing standards of The New York Stock Exchange, without complying, if applicable, with the stockholder approval rules contained in such listing standards.

Article 8.

PURCHASE AT OPTION OF HOLDERS UPON A FUNDAMENTAL CHANGE

Section 8.01 *Purchase at Option of Holders upon a Fundamental Change*.

a) *Generally*. If a Fundamental Change occurs at any time prior to the Maturity Date of the Notes, then each Holder shall have the right, at such Holder's option, to require the Company to purchase any or all of such Holder's Notes or any portion thereof that is equal to \$1,000 or an integral multiple of \$1,000 in excess thereof, on a date specified by the Company that is no earlier than the 20th and not later than the 35th calendar day following the date of the Fundamental Change Company Notice, subject to extension to comply with applicable law (the "**Fundamental Change Purchase Date**"), at a purchase price in cash equal to 100% of the Principal Amount thereof, together with accrued and unpaid interest thereon to, but excluding, the Fundamental Change Purchase Date (the "**Fundamental Change Purchase Price**"); *provided, however*, if the Fundamental Change Purchase Date occurs after a Regular Record Date and on

or prior to the Interest Payment Date to which it relates, the Company will pay accrued and unpaid interest to the Holder of record on such Regular Record Date, and the Fundamental Change Purchase Price will be equal to 100% of the Principal Amount of the Notes to be purchased.

Purchases of Notes under this Section 8.01 shall be made, at the option of the Holder thereof upon delivery to the Paying Agent of a duly completed notice (the “**Fundamental Change Purchase Notice**”) in the form set forth on the reverse of the Notes on or prior to the Close of Business on the Business Day immediately preceding the Fundamental Change Purchase Date, subject to extension to comply with applicable law, which must specify:

- (1) if the Notes are Physical Notes, the certificate numbers of the Holder’s Notes to be delivered for purchase;
- (2) the portion of the Principal Amount of the Holder’s Notes to be purchased, which must be \$1,000 or an integral multiple in excess thereof; and
- (3) that the Holder’s Notes are to be purchased by the Company pursuant to the applicable provisions of the Notes and this Indenture; and
- (4) delivery or book-entry transfer of the Notes to the Trustee (or other Paying Agent appointed by the Company) (together with all necessary endorsements) at any time on or prior to the Business Day immediately preceding the Fundamental Change Purchase Date, subject to extension to comply with applicable law, at the applicable Corporate Trust Office of the Trustee (or other Paying Agent appointed by the Company), such delivery being a condition to receipt by the Holder of the Fundamental Change Purchase Price therefor; *provided* that such Fundamental Change Purchase Price shall be so paid pursuant to this Section 8.01 only if the Notes so delivered to the Trustee (or other Paying Agent appointed by the Company) shall conform in all respects to the description thereof in the related Fundamental Change Purchase Notice;

provided that, if such Holder’s Notes are not Physical Notes, such Holder must comply with the Applicable Procedures.

Any purchase by the Company contemplated pursuant to the provisions of this Section 8.01 shall be consummated by the delivery of the Fundamental Change Purchase Price to be received by the Holder promptly following the later of the Fundamental Change Purchase Date or the time of the book-entry transfer or delivery of the Notes.

Notwithstanding anything herein to the contrary, any Holder delivering to the Trustee (or other Paying Agent appointed by the Company) the Fundamental Change Purchase Notice contemplated by this Section 8.01 shall have the right to withdraw such Fundamental Change Purchase Notice (in whole or in part) at any time prior to the Close of Business on the Business Day prior to the Fundamental Change Purchase Date by delivery of a written notice of withdrawal to the Trustee (or other Paying Agent appointed by the Company) in accordance with Section 8.02 below.

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

b) *Fundamental Change Company Notice.* On or before the 10th day after the occurrence of a Fundamental Change, the Company shall provide to all Holders of record of the Notes and the Trustee and Paying Agent a notice (the “**Fundamental Change Company Notice**”) of the occurrence of such Fundamental Change and of the purchase right at the option of the Holders arising as a result thereof. Such mailing shall be by first class mail. Simultaneously with providing such Fundamental Change Company Notice, the Company shall publish a notice containing the information included therein once in a newspaper of general circulation in The City of New York or publish such information on the Company’s website or through such other public medium as the Company may use at such time.

Each Fundamental Change Company Notice shall specify:

- (1) the events causing the Fundamental Change;
- (2) the date of the Fundamental Change;
- (3) the last date on which a Holder may exercise the purchase right;
- (4) the Fundamental Change Purchase Price;
- (5) the Fundamental Change Purchase Date;
- (6) the name and address of the Paying Agent and the Conversion Agent, if applicable;
- (7) if applicable, the Applicable Conversion Rate and any adjustments to the Applicable Conversion Rate;
- (8) if applicable, that the Notes with respect to which a Fundamental Change Purchase Notice has been delivered by a Holder may be converted only if the Holder validly withdraws the Fundamental Change Purchase Notice in accordance with Section 8.03; and
- (9) the procedures that Holders must follow to require the Company to purchase their Notes.

No failure of the Company to give the foregoing notices and no defect therein shall limit any Holder’s purchase rights or affect the validity of the proceedings for the purchase of the Notes pursuant to this Section 8.01.

c) *No Payment During an Acceleration.* Notwithstanding the foregoing, no Notes may be purchased by the Company at the option of the Holders pursuant to this Section 8.01 if the Principal Amount of the Notes has been accelerated, and such acceleration has not been rescinded, on or prior to the Fundamental Change Purchase Date.

d) *Payment of Fundamental Change Purchase Price.* The Notes to be purchased pursuant to this Section 8.01 shall be paid for in cash.

Section 8.02 *Withdrawal of Fundamental Change Purchase Notice.*

A Fundamental Change Purchase Notice may be withdrawn (in whole or in part) by means of a written notice of withdrawal delivered to the Paying Agent in accordance with the Fundamental Change

Company Notice prior to the Close of Business on the Business Day immediately preceding the relevant Fundamental Change Purchase Date specifying:

- (1) the Principal Amount of the withdrawn Notes;
- (2) if the Notes are Physical Notes, the certificate numbers of the withdrawn Notes; and
- (3) the Principal Amount, if any, of such Notes that remains subject to the original Fundamental Change Purchase Notice, which must be \$1,000 or an integral multiple of \$1,000 in excess thereof;

provided that, if such Holder's Notes are not Physical Notes, such Holder must comply with the Applicable Procedures.

Section 8.03 *Deposit of Fundamental Change Purchase Price.* Prior to 12:00 p.m. noon (local time in The City of New York) on the Fundamental Change Purchase Date, the Company shall deposit with the Paying Agent (or, if the Company or a Subsidiary or an Affiliate of either of them is acting as the Paying Agent, shall segregate and hold in trust as provided herein) an amount of money (in immediately available funds if deposited on such Business Day) sufficient to pay the Fundamental Change Purchase Price, of all the Notes or portions thereof that are to be purchased as of the Fundamental Change Purchase Date. The Company shall promptly notify the Trustee in writing of the amount of any deposits of cash made pursuant to this Section 8.03. If the Paying Agent holds money or securities sufficient to pay the Fundamental Change Purchase Price of any Note surrendered for purchase and not withdrawn in accordance with this Indenture as of the Close of Business on the Fundamental Change Purchase Date, then immediately following the Close of Business on the Fundamental Change Purchase Date, (a) any such Note will cease to be outstanding and interest will cease to accrue thereon on the Fundamental Change Purchase Date (whether or not book-entry transfer of the Notes is made or whether or not the Notes are delivered to the Paying Agent) and (b) all other rights of the Holder in respect thereof will terminate (other than the right to receive the Fundamental Change Purchase Price and previously accrued and unpaid interest (including Additional Interest, if any) upon delivery or book-entry transfer of such Note).

Section 8.04 *Notes Purchased in Whole or in Part.* Any Note that is to be purchased, whether in whole or 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 shall authenticate and deliver to the Holder of such Note, without service charge, a new Note or Notes, 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 Note so surrendered which is not purchased.

Section 8.05 *Covenant to Comply With Securities Laws upon Purchase of Notes.* In connection with any offer to purchase Notes under Section 8.01, the Company shall, if required, comply with the provisions of the tender offer rules under the Exchange Act that may then be applicable and file a Schedule TO or any other required schedule under the Exchange Act.

Section 8.06 *Repayment to the Company.* Subject to the requirements of any applicable abandoned property laws, regardless of who acts as Paying Agent, the Paying Agent shall return to the

Company any cash that remains unclaimed, together with interest, if any, thereon, held by them for the payment of the Fundamental Change Purchase Price; provided that to the extent that the aggregate amount of cash deposited by the Company pursuant to Section 8.03 exceeds the aggregate Fundamental Change Purchase Price of the Notes or portions thereof which the Company is obligated to purchase as of the Fundamental Change Purchase Date, then as soon as practicable following the Fundamental Change Purchase Date, the Paying Agent shall return any such excess to the Company.

Article 9.

EVENTS OF DEFAULT; REMEDIES

Section 9.01 *Events of Default*. “**Event of Default**,” wherever used herein, means any one of the following events):

a) default by the Company in any payment of interest on any Notes when due and payable and such default continues for a period of 30 consecutive days;

b) default by the Company in the payment of the Principal Amount of any Note when due and payable on the Maturity Date, any Redemption Date, upon required purchase in connection with a Fundamental Change, upon declaration of acceleration or otherwise;

c) failure by the Company to comply with its obligation to convert the Notes in accordance with this Indenture upon exercise of a Holder’s conversion right and such failure continues for three Business Days;

d) failure by the Company to provide the Fundamental Change Company Notice to Holders required pursuant to Section 8.01(b) hereof when due;

e) failure by the Company to comply with its obligations under Article 9 hereof;

f) failure by the Company in the performance of any other covenant or agreement of the Company in the Notes or in this Indenture that continues for a period of 60 days after receipt by the Company of a Notice of Default as provided in this Indenture;

g) default by the Company or any Significant Subsidiaries of the Company with respect to any indebtedness for borrowed money in excess of \$35,000,000 in the aggregate of the Company and/or any Significant Subsidiary of the Company, whether such indebtedness now exists or shall hereafter be created, which default results (i) in such indebtedness becoming or being declared due and payable or (ii) from a failure to pay the principal of any such indebtedness when due and payable at its stated maturity, upon redemption, upon required purchase in connection with a fundamental change, upon declaration of acceleration or otherwise, in each case where such default is not cured or waived within 30 days after notice to the Company by the Trustee or to the Company and the Trustee by holders of at least 25% of the aggregate principal amount of Notes then outstanding; *provided, however*, that any such Event of Default shall be deemed cured and not continuing upon payment of such indebtedness or rescission of such declaration of acceleration;

h) a final judgment for the payment of \$35,000,000 or more (excluding any amounts covered by insurance or bond) rendered against the Company or any Significant Subsidiary of the Company by a court of competent jurisdiction, which judgment is not discharged, stayed, vacated, paid or otherwise

satisfied within 60 days after (i) the date on which the right to appeal thereof has expired if no such appeal has commenced, or (ii) the date on which all rights to appeal have been extinguished;

i) the entry by a court having jurisdiction in the premises of (i) a decree or order for relief in respect of the Company or any Significant Subsidiary of the Company of a voluntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization or other similar law, (ii) a decree or order adjudging the Company or a Significant Subsidiary of the Company as bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company or any Significant Subsidiary of the Company under any applicable federal, state or foreign law or (iii) appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or of a Significant Subsidiary of the Company of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order for relief or any such other decree or order unstayed and in effect for a period of 60 consecutive days; and

j) the commencement by the Company or by a Significant Subsidiary of the Company of a voluntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by it to the entry of a decree or order for relief in respect of the Company or of a Significant Subsidiary of the Company in an involuntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under any applicable federal, state or foreign law, or the consent by it to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or of a Significant Subsidiary of the Company or of any substantial part of such entity's property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by the Company or by a Significant Subsidiary of the Company in furtherance of any such action.

The Trustee shall not be charged with knowledge of any Event of Default unless written notice thereof shall have been given to a Trust Officer at the Corporate Trust Office of the Trustee by the Company, the Paying Agent or any Holder.

Section 9.02 Acceleration of Maturity: Waiver of Past Defaults and Rescission.

a) If an Event of Default (other than those specified in Section 9.01(i) and 9.01(j) involving the Company, and as otherwise provided in Section 9.03) occurs and is continuing, then and in every such case the Trustee or the Holders of not less than 25% in aggregate Principal Amount of the outstanding Notes may declare 100% of the Principal Amount *plus* accrued and unpaid interest on all the outstanding Notes to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by Holders), and upon any such declaration such Principal Amount *plus* accrued and unpaid interest shall become immediately due and payable.

Notwithstanding the foregoing, in the case of an Event of Default specified in Section 9.01(i) or Section 9.01(j) with respect to the Company, 100% of the Principal Amount *plus* accrued and unpaid interest

on all outstanding Notes will automatically become due and payable without any declaration or other act on the part of the Trustee or any Holder.

b) The Holders of a majority in aggregate Principal Amount of the outstanding Notes, by written notice to the Company and the Trustee, may (x) waive any past Default and its consequences and (y) at any time after a declaration of acceleration has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter in this Article 9 provided, rescind any such acceleration with respect to the Notes and its consequences, except, in each case, with respect to a Default described in Section 9.01(a), Section 9.01(b) or Section 9.01(c), or in respect of a covenant or provision hereof which under Article 14 cannot be modified or amended without the consent of the Holder of each outstanding Note affected, if:

- (1) such rescission will not conflict with any judgment or decree of a court of competent jurisdiction; and
- (2) all existing Events of Default have been cured or waived and all amounts owing to the Trustee have been paid.

Upon any such waiver, the Default which has been waived shall cease to exist and any Event of Default arising therefrom shall be deemed to have been cured, for every other purpose of the Indenture; but no such waiver shall extend to any subsequent or other Default or impair any right consequent.

No such rescission shall affect any subsequent default or impair any right consequent thereon.

Section 9.03 *Additional Interest.*

a) If, at any time during the six-month period beginning on, and including, the date which is six months after the last date of original issuance of any of the Initial Notes, the Company fails to timely file any document or report that the Company is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act, as applicable (after giving effect to all applicable grace periods thereunder and other than current reports on Form 8-K), or the Notes are not otherwise Freely Tradable (as a result of restrictions pursuant to U.S. securities law or the terms of this Indenture or the Notes), the Company shall pay Additional Interest on the Notes which shall accrue at the rate of 0.25% per annum of the Principal Amount of Notes outstanding for each day during the first 90 calendar days during which the Company's failure to file has occurred and is continuing or for which the Notes are not Freely Tradable (ending on the date that is one year from the last date of original issuance of any of the Initial Notes). If such Additional Interest accrues for more than 90 consecutive dates, the rate at which the Additional Interest accrues will increase to 0.50% per annum on the Principal Amount of then outstanding Notes beginning on the 91st consecutive day on which it accrues and ending on the last consecutive day on which it continues to accrue.

Further, if, and for so long as, the Restrictive Notes Legend has not been removed or deemed removed pursuant to the provisions hereof, from the Notes, the Notes are assigned a restricted CUSIP number or the Notes are not otherwise Freely Tradable as of the 370th day after the last date of original issuance of any of the Initial Notes, the Company shall pay Additional Interest on the Notes. Such Additional Interest will accrue on the Notes at the rate of 0.50% per annum of the Principal Amount of Notes outstanding until the Restrictive Notes Legend has been removed in accordance with Section 3.08(b), the Notes are assigned an unrestricted CUSIP number and the Notes are Freely Tradable.

The obligations of the Company pursuant to this Section 9.03(a) are separate and distinct from, and in addition to, the obligations of the Company pursuant to Section 9.03(b). Any Additional Interest payable pursuant to this Section 9.03(a) will be payable in arrears on each Interest Payment Date following accrual in the same manner as ordinary interest is payable pursuant to Section 2.03.

b) Notwithstanding anything to the contrary in this Indenture, if so elected by the Company, the sole remedy for an Event of Default relating to the failure to comply with Section 4.10 hereof will (i) for the first 90 days after the occurrence of such an Event of Default consist exclusively of the right to receive Additional Interest on the Notes at an annual rate equal to 0.25% of the Principal Amount of outstanding Notes and (ii) from the 91st day until the 180th day following the occurrence of such an Event of Default consist exclusively of the right to receive Additional Interest on the Notes at an annual rate equal to 0.50% of the Principal Amount of outstanding Notes. If the Company so elects, the Additional Interest payable under this Section 9.03(b) will be payable on all outstanding Notes from and including the date on which such Event of Default first occurs to, but excluding, the 180th day thereafter, or such earlier date on which such Event of Default has been cured or waived or ceases to exist. On the 181st day after such Event of Default, if such Event of Default has not been cured or waived prior to such 181st day, Additional Interest payable pursuant to this Section 9.03(b) will cease to accrue and the Notes will be subject to acceleration as provided in Section 9.02. In the event the Company does not elect to pay the Additional Interest payable pursuant to this Section 9.03(b) upon an Event of Default in accordance with this paragraph, the Notes will be subject to acceleration as provided in Section 9.02. Any Additional Interest payable pursuant to this Section 9.03(b) will be payable in arrears on each Interest Payment Date following accrual in the same manner as ordinary interest is payable pursuant to Section 2.03.

The Additional Interest payable pursuant to this Section 9.03(b) will be in addition to any Additional Interest that may accrue pursuant to Section 9.03(a). However, in no event will Additional Interest, together with any Additional Interest that accrues pursuant to Section 9.03(a), accrue on any day on a Note at a combined rate per annum that exceeds 0.50%.

In order to elect to pay the Additional Interest payable pursuant to this Section 9.03(b) as the sole remedy during the first 180 days after the occurrence of an Event of Default relating to the failure to comply with Section 4.10 in accordance with the immediately preceding paragraph, the Company must notify all Holders, the Trustee and Paying Agent in writing of such election on or before the Close of Business on the date on which such Event of Default first occurs. Upon the failure to timely give all Holders, the Trustee and Paying Agent such notice, the Notes will be immediately subject to acceleration as provided in Section 9.02.

Payments of the Redemption Price, the Fundamental Change Purchase Price and Principal Amount or interest that are not made when due and payable shall accrue interest per annum at the then-applicable interest rate.

Section 9.04 *Collection of Indebtedness and Suits for Enforcement by Trustee*. The Company covenants that if a Default is made in the payment of the Principal Amount plus accrued and unpaid interest on the Maturity Date therefor or, as applicable, in the payment of the Fundamental Change Purchase Price, any cash amount due relating to a conversion in connection with a Make-Whole Fundamental Change or Notice of Redemption in respect of any Note, the Company will, upon demand of the Trustee, pay to it, for the benefit of the Holders or Redemption Price, of such Notes, the whole amount then due and payable on such Notes, and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses

of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

If an Event of Default occurs and is continuing, the Trustee may, but shall not be obligated to, pursue any available remedy to collect the payment of the Principal Amount plus accrued but unpaid interest on the Notes or to enforce the performance of any provision of the Notes or this Indenture. The Trustee may maintain a proceeding even if the Trustee does not possess any of the Notes or does not produce any of the Notes 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 9.05 *Trustee May File Proofs of Claim*. In case of any judicial proceeding relative to the Company (or any other obligor upon the Notes), its property or its creditors, the Trustee shall be entitled and empowered, by intervention in such proceeding or otherwise, to take any and all actions authorized under this Indenture and applicable law in order to have claims of the Holders and the Trustee allowed in any such proceeding. In particular, the Trustee shall be authorized to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel and any other amounts due the Trustee under Section 11.07.

No provision of this Indenture shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder thereof or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

Section 9.06 *Application of Money Collected*. Any money or property collected by the Trustee pursuant to this Article shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money or property to Holders, upon presentation of the Notes and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee in all of its capacities under Section 11.07;

SECOND: To the payment of the amounts then due and unpaid on the Notes for, as applicable, the Principal Amount, Fundamental Change Purchase Price, any cash amount relating to a conversion in connection with a Make-Whole Fundamental Change or Notice of Redemption, Redemption Price or interest (including Additional Interest, if any) as the case may be, in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Notes; and

THIRD: To the payment of the remainder, if any, to the Company or any other Person lawfully entitled thereto.

Section 9.07 *Limitation on Suits*. No Holder of any Note shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture or the Notes, or for the appointment of a

receiver or trustee, or for any other remedy hereunder (other than in the case of an Event of Default specified in Section 9.01(a), Section 9.01(b) or Section 9.01(c)) unless:

- (1) such Holder has previously given written notice to the Trustee that an Event of Default is continuing;
- (2) the Holder or Holders of not less than 25% in aggregate Principal Amount of the outstanding Notes shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;
- (3) such Holder or Holders have offered to the Trustee security or indemnity satisfactory to it against any loss, liability, claim or expense;
- (4) the Trustee for 60 days after its receipt of such request and offer of security or indemnity has failed to institute any such proceeding; and
- (5) no direction, in the opinion of the Trustee, inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in aggregate Principal Amount of the outstanding Notes;

it being understood and intended that no one or more Holders shall have any right in any manner whatever by virtue of, or by availing itself of, any provision of this Indenture to affect, disturb or prejudice the rights of any other Holders, or to obtain or to seek to obtain priority or preference over any other Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all the Holders.

Section 9.08 *Unconditional Right of Holders to Receive Payment.* Notwithstanding any other provision of this Indenture, the right of any Holder to receive payment of the Principal Amount (including, if applicable, the Fundamental Change Purchase Price or Redemption Price or interest in respect of the Notes held by such Holder, on or after the respective due dates expressed in the Notes, or any Fundamental Change Purchase Date, any Redemption Date or otherwise, as applicable), any accrued and unpaid interest (including Additional Interest, if any) and to convert the Notes in accordance with Article 7 and receive if applicable, the cash amount relating to a conversion in connection with a Make-Whole Fundamental Change or Notice of Redemption”, or to bring suit for the enforcement of any such payment on or after such respective dates or the right to convert, shall not be impaired or affected without the consent of such Holder.

Section 9.09 *Restoration of Rights and Remedies.* If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceeding, the Company, the Trustee and the Holders shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and the Holders shall continue as though no such proceeding had been instituted.

Section 9.10 *Rights and Remedies Cumulative.* Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes in the last paragraph of Section 3.09, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at

law or in equity or otherwise. The assertion or employment of any right or remedy hereunder shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 9.11 *Delay or Omission Not Waiver*. No delay or omission of the Trustee or of any Holder of any Note to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders, as the case may be.

Section 9.12 *Control by Holders*. The Holders of a majority in aggregate Principal Amount of the outstanding Notes may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. However, if an Event of Default has occurred and is continuing, the Trustee will be required in the exercise of its powers vested in it by this Indenture to use the degree of care that a prudent person would use under the circumstances in the conduct of its own affairs. Furthermore, the Trustee may refuse to follow any direction that conflicts with applicable law or this Indenture or that the Trustee determines is unduly prejudicial to the rights of any other Holder or that would involve the Trustee in personal liability. Prior to taking any action under the indenture, the Trustee will be entitled to indemnification satisfactory to it in its sole discretion against all losses and expenses caused by taking or not taking such action.

Section 9.13 *Undertaking for Costs*. In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, in either case in respect of the Notes, a court may require any party litigant in such suit to file an undertaking to pay the costs of the suit, and the court may assess reasonable costs, including reasonable attorney's 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; but the provisions of this Section 9.13 shall not apply to any suit instituted by the Company, to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in Principal Amount of the outstanding Notes, or to any suit instituted by any Holder for the enforcement of the payment of the Principal Amount on any Note on or after the Maturity Date of such Note or the Fundamental Change Purchase Date.

Article 10.

MERGER, CONSOLIDATION OR SALE OF ASSETS

Section 10.01 *Company May Consolidate, etc., only on Certain Terms*. The Company shall not, consolidate or merge with or into, or sell, lease or otherwise transfer, in one transaction or a series of transactions, all or substantially all of Company's or a the Company's subsidiaries' assets, taken as a whole, to another person (a "**Business Combination Event**"), unless

a) the resulting, surviving, or transferee person is the Company, or if not the Company, is a corporation (the "**Successor Corporation**") duly organized and existing under the laws of the United States of America, any State thereof or the District of Columbia and such Successor Corporation that expressly assumes (by executing and delivering to the trustee, at or before the effective time of such Business Combination Event,) an indenture supplemental hereto all obligations of the Company under this Indenture and the Notes;

b) immediately after giving effect to such Business Combination Event, no Default or event of default will have occurred and be continuing; and

c) the Company shall have delivered to the Trustee an Officer's Certificate and Opinion of Counsel stating that such Business Combination Event and, if a supplemental indenture is required in connection with such event, such supplemental indenture, comply with this Article 10 and that all conditions precedent herein provided for relating to such transaction have been satisfied.

At the effective time of a Business Combination Event that complies with the provisions in this Section 11.01, the Successor Corporation will succeed to, and may exercise every right and power of, the Company under this Indenture and the Notes.

Notwithstanding anything to the contrary in the foregoing, a Specified Asset Sale shall not constitute a sale, lease, or transfer of all or substantially all of the assets of the Company or its subsidiaries, taken as a whole.

Section 10.02 *Successor Substituted.* Upon a Business Combination Event in accordance with Section 10.01, the Successor Corporation formed by such consolidation or into which the Company is merged or to which such sale, conveyance, transfer, lease or other disposal is made shall succeed to, and may exercise every right and power of, the Company under this Indenture with the same effect as if such Successor Corporation had been named as the Company herein, and thereafter. If the predecessor is still in existence after such transaction, it will be released from its obligations and covenants under this indenture and the Notes, except in the case of a lease of all or substantially all of its properties and assets.

Article 11.
THE TRUSTEE

Section 11.01 *Duties and Responsibilities of Trustee.*

a) The Trustee, prior to the occurrence of an Event of Default and after the curing of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In case an Event of Default has occurred (which has not been cured or waived), the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of his own affairs.

b) No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(1) prior to the occurrence of an Event of Default and after the curing or waiving of all Events of Default which may have occurred:

- i. the duties and obligations of the Trustee shall be determined solely by the express provisions of this Indenture and applicable law, and the Trustee shall not be liable except for the performance of such duties and obligations 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 and willful misconduct on the part of the Trustee, the Trustee may conclusively rely as to

the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but, in the case of any such certificates or opinions which by any provisions hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of any mathematical calculations or other facts stated therein);

(2) the Trustee shall not be liable for any error of judgment made in good faith by a Trust Officer or Officers of the Trustee, unless the Trustee was negligent in ascertaining the pertinent facts;

(3) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the written direction of the Holders of not less than a majority in Principal Amount of the Notes at the time outstanding determined as provided in Section 1.04 relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture;

(4) whether or not therein provided, every provision of this Indenture relating to the conduct or affecting the liability of, or affording protection to, the Trustee shall be subject to the provisions of this Section;

(5) the Trustee shall not be liable in respect of any payment (as to the correctness of amount, entitlement to receive or any other matters relating to payment) or notice effected by the Company or any Paying Agent or any records maintained by any co-Registrar with respect to the Notes; and

(6) the Trustee (including in its capacities as Conversion Agent, Paying Agent, or Registrar) shall have no responsibility to determine whether any change or adjustment to the Conversion Rate is required, whether the Notes may be called for redemption or whether and to what extent Additional Interest may be due.

c) if any party fails to deliver a notice relating to an event the fact of which, pursuant to this Indenture, requires notice to be sent to the Trustee, the Trustee may conclusively rely on its failure to receive such notice as reason to act as if no such event occurred.

None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if there is reasonable ground for believing that the repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

Section 11.02 *Notice of Defaults*. The Trustee shall give the Holders notice of any Default of which a Trust Officer of the Trustee has knowledge or is deemed to have notice under Section 11.03(i) within

90 days after the occurrence thereof so long as such Default is continuing; *provided*, that (except in the case of any Default in the payment of Principal Amount of, or interest on, any of the Notes or Fundamental Change Purchase Price or a default in the delivery of the consideration due upon conversion), the Trustee shall be protected in withholding such notice if and so long as it in good faith determines that the withholding of such notice is in the interest of the Holders of Notes.

Section 11.03 *Reliance on Documents, Opinions, Etc.* Except as otherwise provided in Section 11.01:

a) the Trustee may rely and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture, note, coupon or other paper or document (whether in its original or facsimile form) believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties;

b) any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced by an Officer's Certificate (unless other evidence in respect thereof be herein specifically prescribed); and any resolution of the Board of Directors may be evidenced to the Trustee by a copy thereof certified by the Secretary, any Assistant Secretary or the General Counsel of the Company;

c) the Trustee may consult with counsel of its own selection and any advice or Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or omitted by it hereunder in good faith and in accordance with such advice or Opinion of Counsel;

d) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request, order or direction of any of the Holders pursuant to the provisions of this Indenture (including upon the occurrence and during the continuance of an Event of Default), unless such Holders shall have offered to the Trustee security or indemnity satisfactory to the Trustee against any loss, expenses and liabilities which may be incurred therein or thereby;

e) 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, consent, order, bond, debenture 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 reasonable expense of the Company and shall incur no liability of any kind by reason of such inquiry or investigation);

f) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed by it with due care hereunder;

g) the Trustee shall not be liable for any action taken, suffered, or omitted to be taken by it in good faith and reasonably believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture;

h) in no event shall the Trustee 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)

irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action;

i) the Trustee shall not be deemed to have notice of any Default or Event of Default unless a Trust Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a default is received by the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Notes and the Indenture;

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

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

(l) 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.

Section 11.04 *No Responsibility for Recitals, Etc.* The recitals contained herein and in the Notes (except in the Trustee's certificate of authentication) shall be taken as the statements of the Company, and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Notes. The Trustee shall not be accountable for the use or application by the Company of any Notes or the proceeds of any Notes authenticated and delivered by the Trustee in conformity with the provisions of this Indenture.

Section 11.05 *Trustee, Paying Agents, Conversion Agents or Registrar May Own Notes.* The Trustee, any Paying Agent, any Conversion Agent or Registrar, in its individual or any other capacity, may become the owner or pledgee of Notes with the same rights it would have if it were not Trustee, Paying Agent, Conversion Agent or Registrar.

Section 11.06 *Monies to be Held in Trust.* Subject to the provisions of Section 13.04, all monies and properties received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received. Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as may be agreed in writing from time to time by the Company and the Trustee.

Section 11.07 *Compensation and Expenses of Trustee.* The Company covenants and agrees to pay to the Trustee from time to time, and the Trustee shall receive such compensation for all services rendered by it hereunder in any capacity (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) as mutually agreed to from time to time in writing between the Company and the Trustee, and the Company will pay or reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances reasonably incurred or made by the Trustee in accordance with any of the provisions of this Indenture (including the reasonable compensation and the expenses and disbursements of its counsel and of all Persons not regularly in its employ) except any such expense, disbursement or advance as may arise from its negligence, willful misconduct or bad faith. The Company

also covenants to indemnify the Trustee (or any officer, director or employee of the Trustee), in any capacity under this Indenture and its agents and any authenticating agent for, and to hold them harmless against, any and all loss, liability, claim or expense incurred without negligence, willful misconduct or bad faith on the part of the Trustee or such officers, directors, employees and agent or authenticating agent, as the case may be, and arising out of or in connection with the acceptance or administration of this trust or in any other capacity hereunder, including the costs and expenses of defending themselves against any claim (whether asserted by a Holder, the Company or any other Person) of liability in the premises and the enforcement of this Indenture (including this Section 11.07). The obligations of the Company under this Section 11.07 to compensate or indemnify the Trustee and to pay or reimburse the Trustee for expenses, disbursements and advances shall be secured by a lien prior to that of the Notes upon all property and funds held or collected by the Trustee as such, except funds held in trust for the benefit of the Holders of particular Notes. The obligation of the Company under this Section shall survive the satisfaction and discharge of this Indenture and any removal or resignation of the Trustee hereunder.

When the Trustee and its agents and any authenticating agent incur expenses or render services after an Event of Default specified in Section 9.01(i) or Section 9.01(j) with respect to the Company occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under any bankruptcy, insolvency or similar laws.

Section 11.08 *Officer's Certificate as Evidence.* Except as otherwise provided in Section 11.01, whenever in the administration of the provisions of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of negligence or willful misconduct on the part of the Trustee, be deemed to be conclusively proved and established by an Officer's Certificate delivered to the Trustee.

Section 11.09 *Conflicting Interests of Trustee.* If the Trustee has or shall acquire a conflicting interest within the meaning of the Trust Indenture Act, the Trustee shall either eliminate such interest or resign, to the extent and in the manner provided by, and subject to the provisions of, this Indenture.

Section 11.10 *Eligibility of Trustee.* There shall at all times be a Trustee hereunder which shall be a Person that is eligible pursuant to the Trust Indenture Act to act as such and has a combined capital and surplus of at least \$50,000,000 (or if such Person is a member of a bank holding company system, its bank holding company shall have a combined capital and surplus of at least \$50,000,000). If such Person publishes reports of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority, then for the purposes of this Section the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 11.10, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

Section 11.11 *Resignation or Removal of Trustee.*

a) The Trustee may at any time resign by giving written notice of such resignation to the Company and to the Holders of Notes.

Upon receiving such notice of resignation, the Company shall promptly appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the resigning Trustee and one copy to the successor trustee. If no successor trustee shall

have been so appointed and have accepted appointment ninety (90) days after the mailing of such notice of resignation to the Holders, the resigning Trustee may, upon ten (10) Business Days' notice to the Company and the Holders, appoint a successor identified in such notice or may petition, at the expense of the Company, any court of competent jurisdiction for the appointment of a successor trustee, or, if any Holder who has been a bona fide Holder of a Note or Notes for at least six (6) months may, subject to the provisions of Section 9.13, on behalf of himself and all others similarly situated, petition any such court for the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

b) In case at any time any of the following shall occur:

(1) the Trustee shall fail to comply with Section 11.09 after written request therefor by the Company or by any Holder who has been a bona fide Holder of a Note or Notes for at least six (6) months; or

(2) the Trustee shall cease to be eligible in accordance with the provisions of Section 11.10 and shall fail to resign after written request therefor by the Company or by any such Holder; or

(3) the Trustee shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation;

then, in any such case, the Company may remove the Trustee and appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee, or, subject to the provisions of Section 9.13, any Holder who has been a bona fide Holder of a Note or Notes for at least six (6) months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee; *provided, however*, that if no successor Trustee shall have been appointed and have accepted appointment ninety (90) days after either the Company or the Holders has removed the Trustee, the Trustee so removed may petition at its own expense any court of competent jurisdiction for an appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee.

c) The Holders of a majority in aggregate Principal Amount of the Notes at the time outstanding may at any time remove the Trustee and nominate a successor trustee which shall be deemed appointed as successor trustee unless, within ten (10) days after notice to the Company of such nomination, the Company objects thereto, in which case the Trustee so removed or any Holder, or if such Trustee so removed or any Holder fails to act, the Company, upon the terms and conditions and otherwise as in Section 11.11(a) provided, may petition any court of competent jurisdiction for an appointment of a successor trustee.

d) Any resignation or removal of the Trustee and appointment of a successor trustee pursuant to any of the provisions of this Section 9.11 shall become effective upon acceptance of appointment by the successor trustee as provided in Section 11.12.

Section 11.12 *Acceptance by Successor Trustee*. Any successor trustee appointed as provided in Section 11.11 shall execute, acknowledge and deliver to the Company and to its predecessor trustee an

instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder, with like effect as if originally named as trustee herein; but, nevertheless, on the written request of the Company or of the successor trustee, the trustee ceasing to act shall, upon payment of any amount then due it pursuant to the provisions of Section 11.07, execute and deliver an instrument transferring to such successor trustee all the rights and powers of the trustee so ceasing to act. Upon request of any such successor trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a lien upon all property and funds held or collected by such trustee as such, except for funds held in trust for the benefit of Holders of particular Notes, to secure any amounts then due it pursuant to the provisions of Section 11.07.

No successor trustee shall accept appointment as provided in this Section 11.12 unless, at the time of such acceptance, such successor trustee shall be qualified under the provisions of Section 11.09 and be eligible under the provisions of Section 11.10. Upon acceptance of appointment by a successor trustee as provided in this Section 11.12, the Company (or the former trustee, at the written direction of the Company) shall mail or cause to be mailed notice of the succession of such trustee hereunder to the Holders of Notes at their addresses as they shall appear on the Register. If the Company fails to mail such notice within ten (10) days after acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be mailed at the expense of the Company.

Section 11.13 *Succession by Merger, Etc.* Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee (including any trust created by this Indenture), shall be the successor to the Trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto, provided that in the case of any corporation succeeding to all or substantially all of the corporate trust business of the Trustee, such corporation shall be qualified under the provisions of Section 11.09 and eligible under the provisions of Section 11.10.

In case at the time such successor to the Trustee shall succeed to the trusts created by this Indenture, any of the Notes shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor trustee or authenticating agent appointed by such predecessor trustee, and deliver such Notes so authenticated; and in case at that time any of the Notes shall not have been authenticated, any successor to the Trustee or any authenticating agent appointed by such successor trustee may authenticate such Notes in the name of the successor trustee; and in all such cases such certificates shall have the full force that is provided in the Notes or in this Indenture; provided, however, that the right to adopt the certificate of authentication of any predecessor Trustee or authenticate Notes in the name of any predecessor Trustee shall apply only to its successor or successors by merger, conversion or consolidation.

Section 11.14 *Preferential Collection of Claims.* If and when the Trustee shall be or become a creditor of the Company (or any other obligor upon the Notes), the Trustee shall be subject to the provisions of the Trust Indenture Act regarding the collection of the claims against the Company (or any such other obligor).

Section 11.15 *Trustee's Application for Instructions from the Company*. Any application by the Trustee for written instructions from the Company (other than with regard to any action proposed to be taken or omitted to be taken by the Trustee that affects the rights of the Holders of the Notes under this Indenture) may, at the option of the Trustee, set forth in writing any action proposed to be taken or omitted by the Trustee under this Indenture and the date on and/or after which such action shall be taken or such omission shall be effective. The Trustee shall not be liable for any action taken by, or omission of, the Trustee in accordance with a proposal included in such application on or after the date specified in such application (which date shall not be less than three (3) Business Days after the date any officer of the Company actually receives such application, unless any such officer shall have consented in writing to any earlier date) unless prior to taking any such action (or the effective date in the case of an omission), the Trustee shall have received written instructions in response to such application specifying the action to be taken or omitted.

Article 12.

HOLDERS' LISTS AND REPORTS BY TRUSTEE

Section 12.01 *Company to Furnish Trustee Names and Addresses of Holders*. The Company will furnish or cause to be furnished to the Trustee:

(1) semiannually, not more than 10 days after each Regular Record Date, a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders as of such Regular Record Date; and

(2) at such other times as the Trustee may request in writing, within 30 days after the receipt by the Company of any such request, a list of similar form and content as of a date not more than 15 days prior to the time such list is furnished;

excluding from any such list names and addresses received by the Trustee in its capacity as Registrar; *provided, however*, that no such list need be furnished so long as the Trustee is acting as Registrar.

Section 12.02 *Preservation of Information; Communications to Holders*.

a) The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders contained in the most recent list furnished to the Trustee as provided in Section 12.01 and the names and addresses of Holders received by the Trustee in its capacity as Registrar. The Trustee may destroy any list furnished to it as provided in Section 12.01 upon receipt of a new list so furnished.

b) The rights of Holders to communicate with other Holders with respect to their rights under this Indenture or under the Notes, and the corresponding rights and duties of the Trustee, shall be as provided under applicable law.

c) Every Holder, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee nor any agent of either of them shall be held accountable by reason of any disclosure of information as to names and addresses of Holders made pursuant to applicable law.

Section 12.03 *Reports By Trustee*. The Trustee shall transmit to Holders such reports concerning the Trustee and its actions under this Indenture as may be required pursuant to this Indenture at the times and in the manner provided pursuant thereto. A copy of each such report shall, at the time of such transmission

to Holders, be filed by the Trustee with each stock exchange, if any, upon which the Notes are listed, with the Commission and with the Company. The Company will notify the Trustee when the Notes are listed on any stock exchange or of any delisting thereof.

Article 13.

SATISFACTION AND DISCHARGE

Section 13.01 *Discharge of Indenture*. When (a) the Company shall deliver to the Trustee for cancellation all Notes theretofore authenticated (other than any Notes that have been destroyed, lost or stolen and in lieu of or in substitution for which other Notes shall have been authenticated and delivered) and not theretofore canceled, or (b) all the Notes not theretofore canceled or delivered to the Trustee for cancellation shall have become due and payable, and the Company shall deposit with the Trustee, in trust, cash or shares of Common Stock (in the case of any conversion) sufficient to pay on the Maturity Date, upon any Redemption Date, upon any Fundamental Change Date or upon any conversion (other than any Notes that shall have been mutilated, destroyed, lost or stolen and in lieu of or in substitution for which other Notes shall have been authenticated and delivered) not theretofore canceled or delivered to the Trustee for cancellation, including principal and interest or shares of Common Stock (in the case of any conversion) due to such Maturity Date, Redemption Date, Fundamental Change Purchase Date or upon conversion, as the case may be, accompanied by a verification report, as to the sufficiency of the deposited amount, from an independent certified accountant or other financial professional satisfactory to the Trustee, and if the Company shall also pay or deliver or cause to be paid or delivered all other sums payable or deliverable hereunder by the Company, then this Indenture shall cease to be of further effect (except as to (i) remaining rights of registration of transfer, substitution and exchange and conversion of Notes, (ii) rights hereunder of Holders to receive payments of principal of and interest or (in the case of any conversion) shares of Common Stock on, the Notes and the other rights, duties and obligations of Holders, as beneficiaries hereof with respect to the amounts, if any, so deposited with the Trustee and (iii) the rights, obligations and immunities of the Trustee hereunder), and the Trustee, on written demand of the Company accompanied by an Officer's Certificate and an Opinion of Counsel as required by Section 1.02 and at the cost and expense of the Company, shall execute such instruments reasonably requested by the Company acknowledging satisfaction of and discharging this Indenture; the Company, however, hereby agrees to reimburse the Trustee for any costs or expenses thereafter reasonably and properly incurred by the Trustee and to compensate the Trustee for any services thereafter reasonably and properly rendered by the Trustee in connection with this Indenture or the Notes.

Section 13.02 *Deposited Monies to be Held in Trust by Trustee*. Subject to Section 13.04, all monies and shares of Common Stock deposited with the Trustee pursuant to Section 13.01 shall be held in trust for the sole benefit of the Holders, and such monies and shares of Common Stock shall be applied by the Trustee to the payment, either directly or through any Paying Agent (including the Company if acting as its own Paying Agent), to the Holders of the particular Notes for the payment or delivery upon conversion thereof have been deposited with the Trustee, of all sums and amounts due thereon for principal and interest or upon conversion.

Section 13.03 *Paying Agent to Repay Monies Held*. Upon the satisfaction and discharge of this Indenture, all monies then held by any Paying Agent of the Notes (other than the Trustee) shall, upon written request of the Company, be repaid to it or paid to the Trustee, and thereupon such Paying Agent shall be released from all further liability with respect to such Monies.

Section 13.04 *Return of Unclaimed Monies*. Subject to the requirements of applicable abandoned property laws, any monies or shares of Common Stock deposited with or paid to the Trustee for payment of the principal of or interest on Notes and not applied but remaining unclaimed by the Holders of Notes for two years after the date upon which the principal of or interest on such Notes or shares of Common Stock, as the case may be, shall have become due and payable, shall be repaid to the Company by the Trustee on demand and all liability of the Trustee shall thereupon cease with respect to such monies or shares of Common Stock; and the Holder of any of the Notes shall thereafter look only to the Company for any payment or delivery that such Holder may be entitled to collect unless an applicable abandoned property law designates another Person.

Section 13.05 *Reinstatement*. If the Trustee or the Paying Agent is unable to apply any money or shares of Common Stock in accordance with Section 13.02 by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's obligations under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 13.01 until such time as the Trustee or the Paying Agent is permitted to apply all such money or shares of Common Stock in accordance with Section 13.02; *provided, however*, that if the Company makes any payment of interest on or principal of any Note or delivery of shares of Common Stock due upon conversion following the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money, or delivery from the shares of Common Stock, as the case may be, held by the Trustee or Paying Agent.

Article 14.

SUPPLEMENTAL INDENTURES

Section 14.01 *Supplemental Indentures without Consent of Holders*. Without the consent of any Holders, the Company, when authorized by a Board Resolution, and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form satisfactory to the Trustee, for any of the following purposes:

- (1) to cure any ambiguity or correct any inconsistent or otherwise defective provision contained herein;
- (2) to provide for the assumption by a Successor Corporation of the obligations of the Company contained herein;
- (3) to provide for or confirm the issuance of Additional Notes in accordance with the terms of this Indenture;
- (4) to evidence and provide for the acceptance of appointment under this Indenture by a successor Trustee;
- (5) to add Note guarantees with respect to the Notes;
- (6) to secure the Notes;
- (7) 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;
- (8) to comply with the applicable procedures of the Depositary;

- (9) to make any change that does not materially adversely affect the rights of any Holder;
- (10) as expressly required by Section 7.05; or
- (11) to conform the provisions of this Indenture to the “Description of Notes” section in the Offering Memorandum (and the Trustee may conclusively rely on an Officer’s Certificate from the Company for such purpose).

Section 14.02 *Supplemental Indentures with Consent of Holders*. With the consent of the Holders of not less than a majority in Principal Amount of the outstanding Notes (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes), by Act of said Holders delivered to the Company and the Trustee, the Company, when authorized by a Board Resolution, and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights of the Holders under this Indenture; *provided, however*, that no such supplemental indenture shall, without the consent of the Holder of each outstanding Note affected thereby:

- (1) reduce the percentage in Principal Amount of Notes whose Holders must consent to an amendment of this Indenture or to waive any past default;
- (2) reduce the rate of, or extend the time of payment of, any interest on any Note;
- (3) reduce the Principal Amount of, or extend the Maturity Date of, any Note;
- (4) make any change that impairs or adversely affects the conversion rights of any Note;
- (5) reduce the Redemption Price or the Fundamental Change Purchase Price of any Note or amend or modify in any manner adverse to the Holders of Notes the Company’s obligation to make such payments, whether through an amendment or waiver of provisions in the covenants, definitions or otherwise;
- (6) make any Note payable in a currency other than that stated in the Notes;
- (7) impair the right of any Holder to receive payment of principal of, and interest on such Holder’s Notes on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such Holder’s Notes;
- (8) change the ranking of the Notes; or
- (9) modify any of the provisions of this Section 14.02 or Section 9.02(b).

It shall not be necessary for any Act of Holders under this Section 14.02 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.

Section 14.03 *Execution of Supplemental Indentures*. In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article 14 or the modifications thereby of

the trusts created by this Indenture, the Trustee shall be provided with, and (subject to Section 11.01) shall be fully protected in relying upon, in addition to the documents required by Section 1.02, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture. Subject to the preceding sentence, the Trustee shall sign such supplemental indenture if the same does not adversely affect the Trustee's own rights, duties or immunities under this Indenture or otherwise. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture that adversely affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Section 14.04 *Effect of Supplemental Indentures*. Upon the execution of any supplemental indenture under this Article 14, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

Section 14.05 *[Reserved.]*.

Section 14.06 *Reference in Notes to Supplemental Indentures*. Notes authenticated and delivered after the execution of any supplemental indenture pursuant to this Article 14 shall bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Notes so modified as to conform, in the opinion of the Trustee and the Company, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for outstanding Notes.

Section 14.07 *Notice to Holders of Supplemental Indentures*. The Company shall cause notice of the execution of any supplemental indenture to be sent to each Holder, at such Holder's address appearing on the Register provided for in this Indenture, within 20 days after execution thereof. Failure to deliver such notice, or any defect in such notice, shall not impair or affect the legality or validity of such supplemental indenture.

Article 15.
MISCELLANEOUS

Section 15.01 *[Reserved.]*.

Section 15.02 *Notices*. Any notice or communication shall be in writing (including telecopy promptly confirmed in writing) and delivered in person or mailed by first-class mail addressed as follows:

if to the Company:

HC2 Holdings, Inc.
450 Park Avenue, 30th Floor
New York, NY 10022
Attention: Joseph Ferraro

with a copy to:

Latham & Watkins LLP
885 Third Avenue
New York, NY 10022
Attention: Senet Bischoff

if to the Trustee:

U.S. Bank National Association
Global Corporate Trust Services
Mailcode: EP MN WS3C
60 Livingston Avenue
St. Paul, MN 55107-2292
Facsimile No.: (651) 466-4730
Attention: Rick Prokosch

The Company or the Trustee by notice to the other may designate additional or different 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 registration books of the Registrar and shall be sufficiently given if so mailed within the time prescribed; *provided* that, notwithstanding anything to the contrary herein, notices given to Holders of Global Notes may be given electronically through the facilities of the Depository.

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 shall be effective only upon receipt.

The Trustee agrees to accept instructions or directions pursuant to this Indenture sent by unsecured e-mail, pdf, facsimile transmission or other similar unsecured electronic methods; *provided, however*, that the Trustee shall have received an incumbency certificate listing persons designated to give such instructions or directions and containing specimen signatures of such designated persons, which such incumbency certificate shall be amended and replaced whenever a person is to be added or deleted from the listing. If the Company elects to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The Company agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties, absent the gross negligence or willful misconduct of the Trustee.

Section 15.03 *[Reserved.]*.

Section 15.04 *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 Officer's Certificate in form 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) if requested by the Trustee, an Opinion of Counsel in form reasonably satisfactory to the Trustee stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

Section 15.05 *When Notes Are Disregarded*. In determining whether the Holders of the required Principal Amount of Notes have concurred in any direction, waiver or consent, Notes owned by the Company or by any Affiliate of the Company shall be disregarded and deemed not to be outstanding, except that, for the purpose of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Notes which a Trust Officer of the Trustee actually knows are so owned shall be so disregarded. Also, subject to the foregoing, only Notes outstanding at the time shall be considered in any such determination.

Section 15.06 *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 15.07 *Legal Holidays*. If an Interest 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, the Regular Record Date shall not be affected. In any case where the Maturity Date, Fundamental Change Purchase Date or Redemption Date, as the case may be, of any Note is a Legal Holiday, then (notwithstanding any other provision of this Indenture or of the Notes) payment of principal need not be made on such date, but may be made on the next succeeding day that is not a Legal Holiday, with the same force and effect as if made on such Maturity Date, Fundamental Change Purchase Date or Redemption Date, as the case may be.

Section 15.08 *Governing Law*. THIS INDENTURE AND THE NOTES, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS INDENTURE OR THE NOTES, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

Section 15.09 *No Recourse against Others*. An incorporator, director, officer, employee, Affiliate or stockholder of the Company, solely by reason of this status, shall not have any liability for any obligations of the Company under the Notes, this Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. By accepting a Note, each Holder shall waive and release all such liability. The waiver and release shall be part of the consideration for the issue of the Notes.

Section 15.10 *Successors*. All agreements of the Company in this Indenture and the Notes shall bind their respective successors. All agreements of the Trustee in this Indenture shall bind its successors.

Section 15.11 *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. Delivery of an executed counterpart by facsimile, .pdf or other electronic means shall be effective as delivery of a manually executed counterpart thereof.

Section 15.12 *Benefits of Indenture*. Nothing in this Indenture or in the Notes, express or implied, shall give to any Person, other than the parties hereto and their respective successors hereunder and the Holders of Notes, any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 15.13 *Table of Contents; Headings*. The table of contents 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 15.14 *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 15.15 *Calculations*. The Company (or its agents) will be responsible for making all calculations called for under this Indenture or the Notes. The Company (or its agents) will make all such calculations in good faith and, absent manifest error, its calculations will be final and binding on Holders. The Company (or its agents) upon request will provide a schedule of its calculations to each of the Trustee and the Conversion Agent, and each of the Trustee and Conversion Agent is entitled to rely conclusively upon the accuracy of such calculations without independent verification. The Trustee will deliver a copy of such schedule to any Holder upon the written request of such Holder.

Section 15.16 *Waiver of Jury Trial*. EACH OF THE COMPANY AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE SECURITIES OR THE TRANSACTION CONTEMPLATED THEREBY.

Section 15.17 *Consent to Jurisdiction*.

a) The Company hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of any New York State court or federal court of the United States sitting in the State and City of New York, County and Borough of Manhattan, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Indenture or the Notes, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such state court sitting in the State and City of New York, County and Borough of Manhattan or, to the extent permitted by law, in such federal court sitting in the State and City of New York, County and Borough of Manhattan.

b) The Company hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action proceeding arising out of or relating to this Indenture or the Notes in any New York State or federal court. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

Section 15.18 *Force Majeure*. In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software or hardware) services; it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

Section 15.19 *U.S.A. Patriot Act.* The parties hereto acknowledge that in accordance with Section 326 of the U.S.A. Patriot Act, the Trustee (in all of its capacities), 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.

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IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed as of the day and year first above written.

HC2 HOLDINGS, INC.

By: _____

Name: [•]

Title: [•]

U.S. Bank National Association
as Trustee

By: _____

Name: [•]

Title: [•]

SCHEDULE A

Effective Date/ Date of the Notice of Redemption	\$3.65	\$4.00	\$4.38	\$5.00	\$5.69	\$7.00	\$10.00	\$12.00	\$15.00	\$20.00
November 20, 2018	45.6621	45.6621	38.3333	29.0095	21.9705	13.8181	5.2695	2.6645	0.6828	0.0000
June 1, 2019	45.6621	44.4895	36.4155	27.1495	20.3372	12.6609	4.8195	2.4312	0.6028	0.0000
June 1, 2020	45.6621	39.9145	31.4155	22.2495	16.0344	9.6752	3.6895	1.8562	0.4162	0.0000
June 1, 2021	45.6621	33.2895	23.7215	14.5695	9.4661	5.3895	2.1695	1.0978	0.1895	0.0000
June 1, 2022	45.6621	21.6895	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

[FORM OF RESTRICTED STOCK LEGEND]

THE SALE OF THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), AND ACCORDINGLY, PRIOR TO THE RESALE RESTRICTION TERMINATION DATE (AS DEFINED BELOW), THIS SECURITY MAY NOT BE OFFERED, RESOLD, OR OTHERWISE TRANSFERRED, EXCEPT:

(A) TO HC2 HOLDINGS, INC. (THE “COMPANY”) OR ANY SUBSIDIARY THEREOF;

(B) PURSUANT TO, AND IN ACCORDANCE WITH, A REGISTRATION STATEMENT THAT IS EFFECTIVE UNDER THE SECURITIES ACT AT THE TIME OF SUCH TRANSFER;

(C) TO A PERSON THAT YOU REASONABLY BELIEVE TO BE A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT; OR

(D) UNDER ANY OTHER AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT (INCLUDING, IF AVAILABLE, THE EXEMPTION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT).

THE “RESALE RESTRICTION TERMINATION DATE” MEANS THE LATEST OF: (1) THE DATE THAT IS ONE YEAR AFTER THE LAST DATE OF ORIGINAL ISSUANCE OF THE COMPANY’S 7.5% CONVERTIBLE SENIOR NOTES DUE 2022 (THE “NOTES”) (INCLUDING THE LAST DATE OF ISSUANCE OF ADDITIONAL NOTES PURSUANT TO THE EXERCISE OF THE INITIAL PURCHASER’S OPTION TO PURCHASE ADDITIONAL NOTES) OR SUCH SHORTER PERIOD OF TIME PERMITTED BY RULE 144 OR ANY SUCCESSOR PROVISION THERETO; (2) THE DATE ON WHICH THE COMPANY HAS INSTRUCTED THE TRUSTEE FOR THE NOTES THAT THE SUBSTANTIALLY SIMILAR RESTRICTIONS APPLICABLE TO THE NOTES WILL NO LONGER APPLY IN ACCORDANCE WITH THE PROCEDURES DESCRIBED IN THE INDENTURE GOVERNING THE NOTES AND (3) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW.

WITH RESPECT TO ANY TRANSFER PURSUANT TO THE FOREGOING CLAUSE (D), PRIOR TO THE RESALE RESTRICTION TERMINATION DATE, THE COMPANY AND THE COMPANY’S TRANSFER AGENT RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS THEY MAY REASONABLY REQUIRE AND MAY RELY UPON 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.

[FORM OF FREE TRANSFERABILITY CERTIFICATE]

Officer's Certificate

[NAME OF OFFICER], the [TITLE] of HC2 Holdings, Inc., a Delaware corporation (the "**Company**") and [NAME OF OFFICER], the [TITLE] of the Company do hereby certify, in connection with the sale of \$55,000,000 of the Company's 7.5% Convertible Senior Notes due 2022 (the "**Notes**") pursuant to the terms of the Indenture, dated as of November 20, 2018 (as may be amended or supplemented from time to time, the "**Indenture**"), by and among the Company and U.S. Bank National Association (the "**Trustee**"), that:

1. The undersigned are permitted to sign this "Officer's Certificate" on behalf of the Company, as the term "Officer's Certificate" is defined in the Indenture.
2. The undersigned have read, and thoroughly examined, the Indenture and the definitions therein relating thereto.
3. In the opinion of the undersigned, the undersigned have made such examination as is necessary to enable the undersigned to express an informed opinion as to whether or not all conditions precedent to the removal of the Restricted Notes Legend, cancellation of the Global Note containing the Restricted Notes Legend and the authentication of a Global Note not bearing the Restricted Notes Legend described herein as provided for in the Indenture have been complied with.
4. To the best knowledge of the undersigned, all conditions precedent described herein as provided for in the Indenture have been complied with.
5. The Notes have become Freely Tradable.

In accordance with Section 3.08 of the Indenture, the Company hereby instructs you as follows:

1. To take those actions necessary so that the Restricted Notes Legend and set forth on the Restricted Global Notes shall be removed from the Global Notes in accordance with the terms and conditions of the Securities and as provided in the Indenture, without further action on the part of the Holders.
2. To take those actions necessary so that the restricted CUSIP number for the Notes shall be removed from the Global Notes and replaced with an unrestricted CUSIP number, which unrestricted CUSIP number shall be 404139 AAF4, in accordance with the terms and conditions of the Global Notes and as provided in the Indenture, without further action on the part of the Holders.

[Signature page follows.]

IN WITNESS WHEREOF, we have signed this certificate as of [_____].

HC2 HOLDINGS, INC.

By:
Name:
Title:

HC2 HOLDINGS, INC.
AND EACH OF THE SUBSIDIARY GUARANTORS PARTY HERETO
11.500% SENIOR SECURED NOTES DUE 2021

INDENTURE
Dated as of November 20, 2018

U.S. Bank National Association
Trustee and Collateral Trustee

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Exhibit E	FORM OF NOTATION OF GUARANTEE
Exhibit F	FORM OF SUPPLEMENTAL INDENTURE

INDENTURE dated as of November 20, 2018 among HC2 Holdings, Inc., a Delaware corporation, the Guarantors (as defined), and U.S. Bank National Association, a national association, as trustee (the “Trustee”), and U.S. Bank National Association, a national association, as collateral trustee (the “Collateral Trustee”).

The Company, the Subsidiary Guarantors, the Trustee and the Collateral Trustee agree as follows for the benefit of each other and for the equal and ratable benefit of the Holders (as defined) of the 11.500% Senior Secured Notes due 2021 (the “Notes”):

Article 1
DEFINITIONS AND INCORPORATION
BY REFERENCE

Section 1.01 *Definitions.*

“144A Global Note” means a Global Note substantially in the form of Exhibit A hereto bearing the Global Note Legend and the Private Placement Legend and deposited with or on behalf of, and registered in the name of, the Depository or its nominee that will be issued in a denomination equal to the outstanding principal amount of the Notes sold in reliance on Rule 144A.

334 “Acquired Indebtedness” means Debt of a Person or any of its Subsidiaries existing at the time such Person becomes a Restricted Subsidiary or at the time it merges or consolidates with the Company or any of its Restricted Subsidiaries or is assumed in connection with the acquisition of assets from such Person. Such Debt will be deemed to have been Incurred at the time such Person becomes a Restricted Subsidiary or at the time it merges or consolidates with the Company or a Restricted Subsidiary or at the time such Debt is assumed in connection with the acquisition of assets from such Person.

335 “Advances” means all indebtedness of the Company and its Affiliates for borrowed money *provided, however,* that notwithstanding the foregoing, Advances shall be deemed not to include common equity capital or Preferred Stock.

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

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

338 “ANG” means ANG Holdings, Inc.

339 “Applicable Premium” means, with respect to any Note on any redemption date, the greater of

340 (i) 1.0% of the principal amount of such Note; or

341 (ii) the excess of:

342 (a) the present value at such redemption date of (i) the redemption price of such Note at June 1, 2020 (such redemption price being set forth in the table appearing below), plus (ii) all required interest payments due on such Note through June 1, 2020, excluding accrued but unpaid interest to the applicable redemption date, computed using a discount rate equal to the Treasury Rate as of such redemption date plus 50 basis points;

over

343 (b) the principal amount of the Note.

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

345 “*Asset Sale*” means any sale, lease, transfer or other disposition of any assets by the Company or any Restricted Subsidiary, including by means of a merger, consolidation or similar transaction and including any sale by the Company or any Restricted Subsidiary of the Equity Interests of any Restricted Subsidiary (each of the above referred to as a “disposition”), *provided* that the following are not included in the definition of “Asset Sale”:

(1) a disposition to the Company or a Restricted Subsidiary, including the sale or issuance by the Company or any Subsidiary of any Equity Interests of any Subsidiary to the Company or any Restricted Subsidiary;

(2) the disposition by the Company or any Restricted Subsidiary in the ordinary course of business of (i) Cash Equivalents and cash management investments, (ii) damaged, worn out or obsolete assets, (iii) rights granted to others pursuant to leases or licenses, or (iv) inventory and other assets acquired and held for resale in the ordinary course of business (it being understood that any Equity Interests of any direct Restricted Subsidiary of the Company or any Restricted Subsidiary and the assets of an operating business, unit, division or line of business shall not constitute inventory or other assets acquired and held for resale in the ordinary course of business);

(3) the sale or discount of accounts receivable arising in the ordinary course of business;

(4) a transaction covered by Section 5.01 hereof or that constitutes a Change of Control;

(5) a Restricted Payment permitted under Section 4.09 hereof or a Permitted Investment;

(6) the issuance of Disqualified Equity Interests pursuant to Section 4.11;

(7) any disposition in a transaction or series of related transactions of assets with a fair market value of less than \$25.0 million;

(8) any disposition of Equity Interests of a Subsidiary pursuant to an agreement or other obligation with or to a Person from whom such Subsidiary was acquired or from whom such Subsidiary (having been newly formed in connection with such acquisition) acquired its business and assets, made as part of such acquisition and in each case comprising all or a portion of the consideration in respect of such sale or acquisition;

(9) any surrender or waiver of contract rights pursuant to a settlement, release, recovery on or surrender of contract, tort or other claims of any kind;

(10) foreclosure or any similar action with respect to any property or other asset of the Company or any of its Subsidiaries;

(11) dispositions in connection with Permitted Liens;

(12) leases of real or personal property in the ordinary course of business and in accordance with the applicable Security Documents;

(13) licenses or sublicenses of Intellectual Property in the ordinary course of business and not interfering in any material respect with the ordinary conduct of business of the Company and its Restricted Subsidiaries;

(14) sales of inventory in the ordinary course of business and dispositions of cash and Cash Equivalents in the ordinary course of business;

(15) licenses or sublicenses of Intellectual Property in the ordinary course of business;

(16) dispositions of Investments by any Insurance Subsidiary (other than any of its Investments in Subsidiaries engaged in insurance lines of business) consistent with the investment policy approved by the Board of Directors of such Insurance Subsidiary or the Company, as the case may be;

(17) dispositions by Insurance Subsidiaries and their Subsidiaries pursuant to Reinsurance Agreements so long as such disposition is entered into in the ordinary course of business for the purpose of managing insurance risk consistent with industry practice;

(18) Permitted Transactions;

(19) any termination of leases by the Company or any Subsidiary as lessee that is, in the reasonable and good faith judgment of the Company, no longer commercially practicable to maintain or useful in the conduct of business of the Company and its Restricted Subsidiaries taken as a whole;

(20) the transactions provided for in the Merger Agreement, dated May 1, 2018, by and among Janssen Biotech, Inc., Dogfish Merger Sub, Inc., Benevir Biopharm, Inc., and Shareholder Representative Services LLC, as holder representative, as such agreement may be amended, replaced or supplemented from time to time;

(21) dispositions completed prior to the Issue Date or a binding commitment to complete a disposition entered into prior to the Issue Date; and

(22) to the extent allowable under Section 1031 of the Code (as defined below), any exchange of like property (excluding any boot thereon).

346 "*Attributable Debt*" means, in respect of a Sale and Leaseback Transaction, at the time of determination, the present value, discounted at the interest rate implicit in the Sale and Leaseback Transaction determined in accordance with GAAP, of the total obligations of the lessee for rental payments during the remaining term of the lease in the Sale and Leaseback Transaction.

347 “*Authorized Representative*” shall have the meaning assigned to such term in the Collateral Trust Agreement.

348 “*Average Life*” means, with respect to any Debt or Disqualified Equity Interests, the quotient obtained by dividing (i) the sum of the products of (x) the number of years from the date of determination to the dates of each successive scheduled principal payment of such Debt or such redemption or similar payment with respect to such Disqualified Equity Interests and (y) the amount of such principal, or redemption or similar payment by (ii) the sum of all such principal, or redemption or similar payments.

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

350 “*Beneficial Owner*” has the meaning assigned to such term in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular “person”(as that term is used in Section 13(d)(3) of the Exchange Act), such “person” shall be deemed to have beneficial ownership of all securities that such “person” has the right to acquire by conversion or exercise of other securities, whether such right is currently exercisable or is exercisable only upon the occurrence of a subsequent condition. The terms “Beneficially Owns” and “Beneficially Owned” shall have a corresponding meaning.

351 “*Board of Directors*” means:

(1) with respect to a corporation, the board of directors of the corporation or, except with respect to the definition of Change of Control, any duly authorized committee thereof having the authority of the full board with respect to the determination to be made;

(2) with respect to a limited liability company, any managing member thereof or, if managed by managers, the board of managers thereof, or any duly authorized committee thereof having the authority of the full board with respect to the determination to be made;

(3) with respect to a partnership, the Board of Directors of the general partner of the partnership;

(4) with respect to any other Person, the board or committee of such Person serving a similar function; and

(5) unless the context otherwise requires, “Board of Directors” refers to the Board of Directors of the Company.

352 “*Borrowing Base*” means, as of any date an amount equal to 60% of the aggregate book value of all accounts receivable of DBM Global and its Restricted Subsidiaries (i) as set forth in the consolidated balance sheet of DBM Global as of the end of the most recently ended fiscal quarter for which internal consolidated financial statements are available immediately preceding the Incurrence of such Debt and (ii) on a Pro Forma Basis.

353 “*Business Day*” means any day other than a Legal Holiday.

354 “*Capital Lease*” means, with respect to any Person, any lease of any property which, in conformity with GAAP, is required to be capitalized on the balance sheet of such Person.

355 “*Capital Stock*” means, with respect to any Person, any and all shares of stock of a corporation, partnership interests or other equivalent interests (however designated, whether voting or non-voting) in such Person’s equity, entitling the holder to receive a share of the profits and losses, and a distribution of assets, after liabilities, of such Person.

356 “*Cash Equivalents*” means, as of any date of termination and as to any person, any of the following (a) marketable securities issued, or directly, unconditionally and fully guaranteed or insured, by the United States or any agency or instrumentality thereof (provided that the full faith and credit of the United States is pledged in support thereof) having maturities of not more than one year from the date of acquisition by such person, (b) time deposits and certificates of deposit of any commercial bank having, or which is the principal banking subsidiary of a bank holding company organized under the laws of the United States, any state thereof or the District of Columbia having, capital and surplus aggregating in excess of \$500.0 million and a rating of “A”(or such other similar equivalent rating) or higher by at least one nationally recognized statistical rating organization (as defined in Rule 436 under the Securities Act) with maturities of not more than one year from the date of acquisition by such person, (c) repurchase obligations with a term of not more than 30 days for underlying securities of the types described in clause (a) above entered into with any person meeting the qualifications specified in clause (b) above, which repurchase obligations are secured by a valid perfected security interest in the underlying securities, (d) commercial paper issued by any person incorporated in the United States rated at least A-1 or the equivalent thereof by S&P or at least P-1 or the equivalent thereof by Moody’s, and in each case maturing not more than one year after the date of acquisition by such person, (e) investments in money market funds at least 95% of whose assets are comprised of securities of the types described in clauses (a) through (d) above, (f) direct obligations of any sovereign nation (or any agency thereof), and obligations fully and unconditionally guaranteed by such sovereign nation (or any agency thereof), in which either (i) any Foreign Subsidiary is organized or (ii) the Company or any of its Restricted Subsidiaries is conducting business, (g) instruments equivalent to those referred to in clauses (c) and (d) above denominated in Singapore Dollars, HK Dollars, Yuan, and GB pounds comparable in credit quality and customarily used by multinational companies with operations in Singapore, Hong Kong, the People’s Republic of China and Great Britain, respectively, for cash management purposes, (h) short-term investments denominated in Singapore Dollars, HK Dollars, Yuan, and GB pounds and (i) demand or time deposits, certificates of deposit or money market mutual funds issued by any commercial bank having, or which is the principal banking subsidiary of a bank holding company having capital, surplus and undivided profits aggregating in excess of \$500.0 million.

357 “*CBOs*” means notes or other instruments (other than CMOs) secured by collateral consisting primarily of debt securities and/or other types of debt obligations, including loans.

358 “*Change of Control*” means the occurrence of any of the following:

- (1) the direct or indirect sale, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of the Company and its Subsidiaries, taken as a whole, to any “person”(as that term is used in Section 13(d)(3) of the Exchange Act) other than a Permitted Holder;
- (2) the adoption of a plan relating to the liquidation or dissolution of the Company; or
- (3) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) becomes the ultimate Beneficial Owner, directly or indirectly, of 50% or more of the voting power of the Voting Stock of the Company other than a Permitted Holder; *provided* that such event shall not be deemed a Change of Control so long as one or more Permitted Holders shall

Beneficially Own more of the voting power of the Voting Stock of the Company than such person or group.

359 For purposes of this definition, (i) any direct or indirect holding company of the Company shall not itself be considered a Person for purposes of clauses (1) or (3) above or a “person” or “group” for purposes of clauses (1) or (3) above, *provided* that no “person” or “group” (other than the Permitted Holders or another such holding company) Beneficially Owns, directly or indirectly, more than 50% of the voting power of the Voting Stock of such company, and a majority of the Voting Stock of such holding company immediately following it becoming the holding company of the Company is Beneficially Owned by Persons who Beneficially Owned the voting power of the Voting Stock of the Company immediately prior to it becoming such holding company and (ii) a Person shall not be deemed to have beneficial ownership of securities subject to a stock purchase agreement, merger agreement or similar agreement until the consummation of the transactions contemplated by such agreement. Notwithstanding anything to the contrary in the foregoing, a Specified Asset Sale shall not constitute a Change of Control.

“*Clearstream*” means Clearstream Banking, S.A.

360 “*CMOs*” means notes or other instruments secured by collateral consisting primarily of mortgages, mortgage-backed securities and/or other types of mortgage-related obligations.

361 “*Code*” means the Internal Revenue Code of 1986, as amended.

362 “*Collateral*” means, collectively, (i) the Pledged Collateral and (ii) any rights, assets or property of whatever kind and nature, whether now existing or hereafter acquired, pledged or purported to be pledged as collateral or otherwise subject to a security interest or purported to be subject to a security interest under any Security Document to secure the Obligations under this Indenture, the Notes, the Notes Documents or any Note Guarantee.

363 “*Collateral Coverage Ratio*” means, as of any date of determination, the ratio of (i) the Loan Collateral to (ii) Consolidated Secured Debt.

364 “*Collateral Trust Agreement*” means the collateral trust agreement dated as of the Issue Date among the Company, the Collateral Trustee and the Trustee, as amended, restated, supplemented or otherwise modified or replaced from time to time.

365 “*Collateral Trustee*” means U.S. Bank National Association, in its capacity as the Collateral Trustee, or any Collateral Trustee appointed pursuant to the Collateral Trust Agreement.

366 “*Company*” means HC2 Holdings, Inc. and any and all successors thereto.

367 “*Consolidated Amortization Expense*” shall mean, for any Person for any period, the amortization expense of such Person and its Restricted Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP.

368 “*Consolidated Depreciation Expense*” shall mean, for any Person for any period, the depreciation expense of such Person and its Restricted Subsidiaries for such period, determined on a consolidated basis in accordance with GAAP.

369 “*Consolidated Interest Expense*” shall mean, for any Person for any period, the total consolidated interest expense of such Person and its Restricted Subsidiaries for such period determined on a consolidated basis in accordance with GAAP plus, without duplication:

- (1) imputed interest on Capital Leases and Attributable Debt of such Person and its Restricted Subsidiaries for such period;
- (2) commissions, discounts and other fees and charges owed by such Person and its Restricted Subsidiaries with respect to letters of credit securing financial obligations, bankers’ acceptance financing, receivables financings and similar credit transactions for such period;
- (3) amortization of debt issuance costs, debt discount or premium and other financing fees and expenses incurred by such Person and its Restricted Subsidiaries for such period;
- (4) cash contributions to any employee stock ownership plan or similar trust made by such Person and its Restricted Subsidiaries to the extent such contributions are used by such plan or trust to pay interest or fees to any person (other than such Person or any of its Wholly Owned Subsidiaries) in connection with Debt incurred by such plan or trust for such period;
- (5) all interest paid or payable with respect to discontinued operations of such Person and its Restricted Subsidiaries for such period;
- (6) all cash dividend payments (excluding items eliminated in consolidation) on any series of Preferred Stock made during such period;
- (7) the interest portion of any payment obligations of such Person and its Restricted Subsidiaries for such period deferred for payment at any future time, whether or not such future payment is subject to the occurrence of any contingency, and includes any and all payments representing the purchase price and any assumptions of Debt and/or contingent obligations, “earn-outs” and other agreements to make any payment the amount of which is, or the terms of payment of which are, in any respect subject to or contingent upon the revenues, income, cash flow or profits (or the like) of any person or business; and
- (8) all interest on any Debt of such Person and its Restricted Subsidiaries of the type described in clause (6) or (7) of the definition of “Debt” for such period;

provided that Consolidated Interest Expense shall be calculated after giving effect to Hedging Agreements (including associated costs) intended to protect against fluctuations in interest rates, but excluding unrealized gains and losses with respect to any such Hedging Agreements.

370 “*Consolidated Net Income*” means, for any Person (the “*CNI Person*”) for any period, the aggregate net income (or loss) of such CNI Person and its Restricted Subsidiaries for such period determined on a consolidated basis in conformity with GAAP, provided that the following (without duplication) will be excluded in computing Consolidated Net Income:

- (1) [Reserved];
- (2) any net income (or loss) of any Person acquired in a pooling of interests transaction for any period prior to the date of such acquisition;

(3) any net after-tax gains or losses attributable to or associated with the extinguishment of Debt or Hedging Agreements;

(4) the cumulative effect of a change in accounting principles;

(5) any non-cash expense realized or resulting from stock option plans, employee benefit plans or post-employment benefit plans, or grants or sales of stock, stock appreciation or similar rights, stock options, restricted stock, preferred stock or other rights;

(6) to the extent covered by insurance and actually reimbursed, or, so long as such Person has made a determination that there exists reasonable evidence that such amount will in fact be reimbursed by the insurer and only to the extent that such amount is (a) not denied by the applicable carrier in writing within 180 days and (b) in fact reimbursed within 365 days of the date of such evidence (with a deduction for any amount so added back to the extent not so reimbursed within 365 days), expenses with respect to liability or casualty events or business interruption;

(7) any expenses or charges related to any acquisition, disposition, recapitalization or issuance, repayment, refinancing, amendment or modification of Equity Interests or Debt (including amortization or write offs of debt issuance or deferred financing costs, premiums and prepayment penalties), in each case, whether or not successful, including any such expenses or charges attributable to the issuance and sale of any Notes;

(8) any expenses or reserves for liabilities to the extent that such CNI Person or any of its Restricted Subsidiaries is entitled to indemnification therefor under binding agreements; *provided* that any liabilities for which such CNI Person or such Restricted Subsidiary is not actually indemnified shall reduce Consolidated Net Income in the period in which it is determined that such CNI Person or such Restricted Subsidiary will not be indemnified;

(9) to the extent specifically included in the unconsolidated Statement of Operations of the Company, (a) unrealized gains and losses due solely to fluctuations in currency values and the related tax effects according to GAAP shall be excluded (until realized, at which time such gains or losses shall be included); and (b) unrealized gains and losses with respect to hedging obligations for currency exchange risk shall be excluded (until realized, at which time such gains or losses shall be included);

(10) to the extent specifically included in the unconsolidated Statement of Operations of the Company, any charges resulting from the application of FASB ASC 350, Intangibles—Goodwill and Other, ASC 815, Accounting for Derivative Instruments and Hedging Activities, Accounting Standards Codification Topic 360-10-35-15, Impairment or Disposal of Long-Lived Assets, Accounting Standards Codification Topic 480-10-25-4, Distinguishing Liabilities from Equity—Overall Recognition, or Accounting Standards Codification Topic 820 Fair Value Measurements and Disclosures, the amortization of intangibles arising pursuant to FASB ASC 805, Business Combinations, non-cash interest expense resulting from the application of Accounting Standards Codification Topic 470-20 Debt—Debt with Conversion Options—Recognition, and any non-cash income tax expense that results from the inability to include deferred tax liabilities related to indefinite lived intangible assets as future reversals of temporary differences under FASB ASC 740-10-30-18, non-cash charges arising from the springing maturity feature of any debt, and restructuring and related charges and acquisition and related integration charges;

- (11) the aggregate amount of gain or loss from any sale or disposal of assets, including the sale of any Subsidiary;
- (12) the aggregate amount of any contingent consideration; and
- (13) other income or expense, net.

371 “*Consolidated Secured Debt*” means, as at any date of determination, without duplication, the aggregate stated balance sheet amount of all Debt and Disqualified Equity Interests of the Company and the Subsidiary Guarantors that is secured by a Lien on any property of the Company and the Subsidiary Guarantors.

372 “*Consolidated Tax Expense*” means, for any Person for any period, the tax expense (including federal, state, local and foreign income taxes) of such Person and its Restricted Subsidiaries, for such period, determined on a consolidated basis in accordance with GAAP.

373 “*continuing*” means, with respect to any Default or Event of Default, that such Default or Event of Default has not been cured or waived.

374 “*Control Agreement*” shall have the meaning assigned to such term in the Pledge Agreement.

375 “*Convertible Notes*” means the Convertible Senior Notes due 2022 of the Company issued on the Issue Date.

376 “*Convertible Preferred Stock*” means the Existing Convertible Preferred Stock and any convertible preferred stock issued in connection with the Permitted Preferred Refinancing, and any shares of the foregoing issued as pay-in-kind dividends thereon.

377 “*Convertible Preferred Stock Documents*” shall mean, collectively, (x) that certain Securities Purchase Agreement relating to the Company’s Series A Convertible Participating Preferred Stock, by and among the Company and the purchasers party thereto, dated as of May 29, 2014, (y) that certain Securities Purchase Agreement relating to the Company’s Series A-2 Convertible Participating Preferred Stock, by and among the Company and the purchasers party thereto, dated as of January 5, 2015 and, in each case the other documents entered into in connection therewith and (z) any similar documentation entered into in connection with a Permitted Preferred Refinancing.

378 “*Corporate Trust Office of the Trustee*” means the address of the Trustee specified in Section 13.01 hereof or such other address as to which the Trustee may give notice to the Company; or such other address the Trustee may designate from time to time by notice to the Holders and the Company, or the designated corporate trust office of any successor Trustee (or such other address as such successor Trustee may designate from time to time by notice to the Holders and the Company).

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

380 “*DBM Global*” means DBM Global Inc., a Delaware corporation.

381 “*DBM Intermediate*” means DBM Global Intermediate Holdco Inc.

382 “*Debt*” means, with respect to any Person, without duplication:

- (1) all indebtedness of such Person for borrowed money;
- (2) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments;
- (3) all non-contingent obligations of such Person in respect of letters of credit, bankers' acceptances or other similar instruments, excluding obligations in respect of trade letters of credit or bankers' acceptances issued in respect of trade payables;
- (4) all obligations of such Person to pay the deferred and unpaid purchase price of property or services which would have been recorded as liabilities under GAAP, excluding trade payables arising in the ordinary course of business;
- (5) all obligations of such Person as lessee under Capital Leases (other than the interest component thereof);
- (6) all Debt of other Persons Guaranteed by such Person to the extent so Guaranteed;
- (7) to the extent not otherwise included, all Debt of other Persons secured by a Lien on any asset of such Person, whether or not such Debt is assumed by such Person;
- (8) all non-contingent obligations of such Person under Hedging Agreements (excluding Obligations of Insurance Subsidiaries with respect to Hedging Agreements entered into in the ordinary course of business and consistent with the investment policy approved by the Board of Directors of such Insurance Subsidiary);
- (9) Preferred Stock of Restricted Subsidiaries; and
- (10) all Disqualified Equity Interests of such Person;

provided, however, that notwithstanding the foregoing, Debt shall be deemed not to include (1) deferred or prepaid revenues, (2) any liability for federal, state, local or other taxes owed or owing to any governmental entity (3) contingent obligations incurred in the ordinary course of business and not in respect of borrowed money or (4) any obligations with respect to insurance policies, annuities, guaranteed investment contracts and similar policies underwritten by an Insurance Subsidiary, in each case, in the ordinary course of business, and the obligations of any Person under Reinsurance Agreements; *provided, further*, that notwithstanding the foregoing, Debt shall not be deemed to include the following transactions: (a) mortgage-backed security transactions in which an investor sells mortgage collateral, such as securities issued by the Government National Mortgage Association and the Federal Home Loan Mortgage Corporation, for delivery in the current month while simultaneously contracting to repurchase "substantially the same" (as determined by the Public Securities Association and GAAP) collateral for a later settlement, (b) transactions in which an investor lends cash to a primary dealer and the primary dealer collateralizes the borrowing of the cash with certain securities, (c) transactions in which an investor lends securities to a primary dealer and the primary dealer collateralizes the borrowing of the securities with cash collateral, (d) transactions in which an investor makes loans of securities to a broker-dealer under an agreement requiring such loans to be continuously secured by cash collateral or United States government securities, (e) transactions structured as, and submitted to the NAIC Security Valuation Office for approval as, Replication (Synthetic Asset) Transactions (RSAT) (provided that, to the extent that such approval is not granted in respect of any such transaction, such transactions shall constitute an Incurrence of Debt 30 days following the date of such rejection, denial or nonapproval) and (f) transactions in which a federal home loan mortgage bank (an

“FHLMB”) makes loans to an Insurance Subsidiary, that are sufficiently secured by appropriate assets of such Insurance Subsidiary in accordance with the rules, regulations and guidelines of such FHLMB for its loan programs.

383 The amount of Debt of any Person will be deemed to be:

(a) with respect to contingent obligations, the maximum liability upon the occurrence of the contingency giving rise to the obligation;

(b) with respect to Debt secured by a Lien on an asset of such Person but not otherwise the obligation, contingent or otherwise, of such Person, the lesser of (x) the fair market value of such asset on the date the Lien attached and (y) the amount of such Debt;

(c) with respect to any Debt issued with original issue discount, the face amount of such Debt less the remaining unamortized portion of the original issue discount of such Debt;

(d) with respect to any Hedging Agreement, the net amount payable if such Hedging Agreement terminated at that time due to default by such Person; and

(e) otherwise, the outstanding principal amount thereof.

384 “*Default*” means any event that is, or with the passage of time or the giving of notice or both would be, an Event of Default.

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

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

387 “*Disqualified Equity Interests*” means Equity Interests that by their terms or upon the happening of any event are:

(1) required to be redeemed or redeemable at the option of the holder prior to the Stated Maturity of the Notes for consideration other than Qualified Equity Interests, or

(2) convertible at the option of the holder into Disqualified Equity Interests or exchangeable for Debt; *provided* that (i) only the portion of the Equity Interests which is mandatorily redeemable, is so convertible or exchangeable or is so redeemable at the option of the holder thereof prior to the Stated Maturity of the Notes shall be deemed to be Disqualified Equity Interests, (ii) if such Equity Interests are issued to any employee or to any plan for the benefit of employees of the Company or its Subsidiaries or by any such plan to such employees, such Equity Interests shall not constitute Disqualified Equity Interests solely because they may be required to be repurchased by the Company in order to satisfy applicable statutory or regulatory obligations or as a result of such employee’s termination, death or disability and (iii) Equity Interests will not constitute Disqualified Equity Interests solely because of provisions giving holders thereof the right to require repurchase

or redemption upon an “asset sale” or “change of control” occurring prior to the Stated Maturity of the Notes if those provisions: (A) are no more favorable to the holders of such Equity Interests than Sections 4.12 and 4.16 hereof, and (B) specifically state that repurchase or redemption pursuant thereto will not be required prior to the Company’s repurchase of the Notes as required by this Indenture.

388 “*Domestic Subsidiary*” means any Subsidiary other than a Foreign Subsidiary.

389 “*EBITDA*” shall mean, for any Person for any period, Consolidated Net Income of such Person for such period, adjusted by (x) adding thereto, without duplication:

(1) Consolidated Interest Expense for such period to the extent deducted in determining such Consolidated Net Income;

(2) Consolidated Amortization Expense for such period to the extent deducted in determining such Consolidated Net Income;

(3) Consolidated Depreciation Expense for such period to the extent deducted in determining such Consolidated Net Income;

(4) Consolidated Tax Expense for such period to the extent deducted in determining such Consolidated Net Income;

(5) business optimization expenses and other restructuring charges, reserves or expenses (which, for the avoidance of doubt, shall include, without limitation, the effect of inventory optimization programs, facility consolidations, retention, systems establishment costs, contract termination costs, future lease commitments and excess pension charges);

(6) any costs or expense incurred pursuant to any stock option plans, employee benefit plans or post-employment benefit plans, or grants or sales of stock, stock appreciation or similar rights, stock options, restricted stock, preferred stock or other rights, to the extent that such cost or expenses are funded with cash proceeds contributed to the capital of such Person or net cash proceeds of an issuance of Equity Interests of such person (other than Disqualified Equity Interests);

(7) the amount of cost savings, operational expense improvements and synergies projected by such person in good faith to be realized as a result of actions taken or expected to be taken during such period (calculated on a pro forma basis as though such cost savings, operational expense improvements and synergies had been realized on the first day of such period), net of the amount of actual benefits realized during such period from such actions; *provided* that (x) such cost savings, operational expense improvements and synergies are reasonably identifiable and factually supportable and (y) such cost savings, operational expense improvements and synergies being added pursuant to this clause (7) are expected to be realized within 12 months of the date thereof in connection with such actions;

(8) the aggregate amount of all other non-cash charges reducing Consolidated Net Income (excluding any non-cash charge that results in an accrual of a reserve for cash charges in any future period or the amortization of a prepaid cash item that was paid in a prior period or any write-down or writeoff of assets for such period to the extent deducted in determining such Consolidated Net Income);

(9) increases in any change in LIFO reserves for such period determined on a consolidated basis in accordance with GAAP to the extent deducted in determining such Consolidated Net Income;

(10) all current and future charges, losses or expenses attributable to, and payments of, legal settlements, fines, judgments or orders (to the extent deducted in determining such Consolidated Net Income); and

(11) the aggregate amount of fees and expenses related to acquisitions and dispositions of assets (whether or not consummated or a binding agreement with respect thereto is entered into and only to the extent deducted in determining such Consolidated Net Income); and

390 (y) subtracting therefrom the aggregate amount of all non-cash charges increasing Consolidated Net Income (other than the accrual of revenue or recording of receivables in the ordinary course of business) for such period.

391 “*Equity Interests*” means Capital Stock and warrants or options with respect to, or other rights to purchase, Capital Stock, but excluding Debt convertible into equity.

392 “*Equity Offering*” means a primary offering, whether by way of private placement or registered offering, after the Issue Date, of Qualified Stock (as defined below) of the Company other than an issuance registered on Form S-4 or S-8 or any successor thereto or any issuance pursuant to employee benefit plans or otherwise in compensation to officers, directors or employees.

393 “*Escrow Agreements*” shall mean the NA Telecom Escrow Agreement.

394 “*Euroclear*” means Euroclear Bank, S.A./N.V., as operator of the Euroclear system.

395 “*Excess First-Out Obligations*” means Obligations (including for this purpose any Debt that, but for having been incurred in an amount exceeding the principal amount of First-Out Debt permitted under Section 4.11(b)(1) would otherwise constitute First-Out Obligations) for the principal amount of loans, letters of credit and reimbursement obligations incurred under a credit agreement or other instrument governing such Debt in excess of the principal amount of First-Out Debt permitted to be incurred under Section 4.11(b)(1), together with all interest and fees thereon.

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

397 “*Excluded Accounts*” means:

(1) any deposit accounts and securities accounts with an average daily balance throughout a month of less than \$1 million individually and less than \$5 million for all such accounts in the aggregate;

(2) accounts used solely for payroll, employee benefits (including any flexible spending accounts) or withholding tax;

(3) any deposit account or securities account established by the Company or any Restricted Subsidiary for the sole purpose of depositing funds (or Cash Equivalents) or securities in connection with the redemption, refinancing, defeasance or discharge of the Pari Passu Obligations or Subordinated Debt in accordance with this Indenture;

(4) any deposit account, the balance of which consists exclusively of (a) withheld income taxes and federal, state, local and foreign employment taxes in such amounts as are required to be paid to the IRS or any other applicable governmental authority and (b) amounts required to be paid over to an employee benefit plan on behalf of or for the benefit of employees of the Company or any Restricted Subsidiary; and

(5) accounts that have zero balance at the end of a day.

398 “*Excluded Assets*” means:

(1) any motor vehicle or other asset subject to a certificate of title and any letter of credit rights (except to the extent perfection can be obtained by filing of Uniform Commercial Code financing statements in the relevant jurisdiction);

(2) any lease, license or other similar agreement or any property subject to a purchase money security interest or similar arrangement to the extent that a grant of a security interest therein is prohibited by or a violation of any law, rule or regulation applicable to such grantor or would violate or invalidate such lease, license or similar agreement or purchase money arrangement or create a right of termination in favor of any other party thereto (other than the Company or a Subsidiary Guarantor) after giving effect to the applicable anti-assignment provisions of the Uniform Commercial Code, other than proceeds and receivables thereof, the assignment of which is expressly deemed effective under the Uniform Commercial Code and other applicable laws notwithstanding such prohibition;

(3) any “intent-to-use” trademark application to the extent, if any, that, and solely during the period, if any, in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark application or any registration issuing from such application under applicable law;

(4) any governmental licenses or state or local franchises, charters and authorizations, to the extent security interests in such licenses, franchises, charters or authorizations are prohibited or restricted thereby;

(5) equity interests constituting 35% of the total voting power of all outstanding voting stock of any Foreign Subsidiary;

(6) Cash Equivalents deposited for the purpose of securing, leases of office space, furniture or equipment in the ordinary course of business;

(7) any equity interests (but not the proceeds of such equity interests) of any person that is not a Wholly Owned Subsidiary to the extent that a pledge thereof is prohibited by such person’s organizational documents or any other contractual obligation with a third party (subject to applicable law) not created in contemplation of or for the purposes of avoiding such pledge and for only so long as such prohibition exists or cannot be waived;

(8) any limited liability company interests in Kaneland, LLC;

(9) any property of a person existing at the time such person is acquired or merged with or into or consolidated with the Company or any Restricted Subsidiary that is subject to a Lien

permitted under Section 4.14 hereof to the extent and for so long as the contract or other agreement in which such Lien is granted validly prohibits the creation of any other Lien on such property;

(10) any leasehold interests in real property held by the Company or any Restricted Subsidiary;

(11) any Excluded Account;

(12) any letter of credit rights to the extent the Company or any Restricted Subsidiary is required by applicable law or regulation to apply the proceeds of a drawing of such letter of credit for specified purposes; and

(13) any other assets mutually agreed between the Company and the Collateral Trustee.

399 “*Existing Convertible Preferred Stock*” shall mean, collectively, (x) the Series A Convertible Participating Preferred Stock and (y) Series A-2 Convertible Participating Preferred Stock, in each case outstanding as of the Issue Date, and any shares of the foregoing issued as pay-in-kind dividends thereon.

400 “*First-Out Debt*” means Debt secured on a pari passu basis with the Pari Passu Obligations, which Debt was permitted to be incurred under Section 4.11(b)(1).

401 “*First-Out Obligations*” means the First-Out Debt and all other “Obligations” (or equivalent term) in connection with a series of First-Out Debt under a credit agreement or other instrument governing such First-Out Debt. For the avoidance of doubt, Excess First-Out Obligations shall not constitute First-Out Obligations.

402 “*Fixed Charge Coverage Ratio*” means, commencing with the fiscal year ending December 31, 2019, the ratio of:

(1) the aggregate amount of (i) dividends and distributions paid to the Company by any of its Restricted Subsidiaries for the four fiscal quarters immediately prior to such date for which internal financial statements are available (the “reference period”), (ii) any equity proceeds raised by the Company in a public or private transaction, and (iii) any amount pursuant to clause (i) or (ii) of this clause (1) that have not previously been applied towards compliance with this covenant in a prior quarter (collectively, a “Specified Distribution”), to

(2) the sum of (i) the HC2 Corporate Overhead paid in cash during such reference period and (ii) the aggregate Consolidated Interest Expense of the Company paid in cash during such reference period; *provided* that this clause (2) shall not include (A) any such Consolidated Interest Expense of Restricted Subsidiaries of the Company that are not Subsidiary Guarantors or (B) any interest expense on Preferred Stock issued by DBM Intermediate in connection with the GrayWolf Merger.

403 “*Foreign Subsidiary*” means, with respect to any Person, any Subsidiary of such Person (i) that is formed under the laws of a jurisdiction other than the United States of America, any State thereof or the District of Columbia, (ii) that for U.S. federal income tax purposes holds no material assets other than equity interests of one or more entities described in clause (i) or (iii) that is a Subsidiary of any Person described in clause (i).

404 “GAAP” means generally accepted accounting principles in the United States of America as in effect from time to time; *provided* that notwithstanding the foregoing (a) leases will continue to be classified and accounted for on a basis consistent with GAAP as of the Issue Date for all purposes under this agreement and (b) in the event the Company delivers notice to the Trustee within 30 days of entry into effect of any change occurring after the Issue Date in GAAP, such change will not apply for any determinations under this Indenture.

405 “Global Marine” means Global Marine Holdings Limited, a company incorporated in England with registered number 04352407.

406 “Global Marine Business” means the marine services business segment described in the Offering Memorandum.

407 “Global Marine Holdings” means Global Marine Holdings, LLC.

408 “Global Note Legend” means the legend set forth in Section 2.06(f)(2) hereof, which is required to be placed on all Global Notes issued under this Indenture.

409 “Global Notes” means, individually and collectively, each of the Restricted Global Notes and the Unrestricted Global Notes deposited with or on behalf of and registered in the name of the Depository or its nominee, substantially in the form of Exhibit A hereto and that bears the Global Note Legend and that has the “Schedule of Exchanges of Interests in the Global Note” attached thereto, issued in accordance with Section 2.01, 2.06(b)(3), 2.06(b)(4), 2.06(d)(2) or 2.06(f) hereof.

410 “GrayWolf” means CB-Horn Holdings, Inc.

411 “GrayWolf Merger” means the “GrayWolf Merger” as described in the section titled “Summary—Recent Developments—GrayWolf Industrial Acquisition” of the Offering Memorandum.

412 “Guarantee” means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Debt or other obligation of any other Person and, without limiting the generality of the foregoing, any obligation, direct or indirect, contingent or otherwise, of such Person (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt or other obligation of such other Person (whether arising by virtue of partnership arrangements, or by agreement to keep-well, to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement conditions or otherwise) or (ii) entered into for purposes of assuring in any other manner the obligee of such Debt or other obligation of the payment thereof or to protect such obligee against loss in respect thereof, in whole or in part; *provided* that the term “Guarantee” does not include endorsements for collection or deposit in the ordinary course of business. The term “Guarantee” used as a verb has a corresponding meaning.

413 “HC2 Corporate Overhead” means the Company’s general corporate operating and overhead costs and expenses (including, without limitation, expenses related to reporting obligations and any franchise and similar taxes, and other fees and expenses, required to maintain its corporate existence); *provided* that any fees and expenses incurred in connection with the acquisition or disposition of assets shall not be included for purposes of this calculation.

414 “Hedging Agreement” means (i) any interest rate protection agreement, interest rate future agreement, interest rate option agreement, interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedge agreement or other similar agreement or arrangement, (ii) any foreign exchange forward contract, currency swap agreement or other agreement designed to manage

fluctuations in foreign exchange rates or (iii) any commodity swap, forward contract or other agreement designed to manage fluctuations in commodity prices.

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

416 “*IAI Global Note*” means a Global Note substantially in the form of Exhibit A hereto bearing the Global Note Legend and the Private Placement Legend and deposited with or on behalf of and registered in the name of the Depositary or its nominee that will be issued in a denomination equal to the outstanding principal amount of the Notes sold to Institutional Accredited Investors.

417 “*ICS*” means PTGi International Carrier Services, Inc.

418 “*Incur*” and “*Incurrence*” means, with respect to any Debt or Capital Stock, to incur, create, issue, assume or Guarantee such Debt or Capital Stock. If any Person becomes a Subsidiary Guarantor on any date after the date of this Indenture, the Debt and Capital Stock of such Person outstanding on such date will be deemed to have been Incurred by such Person on such date for purposes of Section 4.11, but will not be considered the sale or issuance of Equity Interests for purposes of Section 4.12. The accrual of interest, accretion of original issue discount or payment of interest in kind or the accretion, accumulation or payment in kind of dividends on any Equity Interests, will not be considered an Incurrence of Debt.

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

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

421 “*Initial Purchaser*” means Jefferies LLC.

422 “*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 and is not also a QIB.

423 “*Insurance Management Fees*” means fees payable by Insurance Subsidiaries for advisory and consulting services.

424 “*Insurance Regulatory Authority*” means, with respect to any Insurance Subsidiary, the governmental or regulatory authority or agency charged with regulating the insurance business of insurance companies or insurance holding companies, in its jurisdiction of legal domicile.

425 “*Insurance Subsidiary*” means any Restricted Subsidiary of the Company that is required to be licensed as an insurer or reinsurer by an Insurance Regulatory Authority.

426 “*Intellectual Property*” has the meaning assigned to such term in the Pledge Agreement.

427 “*Investment*” means

- (1) any direct or indirect advance, loan or other extension of credit to another Person,
- (2) any capital contribution to another Person, by means of any transfer of cash or other property or in any other form,

(3) any purchase or acquisition of Equity Interests, bonds, Notes or other Debt, or other instruments or securities issued by another Person, including the receipt of any of the above as consideration for the disposition of assets or rendering of services, or

(4) any Guarantee of any obligation of another Person.

428 “*Investment Grade Ratings*” means a rating of BBB- or higher by S&P and Baa3 or higher by Moody’s, or the equivalent of such ratings by another Rating Agency.

429 “*Issue Date*” means the date on which the Notes are issued under this Indenture.

430 “*Legal Holiday*” means a Saturday, a Sunday or a day on which banking institutions in the City of New York or at a place of payment are authorized by law, regulation or executive order to remain closed. If a payment date is a Legal Holiday at a place of payment, payment may be made at that place on the next succeeding day that is not a Legal Holiday, and no interest shall accrue on such payment for the intervening period.

431 “*Lien*” means any mortgage, pledge, security interest, encumbrance, lien or charge of any kind (including any conditional sale or other title retention agreement or Capital Lease).

432 “*Limited Condition Transaction*” means (1) any Investment or acquisition (whether by merger, amalgamation, consolidation or other business combination or the acquisition of Capital Stock or otherwise and which may include, for the avoidance of doubt, a transaction that may constitute a Change of Control), whose consummation is not conditioned on the availability of, or on obtaining, third party financing, (2) any redemption, repurchase, defeasance, satisfaction and discharge or repayment of Debt, Disqualified Equity Interests or Preferred Stock requiring irrevocable notice in advance of such redemption, repurchase, defeasance, satisfaction and discharge or repayment, (3) any Restricted Payment requiring irrevocable notice in advance thereof; and (4) any Asset Sale or a disposition excluded from the definition of “Asset Sale.”

433 “*Loan Collateral*” shall mean, an amount equal to the sum of, without duplication, (i) the Loan Collateral Fair Market Value of the Equity Interests of DBM Global and Global Marine directly and/or indirectly held by the Company, (ii) with respect to assets other than assets described in clause (i), the Loan Collateral Fair Market Value of the Collateral (other than (x) cash and Cash Equivalents and (y) any Collateral consisting of Equity Interests of the Company held by the Company or a Restricted Subsidiary) subject to a Lien in favor of the Collateral Trustee pursuant to the Pledge Agreement, (iii) the amount of unrestricted cash and Cash Equivalents of the Company and the Guarantors (and excluding cash and Cash Equivalents held by its non-guarantor Subsidiaries) as of the last day of the most recently completed fiscal quarter of the Company for which such amount has been calculated (provided that not more than 30 days have elapsed since the end of any subsequent fiscal quarter that is subject to a Lien in favor of the Collateral Trustee pursuant to the Pledge Agreement and deposited in accounts over which the Collateral Trustee has control, (iv) the Company’s rights, title or interests in any amounts to be received in accordance with the Escrow Agreements other than 50% of the ETA Escrow Amount (as defined in the NA Telecom Escrow Agreement), and (v) the Loan Collateral Fair Market Value of any after-acquired properties subject to a security interest under any Security Document.

434 “*Loan Collateral Fair Market Value*” means:

(1) in the case of any Collateral that (a) is listed on a national securities exchange or (b) is actively traded in the over-the-counter-market and represents equity in a Person with a market capitalization of at least \$100.0 million on each trading day in the preceding 60 day period prior to

such date, the product of (x)(I) the sum of the volume weighted average prices of a unit of such Collateral for each of the 20 consecutive trading days immediately prior to such date, divided by (II) 20, and (y) the number of units pledged as Collateral;

(2) (in the case of any Collateral that is not so listed or actively traded (other than Cash Equivalents), the fair market value thereof (defined as the price that would be negotiated in an arms'-length transaction for cash between a willing buyer and willing seller, neither of which is acting under compulsion), in the case of any item of Collateral with a fair market value in excess of \$10.0 million, as determined by a written opinion of a nationally recognized investment banking, appraisal, accounting or valuation firm that is not an Affiliate of the Company; *provided* that (x) such written opinion may be based on a desktop appraisal conducted by such banking, appraisal, accounting or valuation firm for any date of determination that is not the end of the fiscal year for the Company and (y) the fair market value thereof determined by such written opinion may be determined as of a date as early as 31 days prior to the end of the applicable fiscal period on which a covenant is required to be tested (the end of such period being referred to as the "Test Date");

(3) in the case of cash and Cash Equivalents, the face value thereof; and

(4) in each case, the Company may elect to calculate the value of any Collateral that is an equity interest in a Person by valuing such Person's assets of the type described in clauses (1) and (3) above as provided therein.

435 The "volume weighted average price" means the per share of common stock (or per minimum denomination or unit size in the case of any security other than common stock) volume-weighted average price as displayed under the heading "Bloomberg VWAP" on Bloomberg page for the "<equity> AQR" page corresponding to the "ticker" for such common stock or unit (or its equivalent successor if such page is not available) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such trading day (or if such volume-weighted average price is unavailable, the market value of one share of such common stock (or per minimum denomination or unit size in the case of any security other than common stock) on such trading day determined, using a volume-weighted average method, by a nationally recognized independent investment banking firm retained for this purpose by the Trustee). The "volume weighted average price" will be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours.

In the case of any assets referenced in clause (2) above tested on a date of determination other than in connection with a Test Date, for purposes of calculating compliance with a covenant, the Company will be permitted to rely on the value as determined by the written opinion given for the most recently completed Test Date.

For the avoidance of doubt:

(a) if the Company will be in compliance with an applicable covenant at a Test Date even if an asset constituting Collateral did not have a value in excess of \$10.0 million, it shall not be required to obtain an appraisal of such Collateral (in which case such Collateral shall be assumed to have no value in excess of \$10.0 million for such purpose); and

(b) if the Company will be in compliance with an applicable covenant at a Test Date if an asset constituting Collateral has a minimum specified value, an appraisal establishing that such Collateral is worth at least such minimum specified value shall be sufficient (in which case such Collateral shall be assumed to have such minimum specified value for such purpose).

436 “*Moody’s*” means Moody’s Investors Service, Inc. and its successors.

437 “*Mortgage*” shall mean an agreement, including a mortgage, deed of trust or any other document, creating and evidencing a first priority Lien on a Mortgaged Property, which in the case of real property owned in fee, shall in form and substance, with such schedules and including such provisions, as shall be necessary to conform such document to applicable local or foreign law or as shall be customary under applicable local or foreign legal requirements.

438 “*Mortgaged Property*” shall mean (i) each Real Property located in the United States owned in fee as of the Issue Date that, together with any improvements thereon, has a fair market value of at least \$5.0 million and (ii) each Real Property located in the United States owned in fee following the Issue Date that, together with any improvements thereon, has a fair market value of at least \$5.0 million.

439 “*NA Telecom Escrow Agreement*” shall mean that certain Escrow Agreement, dated as of July 31, 2014, among PTUS, Inc., PTCAN, Inc., the Company (f/k/a Primus Telecommunications Group, Incorporated) and JPMorgan Chase Bank, N.A.

440 “*Net Cash Proceeds*” means, with respect to any Asset Sale, the proceeds of such Asset Sale in the form of cash (including (i) payments in respect of deferred payment obligations to the extent corresponding to, principal, but not interest, when received in the form of cash, and (ii) proceeds from the conversion of other consideration received when converted to cash), net of:

(1) brokerage commissions, underwriting commissions and other fees and expenses related to such Asset Sale, including fees and expenses of counsel, accountants, consultants and investment bankers;

(2) provisions for taxes as a result of such Asset Sale taking into account the consolidated results of operations of the Company and its Subsidiaries;

(3) payments required to be made to holders of minority interests in Subsidiaries as a result of such Asset Sale or (except in the case of Collateral) to repay Debt outstanding at the time of such Asset Sale that is secured by a Lien on the property or assets sold;

(4) appropriate amounts to be provided as a reserve against liabilities associated with such Asset Sale, including pension and other post-employment benefit liabilities, liabilities related to environmental matters and indemnification obligations associated with such Asset Sale, with any subsequent reduction of the reserve other than by payments made and charged against the reserved amount to be deemed a receipt of cash;

(5) payments of unassumed liabilities (not constituting Debt) relating to the assets sold at the time of, or within 30 days after the date of, such Asset Sale;

(6) in the case of an Asset Sale by an Insurance Subsidiary or any of its Subsidiaries, proceeds that are not permitted to be paid as a dividend or distribution by such Insurance Subsidiary pursuant to restrictions imposed by applicable law, rule, regulation, order, permit or grant to the extent and until such time as such proceeds are permitted to be so paid; and

(7) proceeds that are used (a) to permanently repay, reduce, prepay or redeem Debt of a Subsidiary that is not a Subsidiary Guarantor that directly or indirectly owned the assets sold in Asset Sale, or (b) debt of the Company or a Subsidiary Guarantor that is secured by a Lien that is

senior in priority to the Liens securing the Notes or the Guarantees or First-Out Obligations, in each case, other than Debt owed to the Company or another Subsidiary.

441 “*Non-Recourse Debt*” means Debt:

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

(2) as to which the lenders have been notified in writing that they will not have any recourse to the stock or assets of the Company or any of its Restricted Subsidiaries (other than any Insurance Subsidiary).

442 “*Non-U.S. Person*” means a Person who is not a U.S. Person.

443 “*Note Guarantee*” means the guarantee of the Notes by a Subsidiary Guarantor pursuant to this Indenture.

444 “*Notes*” has the meaning assigned to it in the preamble to this Indenture. The Notes shall be treated as a single class for all purposes under this Indenture.

445 “*Notes Documents*” means this Indenture, the Notes, the Note Guarantees and the Security Documents.

446 “*Obligations*” means, with respect to any Debt, all obligations (whether in existence on the Issue Date or arising afterwards, absolute or contingent, direct or indirect) for or in respect of principal (when due, upon acceleration, upon redemption, upon mandatory repayment or repurchase pursuant to a mandatory offer to purchase, or otherwise), premium, interest, penalties, fees, indemnification, reimbursement and other amounts payable and liabilities with respect to such Debt, including all interest accrued or accruing after the commencement of any bankruptcy, insolvency or reorganization or similar case or proceeding at the contract rate (including, without limitation, any contract rate applicable upon default) specified in the relevant documentation, whether or not the claim for such interest is allowed as a claim in such case or proceeding.

447 “*Offering Memorandum*” means that certain final Offering Memorandum of the Company, dated November 14, 2018, relating to the offering of the Notes.

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

449 “*Officer’s Certificate*” means a certificate signed on behalf of the Company or, where provided herein, the applicable Restricted Subsidiary, by one or more officers of such Person, whom must be the principal executive, financial, accounting, operations, or legal officer, or the treasurer or comptroller, or such Person.

450 “*Opinion of Counsel*” means an opinion from legal counsel who is reasonably acceptable to the Trustee, that meets the requirements of Section 13.03 hereof. The counsel may be an employee of or counsel to the Company, any Subsidiary of the Company or the Trustee.

451 *“Pari Passu Obligations”* means, collectively, Debt constituting Obligations secured equally and ratably by Liens on the Collateral.

452 *“Participant”* means, with respect to the Depository, Euroclear or Clearstream, a Person who has an account with the Depository, Euroclear or Clearstream, respectively (and, with respect to DTC, shall include Euroclear and Clearstream).

453 *“Permitted Holders”* means:

(1) Philip A. Falcone, his immediate family (including any spouse, ex-spouse, children, step-children and their respective lineal descendants), the estate of the foregoing, or any trust or other legal entity the beneficiary, beneficial owner, of controlling party of which is any of the foregoing;

(2) any Affiliate of any Person specified in clause (1), other than another portfolio company thereof (which means a company actively engaged in providing goods and services to unaffiliated customers) or a company controlled by a “portfolio company”;

(3) any Person or group whose acquisition of beneficial ownership constitutes a Change of Control in respect of which a Change of Control Offer is made in accordance with the requirements of this Indenture will thereafter, together with its Affiliates, constitute an additional Permitted Holder; or

(4) any Person both the Capital Stock and the Voting Stock of which (or in the case of a trust, the beneficial interests in which) are owned 50% or more by Persons specified in clauses (1), (2) or (3) or any group in which the Persons specified in clauses (1), (2) or (3) own more than a majority of the Voting Stock and Capital Stock held by such group.

454 *“Permitted Investments”* means:

(1) Investments outstanding on, or made pursuant to binding agreements existing on, the Issue Date;

(2) the acquisition of accounts receivables owing to the Company or any of its Restricted Subsidiaries if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary terms;

(3) investments in cash and Cash Equivalents;

(4) negotiable instruments held for collection in the ordinary course of business;

(5) the making of lease, utility and other similar deposits in the ordinary course of business;

(6) Hedging Obligations;

(7) [Reserved];

(8) Investments (i) between and among the Company and any Subsidiary Guarantor, (ii) by any Restricted Subsidiary in the Company or any Subsidiary Guarantor or (iii) by any

Restricted Subsidiary in (A) any Restricted Subsidiary that is directly or indirectly owned by such Restricted Subsidiary or any parent included in the immediately succeeding clause (B) or (B) any direct or indirect parent of such Restricted Subsidiary that is a Restricted Subsidiary but is not a Subsidiary Guarantor; *provided* that any Investment by the Company or any Subsidiary Guarantor in the form of an Advance shall be evidenced by an intercompany note and pledged by such entity as Collateral pursuant to the Security Documents;

(9) Investments in securities of trade creditors or customers in the ordinary course of business and consistent with such the Company's past practices that are received in settlement of bona fide disputes or pursuant to any plan of reorganization or liquidation or similar arrangement upon the bankruptcy or insolvency of such trade creditors or customers;

(10) mergers and consolidations in compliance with Sections 5.01 and 11.04 hereof;

(11) Investments made by the Company or any Restricted Subsidiary as a result of consideration received in connection with an Asset Sale, subject to compliance with Section 4.12 hereof;

(12) Investments consisting of licensing of Intellectual Property made in the ordinary course of business and not interfering in any material respect with the ordinary conduct of business of the Company and its Restricted Subsidiaries;

(13) Investments consisting of licensing or contribution of Intellectual Property;

(14) other Investments in an aggregate amount not to exceed \$10.0 million on the date such Investments are made;

(15) other Investments by the Company or any Restricted Subsidiary in a Specified Operating Subsidiary so long as (i) no Default or Event of Default then exists or would result therefrom and (ii) after giving effect to such Investment, the Company and the Subsidiary Guarantors would be in compliance on a Pro Forma Basis with Sections 4.03, 4.26 and 4.27 hereof;

(16) [Reserved];

(17) Investments by any Insurance Subsidiary (including by any Subsidiary of such Insurance Subsidiary that is not itself an Insurance Subsidiary) in the ordinary course of business and consistent with the investment policy approved by the Board of Directors of such Insurance Subsidiary or otherwise consistent with Investment guidelines approved by the applicable Insurance Regulatory Authority; and

(18) Investments in DBM Global and DBM Intermediate made in connection with the GrayWolf Merger as described in the section of the Offering Memorandum titled "Summary—Recent Developments—Acquisition of GrayWolf Industrial."

455 "*Permitted Liens*" means:

(1) Liens existing on the Issue Date;

(2) Liens on the Collateral to secure Obligations in respect of the Notes;

(3) Liens on the Collateral that rank *pari passu* with or junior to the Liens securing the Obligations in respect of the Notes and that secure Obligations in respect of Debt Incurred pursuant to clause (1) of the definition of Permitted Debt;

(4) Liens to secure any Permitted Refinancing Debt (or successive Permitted Refinancing Debt) as a whole, or in part, of any Obligations secured by any Lien referred to in clauses (2) or (3) of this definition;

(5) pledges or deposits under worker's compensation laws, unemployment insurance laws or similar legislation, or good faith deposits in connection with bids, tenders, contracts or leases, or to secure public or statutory obligations, surety bonds, customs duties and the like, or for the payment of rent, in each case incurred in the ordinary course of business and not securing Debt;

(6) Liens imposed by law, such as carriers', vendors', warehousemen's and mechanics' liens, in each case for sums not yet due or being contested in good faith and by appropriate proceedings;

(7) Liens in respect of taxes and other governmental assessments and charges which are not yet due or which are being contested in good faith by appropriate proceedings and for which adequate reserves are made in accordance with GAAP;

(8) Liens incurred in the ordinary course of business not securing Debt and not in the aggregate materially detracting from the value of the properties or their use in the operation of the business of the Company and the Restricted Subsidiaries;

(9) Liens on property of a Person at the time such Person becomes a Restricted Subsidiary, *provided* such Liens were not created in contemplation thereof and do not extend to any other property of the Company or any other Restricted Subsidiary;

(10) Liens on property or the Equity Interests of any Person at the time the Company or any Restricted Subsidiary acquires such property or Person, including any acquisition by means of a merger or consolidation with or into the Company or a Restricted Subsidiary of such Person, *provided* such Liens were not created in contemplation thereof and do not extend to any other property of the Company or any Restricted Subsidiary;

(11) Liens securing Debt or other obligations of the Company or a Restricted Subsidiary to the Company or a Restricted Subsidiary;

(12) Liens securing Hedging Agreements so long as such Hedging Agreements relate to Debt for borrowed money that is, and is permitted to be under this Indenture, secured by a Lien on the same property securing such Hedging Agreements;

(13) extensions, renewals or replacements of any Liens referred to in clauses (1), (9) or (10) in connection with the refinancing of the obligations secured thereby, *provided* that such Lien does not extend to any other property and, except as contemplated by the definition of "Permitted Refinancing Debt", the amount secured by such Lien is not increased; and

(14) other Liens (not on the Collateral) securing obligations in an aggregate amount not exceeding \$10.0 million;

(15) licenses or leases or subleases as licensor, lessor or sublessor of any of its property, including intellectual property, in the ordinary course of business;

(16) Liens securing office leases and office furniture and equipment in the ordinary course of business;

(17) Liens on property securing Debt permitted pursuant to Sections 4.11(b)(14), (15), (16), (17) or (18); *provided, however*, that (i) with respect to Section 4.11(b)(14), such Liens only extend to the property that is the subject of the Capital Lease; (ii) with respect to Section 4.11(b)(15), such Liens only extend to the property of DBM Global and its Subsidiaries; (iii) with respect to Section 4.11(b)(16), such Liens only extend to property of DBM Global and its Subsidiaries; and (iv) with respect to Sections 4.11(b)(17) and (18), such Liens shall be limited to property of Global Marine and its Subsidiaries, or ANG and its Subsidiaries, respectively, that are the subject of such Purchase Money Obligations;

(18) Liens consisting of deposits made in the ordinary course of business to secure liability to insurance carriers;

(19) Liens arising by virtue of any statutory or common law provisions relating to bankers' Liens, rights of set-off or similar rights and remedies as to deposit accounts or other funds maintained with a depository or financial institution, or Liens arising by virtue of any statutory or common law provisions or arising by operation of contract on insurance policies and the proceeds thereof to secure premiums thereunder; and

(20) Liens securing Debt of any Restricted Subsidiary that is not a Subsidiary Guarantor permitted to be incurred under Section 4.11 hereof; *provided* that such Liens only extend to the assets of (i) such Restricted Subsidiary, (ii) any Restricted Subsidiary that is directly or indirectly owned by such Restricted Subsidiary or any parent included in clause (iii) of this clause (20) or (iii) any direct or indirect parent of such Restricted Subsidiary that is a Restricted Subsidiary but is not a Subsidiary Guarantor and in any event, for the avoidance of doubt, do not extend to any property of the Company or any Subsidiary Guarantor.

456 *"Permitted Preferred Refinancing"* means the exchange of Existing Convertible Preferred Stock for one or more new series of convertible preferred stock of the Company; *provided* that the aggregate amount payable in cash under such new series of convertible preferred stock does not exceed the aggregate amount payable in cash under the series of Existing Convertible Preferred Stock being exchanged.

457 *"Permitted Transactions"* means (a) mortgage-backed security transactions in which an investor sells mortgage collateral, such as securities issued by the Government National Mortgage Association and the Federal Home Loan Mortgage Corporation, for delivery in the current month while simultaneously contracting to repurchase "substantially the same" (as determined by the Public Securities Association and GAAP) collateral for a later settlement, (b) transactions in which an investor lends cash to a primary dealer and the primary dealer collateralizes the borrowing of the cash with certain securities, (c) transactions in which an investor lends securities to a primary dealer and the primary dealer collateralizes the borrowing of the securities with cash collateral, (d) transactions in which an investor makes loans of securities to a broker-dealer under an agreement requiring such loans to be continuously secured by cash collateral or United States government securities, (e) transactions structured as, and submitted to the NAIC Security Valuation Office for approval as, Replication (Synthetic Asset) Transactions (RSAT) (*provided* that, to the extent that such approval is not granted in respect of any such transaction, such transaction shall cease to constitute a Permitted Transaction 30 days following the date of such rejection, denial or nonapproval)

and (f) transactions in which a federal home loan mortgage bank (an “FHLMB”) makes loans to an Insurance Subsidiary, that are sufficiently secured by appropriate assets of such Insurance Subsidiary in accordance with the rules, regulations and guidelines of such FHLMB for its loan programs.

458 “Person” means an individual, a corporation, a partnership, a limited liability company, an association, a trust or any other entity, including a government or political subdivision or an agency or instrumentality thereof.

459 “Pledge Agreement” means the Pledge and Security Agreement dated as of the date of this Indenture, as such agreement may be amended, modified or supplemented from time to time.

460 “Pledged Collateral” means:

(1) all Equity Interests owned by the Company or a Subsidiary Guarantor (which in the case of any Equity Interest in any Foreign Subsidiary, will be limited to 100% of the non-voting stock (if any) and 65% of the Voting Stock of such Foreign Subsidiary) and the related rights and privileges associated therewith (but excluding Equity Interests of Insurance Subsidiaries, to the extent the pledge thereof is deemed a “change of control” under applicable insurance regulations);

(2) all equipment, goods and inventory owned by the Company or a Subsidiary Guarantor;

(3) all cash and investment securities owned by the Company or a Subsidiary Guarantor;

(4) all documents, books and records, instruments and chattel paper owned by the Company or a Subsidiary Guarantor;

(5) all general intangibles owned by the Company or a Subsidiary Guarantor; and

(6) any proceeds and supporting obligations thereof.

461 Notwithstanding anything to the contrary contained in clauses (1) through (6) above, the Pledged Collateral shall not extend to, and the term “Collateral” shall not include, any Excluded Assets.

462 “Preferred Stock” means, with respect to any Person, any and all Capital Stock which is preferred as to the payment of dividends or distributions, upon liquidation or otherwise, over another class of Capital Stock of such Person.

463 “Premises” shall have the meaning assigned thereto in the applicable Mortgage.

464 “Private Placement Legend” means the legend set forth in Section 2.06(f)(1) hereof to be placed on all Notes issued under this Indenture except where otherwise permitted by the provisions of this Indenture.

465 “Pro Forma Basis” means, with respect to any determination under this definition as of any date, that pro forma effect shall be given to each acquisition, Investment, Equity Offering, issuance, incurrence, assumption, refinancing, amendment or permanent repayment of Equity Interests or Debt (including Equity Interests or Debt issued, incurred, assumed, refinanced or amended as a result of, or to finance, any relevant transaction and for which the financial effect is being calculated) and each Asset Sale that have occurred at the Company or any Restricted Subsidiary or any Person that has become a Restricted

Subsidiary during the applicable four consecutive fiscal quarter period (with respect to any calculation of EBITDA) or subsequent to the end of such four consecutive fiscal quarter period or such balance sheet date, as applicable, but prior to or simultaneously with the event for which a determination under this definition is being made, as if each such event had occurred on the first day of such four consecutive fiscal quarter period or on such balance sheet date, as applicable.

466 “*Purchase Money Obligation*” shall mean, for any person, the obligations of such person in respect of Debt (including Capital Lease Obligations) incurred for the purpose of financing all or any part of the purchase price of any fixed or capital assets (including Equity Interests of any person owning fixed or capital assets) or the cost of design, installation, construction, repair or improvement of any fixed or capital assets; *provided, however*, that such Debt is incurred within 180 days after such acquisition, design, installation, construction, repair or improvement of such fixed or capital assets (including Equity Interests of any person owning the applicable fixed or capital assets) by such person.

467 “*QIB*” means a “qualified institutional buyer” as defined in Rule 144A.

468 “*Qualified Equity Interests*” means all Equity Interests of a Person other than Disqualified Equity Interests. For the avoidance of doubt, the Company’s Qualified Equity Interests shall include, but are not limited to, the Convertible Preferred Stock.

469 “*Qualified Stock*” means all Capital Stock of a Person other than Disqualified Interests.

470 “*Rating Agencies*” means S&P and Moody’s; *provided* that if either S&P or Moody’s (or both) shall cease issuing a rating on the Notes for reasons outside the control of the Company, the Company may select a nationally recognized statistical rating agency to substitute for S&P or Moody’s (or both).

471 “*Real Property*” shall mean, collectively, all right, title and interest (including any leasehold, fee, mineral or other estate) in and to any and all parcels of or interests in real property owned, leased or operated by any person, whether by lease, license or other means, together with, in each case, all easements, hereditaments and appurtenances relating thereto, all improvements and appurtenant fixtures and equipment, all general intangibles and contract rights and other property and rights incidental to the ownership, lease or operation thereof.

472 “*Regulation S*” means Regulation S promulgated under the Securities Act.

473 “*Regulation S Global Note*” means a Global Note substantially in the form of Exhibit A hereto bearing the Global Note Legend and the Private Placement Legend and deposited with or on behalf of and registered in the name of the Depository or its nominee, issued in a denomination equal to the outstanding principal amount of the Notes sold in reliance on Rule 903 of Regulation S.

474 “*Reinsurance Agreements*” means any agreement, contract, treaty, certificate or other arrangement by which any Insurance Subsidiary agrees to transfer or cede to another insurer all or part of the liability assumed or assets held by it under one or more insurance, annuity, reinsurance or retrocession policies, agreements, contracts, treaties, certificates or similar arrangements. Reinsurance Agreements shall include, but not be limited to, any agreement, contract, treaty, certificate or other arrangement that is treated as such by the applicable Insurance Regulatory Authority.

475 “*Responsible Officer*,” when used with respect to the Trustee, means any officer within the Corporate Trust Office of the Trustee (or any successor group of the Trustee) having direct responsibility for the administration of this Indenture or any other officer of the Trustee customarily performing functions

similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject.

476 “*Restricted Definitive Note*” means a Definitive Note bearing the Private Placement Legend.

477 “*Restricted Global Note*” means a Global Note bearing the Private Placement Legend.

478 “*Restricted Investment*” means an Investment other than a Permitted Investment.

479 “*Restricted Period*” means the 40-day distribution compliance period as defined in Regulation S.

480 “*Restricted Subsidiary*” means any Subsidiary of the Company.

481 “*Rule 144*” means Rule 144 promulgated under the Securities Act.

482 “*Rule 144A*” means Rule 144A promulgated under the Securities Act.

483 “*Rule 903*” means Rule 903 promulgated under the Securities Act.

484 “*Rule 904*” means Rule 904 promulgated under the Securities Act.

485 “*S&P*” means S&P Global Ratings or any successor thereto.

486 “*Sale and Leaseback Transaction*” means, with respect to any Person, an arrangement whereby such Person enters into a lease of property previously transferred by such Person to the lessor.

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

488 “*Secured Net Leverage Ratio*” means, as of any date of determination, the ratio of (i) Specified Consolidated Secured Net Debt to (ii) Specified Consolidated EBITDA.

489 “*Security Documents*” means (i) the Pledge Agreement, (ii) the Collateral Trust Agreement, (iii) the Mortgages and (iv) any other mortgages, deeds of trust, deeds to secure debt, security agreements, security trust agreements, pledge agreements, jointenders, agency agreements, control agreements, financing statements and other instruments and documents pursuant to which a security interest in any assets of any Person is granted or Collateral is pledged, assigned or granted to the Collateral Trustee, in each case, to secure the Obligations under the Notes Documents, as each may be amended, restated, supplemented or otherwise modified from time to time.

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

491 “*Significant Subsidiary*” means any Subsidiary, or group of Subsidiaries, that would, taken together, be a “significant subsidiary” as defined in Article 1, Rule 1-02 (w)(1) or (2) of Regulation S-X promulgated under the Securities Act, as such regulation is in effect on the Issue Date, substituting 20 percent for 10 percent in the tests used therein to determine significant subsidiary.

492 “*Specified Asset Sale*” means the sale, transfer or other disposition by the Company or its Restricted Subsidiaries of all or substantially all of the assets of the Global Marine Business (including

pursuant to a sale of all or substantially all of the Equity Interests of Global Marine). For the avoidance of doubt, a sale of all or substantially all of the assets of the Global Marine Business may be deemed a Specified Asset Sale even in the event Global Marine's interest in its equity investment in Huawei Marine is not included in such sale.

493 "*Specified Consolidated EBITDA*" means the sum, without duplication, of (a) Insurance Management Fees paid to the Company, the Subsidiary Guarantors or the Specified Operating Subsidiaries for the preceding four fiscal quarters for which financial statements are available and (b) the aggregate EBITDA of the Company for the preceding four quarters for which financial statements are available (including EBITDA of (i) the Company, (ii) the Subsidiary Guarantors and (iii) the Specified Operating Subsidiaries, but excluding EBITDA of all other Restricted Subsidiaries of the Company); *provided* that with respect to Global Marine's equity investment in Huawei Marine, only EBITDA attributable to Global Marine shall be included. For purposes of the calculation of Specified Consolidated EBITDA, (i) through the fiscal quarter ended December 31, 2019, the amount of Insurance Management Fees for such four quarter period shall be deemed to be equal to the amount of such Insurance Management Fees paid to the Company, the Subsidiary Guarantors or the Specified Operating Subsidiaries during the most recent quarter for which financial statements are available, multiplied by four, and (ii) to the extent not included in the foregoing, the EBITDA of GrayWolf for such period (whether or not GrayWolf was directly or indirectly owned by the Company during all or any portion of such period) will be included.

494 "*Specified Consolidated Secured Net Debt*" means, as at any date of determination, an amount equal to the aggregate amount of all Debt of (x) the Company and the Subsidiary Guarantors that, in each case, is secured by a Lien that does not rank junior in priority to the Liens securing the Notes and the Notes Guarantees and (y) Specified Operating Subsidiaries less the aggregate amount of all unrestricted cash and Cash Equivalents of the Company, the Subsidiary Guarantors and the Specified Operating Subsidiaries, in each case determined in accordance with GAAP. For purposes of the calculation of Specified Consolidated Debt, to the extent not included in the foregoing, the Debt, Disqualified Equity Interests and unrestricted cash and Cash Equivalents of GrayWolf will be included. For the avoidance of doubt, Specified Consolidated Net Debt shall not include the Convertible Preferred Stock or any Preferred Stock issued by DBM Global or DBM Intermediate in connection with the GrayWolf Merger.

495 "*Specified Operating Subsidiaries*" means, collectively, (i) DBM Global and its Restricted Subsidiaries, (ii) Global Marine and its Restricted Subsidiaries, (iii) ANG and its Restricted Subsidiaries and (iv) ICS and its Restricted Subsidiaries.

496 "*Stated Maturity*" means (i) with respect to any Debt, the date specified as the fixed date on which the final installment of principal of such Debt is due and payable or (ii) with respect to any scheduled installment of principal of or interest on any Debt, the date specified as the fixed date on which such installment is due and payable as set forth in the documentation governing such Debt, not including any contingent obligation to repay, redeem or repurchase prior to the regularly scheduled date for payment other than the required redemption of the Convertible Preferred Stock at the maturity date thereof.

497 "*Subordinated Debt*" means any Debt of the Company or any Subsidiary Guarantor which is subordinated in right of payment to the Notes or the Note Guarantee, as applicable, either (a) pursuant to a written agreement to that effect or (b) by virtue of such Debt consisting of preferred stock of the Company.

498 "*Subsidiary*" means with respect to any Person, any corporation, association or other business entity of which more than 50% of the outstanding Voting Stock is owned, directly or indirectly, by,

or, in the case of a partnership, the sole general partner or the managing partner or the only general partners of which are, such Person and one or more Subsidiaries of such Person (or a combination thereof).

499 “*Subsidiary Guarantor*” means each Subsidiary that executes a supplemental indenture providing for the guarantee of the payment of the Notes, or any successor obligor under its Note Guarantee pursuant to Section 11.04 hereof, in each case unless and until such Subsidiary Guarantor is released from its Note Guarantee pursuant to Section 11.05 hereof.

500 “*TIA*” means the Trust Indenture Act of 1939 (15 U.S.C. §§ 77aaa-77bbb), as the same may be amended.

501 “*Treasury Rate*” means, as of any redemption date, the yield to maturity as of such redemption date of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15(519) that has become publicly available at least two business days prior to the redemption date (or, if such Statistical Release is no longer published, any publicly available source of similar market data)) most nearly equal to the period from the redemption date to June 1, 2020; *provided, however*, that if the period from the redemption date to June 1, 2020, is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year will be used..

502 “*Trust Officer*” means, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee (or any successor group of the Trustee), including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such person’s knowledge of and familiarity with the particular subject and who shall, in each case, have direct responsibility for the administration of this Indenture.

503 “*Trustee*” means U.S. Bank National Association, until a successor replaces it in accordance with the applicable provisions of this Indenture and thereafter means the successor serving hereunder.

504 “*Unrestricted Definitive Note*” means a Definitive Note that does not bear and is not required to bear the Private Placement Legend.

505 “*Unrestricted Global Note*” means a Global Note that does not bear and is not required to bear the Private Placement Legend.

506 “*U.S. Government Obligations*” means obligations issued or directly and fully guaranteed or insured by the United States of America or by any agent or instrumentality thereof, *provided* that the full faith and credit of the United States of America is pledged in support thereof.

507 “*U.S. Person*” means a U.S. Person as defined in Rule 902(k) promulgated under the Securities Act.

508 “*Voting Stock*” means, with respect to any Person, Capital Stock of any class or kind ordinarily having the power to vote for the election of directors, managers or other voting members of the governing body of such Person.

509 “Wholly Owned” means, with respect to any Subsidiary, a Subsidiary all of the outstanding Capital Stock of which (other than any director’s qualifying shares) is owned by the Company and one or more Wholly Owned Subsidiaries (or a combination thereof).

Section 1.02 *Other Definitions.*

<u>Term</u>	<u>Defined in Section</u>
“Asset Sale Offer”	3.09
“Asset Sale Redemption”	4.12
“Asset Sale Redemption Notice”	4.12
“Authentication Order”	2.02
“Change of Control Offer”	4.16
“Change of Control Payment”	4.16
“Change of Control Payment Date”	4.16
“Covenant Defeasance”	8.03
“Dividend Restriction”	4.12
“DTC”	2.03
“Election Date”	4.12
“Event of Default”	6.01
“incur”	4.11
“Junior Debt”	4.09
“Legal Defeasance”	8.02
“Material Tax Consequence”	4.12
“Offer Amount”	3.09
“Offer Period”	3.09
“Offer to Purchase”	4.12
“Paying Agent”	2.03
“Permitted Debt”	4.11
“Permitted Refinancing Debt”	4.11
“Purchase Date”	3.09
“Registrar”	2.03
“Related Party Transaction”	4.13
“Relevant Four Fiscal Quarter Period”	4.26
“Restricted Payments”	4.09
“Reversion Date”	4.23
“Specified Equity Contribution”	4.26
“Suspended Covenants”	4.23
“Suspension Period”	4.23
“Transaction Agreement Date”	4.24

Section 1.03 *Rules of Construction.*

Unless the context otherwise requires:

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

Article 2
THE NOTES

Section 2.01 *Form and Dating.*

(a) *General.* The Notes and the Trustee’s certificate of authentication will be substantially in the form of Exhibit A hereto. The Notes may have notations, legends or endorsements required by law, stock exchange rule or usage. Each Note will be dated the date of its authentication. The Notes shall be in denominations of \$2,000 and integral multiples of \$1,000 in excess thereof.

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

(b) *Global Notes.* Notes issued in global form will be substantially in the form of Exhibit A hereto (including the Global Note Legend thereon and the “Schedule of Exchanges of Interests in the Global Note” attached thereto). Notes issued in definitive form will be substantially in the form of Exhibit A hereto (but without the Global Note Legend thereon and without the “Schedule of Exchanges of Interests in the Global Note” attached thereto). Each Global Note will represent such of the outstanding Notes as will be specified therein and each shall provide that it represents the aggregate principal amount of outstanding Notes from time to time endorsed thereon and that the aggregate principal amount of outstanding Notes represented thereby may from time to time be reduced or increased, as appropriate, to reflect exchanges and redemptions. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the aggregate principal amount of outstanding Notes represented thereby will be made by the Trustee or the Custodian, at the direction of the Trustee, in accordance with instructions given by the Holder thereof as required by Section 2.06 hereof.

(c) *Euroclear and Clearstream Procedures Applicable.* The provisions of the “Operating Procedures of the Euroclear System” and “Terms and Conditions Governing Use of Euroclear” and the “General Terms and Conditions of Clearstream Banking” and “Customer Handbook” of Clearstream will be applicable to transfers of beneficial interests in the Regulation S Global Note that is held by Participants through Euroclear or Clearstream.

Section 2.02 *Execution and Authentication.*

At least one Officer must sign the Notes for the Company by manual or facsimile signature.

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

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

The Trustee will, upon receipt of a written order of the Company signed by an Officer (an “*Authentication Order*”), authenticate Notes for original issue that may be validly issued under this Indenture. The aggregate principal amount of Notes outstanding at any time may not exceed the aggregate principal amount of Notes authorized for issuance by the Company pursuant to one or more Authentication Orders, except as provided in Section 2.07 hereof.

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

Section 2.03 *Registrar and Paying Agent.*

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

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

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

Section 2.04 *Paying Agent to Hold Money in Trust.*

The Company will require each Paying Agent other than the Trustee to agree in writing that the Paying Agent will hold in trust for the benefit of Holders or the Trustee all money held by the Paying Agent for the payment of principal of, premium on, if any, or interest, if any, on, the Notes, and will notify the

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

Section 2.05 *Holder Lists.*

The Trustee will preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of all Holders. If the Trustee is not the Registrar, the Company will furnish to the Trustee at least seven Business Days before each interest payment date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of the Holders of Notes.

Section 2.06 *Transfer and Exchange.*

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

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

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

(b) *Transfer and Exchange of Beneficial Interests in the Global Notes.* The transfer and exchange of beneficial interests in the Global Notes will be effected through the Depositary, in accordance with the provisions of this Indenture and the Applicable Procedures. Beneficial interests in the Restricted Global Notes will be subject to restrictions on transfer comparable to those set forth herein to the extent required by the Securities Act. Transfers of beneficial interests in the Global Notes also will require compliance with

either subparagraph (1) or (2) below, as applicable, as well as one or more of the other following subparagraphs, as applicable:

(1) *Transfer of Beneficial Interests in the Same Global Note.* Beneficial interests in any Restricted Global Note may be transferred to Persons who take delivery thereof in the form of a beneficial interest in the same Restricted Global Note in accordance with the transfer restrictions set forth in the Private Placement Legend; *provided, however*, that prior to the expiration of the Restricted Period, transfers of beneficial interests in the Regulation S Global Note may not be made to a U.S. Person or for the account or benefit of a U.S. Person (other than an Initial Purchaser). Beneficial interests in any Unrestricted Global Note may be transferred to Persons who take delivery thereof in the form of a beneficial interest in an Unrestricted Global Note. No written orders or instructions shall be required to be delivered to the Registrar to effect the transfers described in this Section 2.06(b)(1).

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

(A) both:

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

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

(B) both:

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

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

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

(3) *Transfer of Beneficial Interests to Another Restricted Global Note.* A beneficial interest in any Restricted Global Note may be transferred to a Person who takes delivery thereof in the form of a beneficial interest in another Restricted Global Note if the transfer complies with the requirements of Section 2.06(b)(2) above and the Registrar receives the following:

(A) if the transferee will take delivery in the form of a beneficial interest in the 144A Global Note, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (1) thereof;

(B) if the transferee will take delivery in the form of a beneficial interest in the Regulation S Global Note, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (2) thereof; and

(C) if the transferee will take delivery in the form of a beneficial interest in the IAI Global Note, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications, certificates and Opinion of Counsel required by item (3) thereof, if applicable.

(4) *Transfer and Exchange of Beneficial Interests in a Restricted Global Note for Beneficial Interests in an Unrestricted Global Note.* A beneficial interest in any Restricted Global Note may be exchanged by any Holder thereof for a beneficial interest in an Unrestricted Global Note or transferred to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note if the exchange or transfer complies with the requirements of Section 2.06(b) (2) above and the Registrar receives the following:

(A) if the Holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a beneficial interest in an Unrestricted Global Note, a certificate from such Holder in the form of Exhibit C hereto, including the certifications in item (1)(a) thereof; or

(B) if the Holder of such beneficial interest in a Restricted Global Note proposes to transfer such beneficial interest to a Person who shall take delivery thereof in the form of a beneficial interest in an Unrestricted Global Note, a certificate from such Holder in the form of Exhibit B hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (4), if the Registrar so requests or if the Applicable Procedures so require, an Opinion of Counsel in form reasonably acceptable to the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

If any such transfer is effected pursuant to subparagraph (4) above at a time when an Unrestricted Global Note has not yet been issued, the Company shall issue and, upon receipt of an Authentication Order in accordance with Section 2.02 hereof, the Trustee shall authenticate one or more Unrestricted Global Notes in an aggregate principal amount equal to the aggregate principal amount of beneficial interests transferred pursuant to subparagraph (4) above.

Beneficial interests in an Unrestricted Global Note cannot be exchanged for, or transferred to Persons who take delivery thereof in the form of, a beneficial interest in a Restricted Global Note.

(c) *Transfer or Exchange of Beneficial Interests for Definitive Notes.*

(1) *Beneficial Interests in Restricted Global Notes to Restricted Definitive Notes.* If any Holder of a beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a Restricted Definitive Note or to transfer such beneficial interest to a Person who

takes delivery thereof in the form of a Restricted Definitive Note, then, upon receipt by the Registrar of the following documentation:

(A) if the Holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a Restricted Definitive Note, a certificate from such Holder in the form of Exhibit C hereto, including the certifications in item (2)(a) thereof;

(B) if such beneficial interest is being transferred to a QIB in accordance with Rule 144A, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (1) thereof;

(C) if such beneficial interest is being transferred to a Non-U.S. Person in an offshore transaction in accordance with Rule 903 or Rule 904, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (2) thereof;

(D) if such beneficial interest is being transferred pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(a) thereof;

(E) if such beneficial interest 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 subparagraphs (B) through (D) above, a certificate to the effect set forth in Exhibit B hereto, including the certifications, certificates and Opinion of Counsel required by item (3) thereof, if applicable;

(F) if such beneficial interest is being transferred to the Company or any of its Subsidiaries, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(b) thereof; or

(G) if such beneficial interest is being transferred pursuant to an effective registration statement under the Securities Act, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(c) thereof,

the Trustee shall cause the aggregate principal amount of the applicable Global Note to be reduced accordingly pursuant to Section 2.06(h) hereof, and the Company shall execute and the Trustee shall authenticate and deliver to the Person designated in the instructions a Definitive Note in the appropriate principal amount. Any Definitive Note issued in exchange for a beneficial interest in a Restricted Global Note pursuant to this Section 2.06(c) shall be registered in such name or names and in such authorized denomination or denominations as the Holder of such beneficial interest shall instruct the Registrar through instructions from the Depository and the Participant or Indirect Participant. The Trustee shall deliver such Definitive Notes to the Persons in whose names such Notes are so registered. Any Definitive Note issued in exchange for a beneficial interest in a Restricted Global Note pursuant to this Section 2.06(c) (1) shall bear the Private Placement Legend and shall be subject to all restrictions on transfer contained therein.

(2) *Beneficial Interests in Restricted Global Notes to Unrestricted Definitive Notes.* A Holder of a beneficial interest in a Restricted Global Note may exchange such beneficial interest for an Unrestricted Definitive Note or may transfer such beneficial interest to a Person who takes delivery thereof in the form of an Unrestricted Definitive Note only if the Registrar receives the following:

(A) if the Holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for an Unrestricted Definitive Note, a certificate from such Holder in the form of Exhibit C hereto, including the certifications in item (1)(b) thereof; or

(B) if the Holder of such beneficial interest in a Restricted Global Note proposes to transfer such beneficial interest to a Person who shall take delivery thereof in the form of an Unrestricted Definitive Note, a certificate from such Holder in the form of Exhibit B hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (2), if the Registrar so requests or if the Applicable Procedures so require, an Opinion of Counsel in form reasonably acceptable to the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

(3) *Beneficial Interests in Unrestricted Global Notes to Unrestricted Definitive Notes.* If any Holder of a beneficial interest in an Unrestricted Global Note proposes to exchange such beneficial interest for a Definitive Note or to transfer such beneficial interest to a Person who takes delivery thereof in the form of a Definitive Note, then, upon satisfaction of the conditions set forth in Section 2.06(b)(2) hereof, the Trustee will cause the aggregate principal amount of the applicable Unrestricted Global Note to be reduced accordingly pursuant to Section 2.06(h) hereof, and the Company will execute and the Trustee will authenticate and deliver to the Person designated in the instructions a Definitive Note in the appropriate principal amount. Any Definitive Note issued in exchange for a beneficial interest pursuant to this Section 2.06(c)(3) will be registered in such name or names and in such authorized denomination or denominations as the Holder of such beneficial interest requests through instructions to the Registrar from or through the Depositary and the Participant or Indirect Participant. The Trustee will deliver such Definitive Notes to the Persons in whose names such Notes are so registered. Any Definitive Note issued in exchange for a beneficial interest pursuant to this Section 2.06(c)(3) will not bear the Private Placement Legend.

(d) *Transfer and Exchange of Definitive Notes for Beneficial Interests.*

(1) *Restricted Definitive Notes to Beneficial Interests in Restricted Global Notes.* If any Holder of a Restricted Definitive Note proposes to exchange such Note for a beneficial interest in a Restricted Global Note or to transfer such Restricted Definitive Notes to a Person who takes delivery thereof in the form of a beneficial interest in a Restricted Global Note, then, upon receipt by the Registrar of the following documentation:

(A) if the Holder of such Restricted Definitive Note proposes to exchange such Note for a beneficial interest in a Restricted Global Note, a certificate from such Holder in the form of Exhibit C hereto, including the certifications in item (2)(b) thereof;

(B) if such Restricted Definitive Note is being transferred to a QIB in accordance with Rule 144A, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (1) thereof;

(C) if such Restricted Definitive Note is being transferred to a Non-U.S. Person in an offshore transaction in accordance with Rule 903 or Rule 904, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (2) thereof;

(D) if such Restricted Definitive Note is being transferred pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(a) thereof;

(E) if such Restricted Definitive Note 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 subparagraphs (B) through (D) above, a certificate to the effect set forth in Exhibit B hereto, including the certifications, certificates and Opinion of Counsel required by item (3) thereof, if applicable;

(F) if such Restricted Definitive Note is being transferred to the Company or any of its Subsidiaries, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(b) thereof; or

(G) if such Restricted Definitive Note is being transferred pursuant to an effective registration statement under the Securities Act, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(c) thereof,

the Trustee will cancel the Restricted Definitive Note, increase or cause to be increased the aggregate principal amount of, in the case of clause (A) above, the appropriate Restricted Global Note, in the case of clause (B) above, the 144A Global Note, in the case of clause (C) above, the Regulation S Global Note, and in all other cases, the IAI Global Note.

(2) *Restricted Definitive Notes to Beneficial Interests in Unrestricted Global Notes.* A Holder of a Restricted Definitive Note may exchange such Note for a beneficial interest in an Unrestricted Global Note or transfer such Restricted Definitive Note to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note only if the Registrar receives the following:

(i) if the Holder of such Definitive Notes proposes to exchange such Notes for a beneficial interest in the Unrestricted Global Note, a certificate from such Holder in the form of Exhibit C hereto, including the certifications in item (1)(c) thereof; or

(ii) if the Holder of such Definitive Notes proposes to transfer such Notes to a Person who shall take delivery thereof in the form of a beneficial interest in the Unrestricted Global Note, a certificate from such Holder in the form of Exhibit B hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (2), if the Registrar so requests or if the Applicable Procedures so require, an Opinion of Counsel in form reasonably acceptable to the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

Upon satisfaction of the conditions of any of the subparagraphs in this Section 2.06(d)(2), the Trustee will cancel the Definitive Notes and increase or cause to be increased the aggregate principal amount of the Unrestricted Global Note.

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

If any such exchange or transfer from a Definitive Note to a beneficial interest is effected pursuant to subparagraphs (2) or (3) above at a time when an Unrestricted Global Note has not yet been issued, the Company will issue and, upon receipt of an Authentication Order in accordance with Section 2.02 hereof, the Trustee will authenticate one or more Unrestricted Global Notes in an aggregate principal amount equal to the principal amount of Definitive Notes so transferred.

(e) *Transfer and Exchange of Definitive Notes for Definitive Notes.* Upon request by a Holder of Definitive Notes and such Holder's compliance with the provisions of this Section 2.06(e), the Registrar will register the transfer or exchange of Definitive Notes. Prior to such registration of transfer or exchange, the requesting Holder must present or surrender to the Registrar the Definitive Notes duly endorsed or accompanied by a written instruction of transfer in form satisfactory to the Registrar duly executed by such Holder or by its attorney, duly authorized in writing. In addition, the requesting Holder must provide any additional certifications, documents and information, as applicable, required pursuant to the following provisions of this Section 2.06(e).

(1) *Restricted Definitive Notes to Restricted Definitive Notes.* Any Restricted Definitive Note may be transferred to and registered in the name of Persons who take delivery thereof in the form of a Restricted Definitive Note if the Registrar receives the following:

(A) if the transfer will be made pursuant to Rule 144A, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (1) thereof;

(B) if the transfer will be made pursuant to Rule 903 or Rule 904, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (2) thereof; and

(C) if the transfer will be made pursuant to any other exemption from the registration requirements of the Securities Act, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications, certificates and Opinion of Counsel required by item (3) thereof, if applicable.

(2) *Restricted Definitive Notes to Unrestricted Definitive Notes.* Any Restricted Definitive Note may be exchanged by the Holder thereof for an Unrestricted Definitive Note or transferred to a Person or Persons who take delivery thereof in the form of an Unrestricted Definitive Note if the Registrar receives the following:

(i) if the Holder of such Restricted Definitive Notes proposes to exchange such Notes for an Unrestricted Definitive Note, a certificate from such Holder in the form of Exhibit C hereto, including the certifications in item (1)(d) thereof; or

(ii) if the Holder of such Restricted Definitive Notes proposes to transfer such Notes to a Person who shall take delivery thereof in the form of an Unrestricted Definitive Note, a certificate from such Holder in the form of Exhibit B hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (2), if the Registrar so requests, an Opinion of Counsel in form reasonably acceptable to the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

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

(f) *Legends.* The following legends will appear on the face of all Global Notes and Definitive Notes issued under this Indenture unless specifically stated otherwise in the applicable provisions of this Indenture.

(1) Private Placement Legend.

(A) Except as permitted by subparagraph (B) below, each Global Note and each Definitive Note (and all Notes issued in exchange therefor or substitution thereof) shall bear the legend in substantially the following form

“THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR ANY STATE SECURITIES LAWS. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, REGISTRATION. THE HOLDER OF THIS SECURITY, BY ITS ACCEPTANCE HEREOF (1) REPRESENTS THAT (A) IT IS A “QUALIFIED INSTITUTIONAL BUYER” (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) (B) IT IS A NON-U.S. PERSON AND IS ACQUIRING THIS SECURITY IN AN OFFSHORE TRANSACTION WITHIN THE MEANING OF REGULATION S UNDER THE SECURITIES ACT AND IN ACCORDANCE WITH THE LAWS APPLICABLE TO SUCH PURCHASER IN THE JURISDICTION IN WHICH SUCH PURCHASE IS MADE, OR (C) IT IS AN INSTITUTIONAL “ACCREDITED INVESTOR” WITHIN THE MEANING OF RULE 501(a)(1), (2), (3) OR (7) UNDER THE SECURITIES ACT AND (2) AGREES TO OFFER, SELL OR OTHERWISE TRANSFER SUCH SECURITY, PRIOR TO THE EXPIRATION OF THE APPLICABLE HOLDING PERIOD WITH RESPECT TO RESTRICTED SECURITIES SET FORTH IN RULE 144 UNDER THE SECURITIES ACT, ONLY (A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, (B) FOR SO LONG AS THE SECURITIES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A, TO A PERSON IT REASONABLY BELIEVES IS A “QUALIFIED INSTITUTIONAL BUYER” AS DEFINED

IN RULE 144A UNDER THE SECURITIES ACT THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHICH NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (C) PURSUANT TO OFFERS AND SALES TO NON-U.S. PERSONS THAT OCCUR OUTSIDE THE UNITED STATES WITHIN THE MEANING OF REGULATIONS UNDER THE SECURITIES ACT AND IN ACCORDANCE WITH THE LAWS APPLICABLE TO IT IN THE JURISDICTION IN WHICH SUCH PURCHASE IS MADE, (D) TO AN INSTITUTIONAL “ACCREDITED INVESTOR” WITHIN THE MEANING OF RULE 501(a)(1), (2), (3) OR 7 UNDER THE SECURITIES ACT THAT IS ACQUIRING THE SECURITY 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, (E) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT, OR (F) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE COMPANY’S AND THE TRUSTEE’S, OR REGISTRAR’S, AS APPLICABLE, RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSE (C), (D) OR (F) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM, AND IN EACH OF THE FOREGOING CASES, A CERTIFICATE OF TRANSFER IN THE FORM APPEARING ON THE OTHER SIDE OF THIS SECURITY IS COMPLETED AND DELIVERED BY THE TRANSFEROR TO THE TRUSTEE OR REGISTRAR. THIS LEGEND WILL BE REMOVED UPON THE REQUEST OF THE HOLDER AFTER THE EXPIRATION OF THE APPLICABLE HOLDING PERIOD WITH RESPECT TO RESTRICTED SECURITIES SET FORTH IN RULE 144 UNDER THE SECURITIES ACT.”

(B) Notwithstanding the foregoing, any Global Note or Definitive Note issued pursuant to subparagraphs (b) (4), (c)(2), (c)(3), (d)(2), (d)(3), (e)(2) or (e)(3) of this Section 2.06 (and all Notes issued in exchange therefor or substitution thereof) will not bear the Private Placement Legend.

(2) *Global Note Legend.* Each Global Note will bear a legend in substantially the following form:

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

UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR NOTES IN DEFINITIVE FORM, THIS NOTE MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY. UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED

REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (55 WATER STREET, NEW YORK, NEW YORK) (“DTC”), 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 SUCH OTHER NAME AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR SUCH OTHER ENTITY AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.”

(3) *Original Issue Discount Legend.* Each Global Note will bear the following legend:

THE FOLLOWING INFORMATION IS SUPPLIED SOLELY FOR U.S. FEDERAL INCOME TAX PURPOSES. THIS NOTE WAS ISSUED WITH “ORIGINAL ISSUE DISCOUNT” (“OID”) WITHIN THE MEANING OF SECTION 1273 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE “CODE”), AND THIS LEGEND IS REQUIRED BY SECTION 1275(c) OF THE CODE. HOLDERS MAY OBTAIN INFORMATION REGARDING THE AMOUNT OF ANY OID, THE ISSUE PRICE, THE ISSUE DATE, AND THE YIELD TO MATURITY RELATING TO THE NOTES BY CONTACTING THE CHIEF FINANCIAL OFFICER OF THE ISSUER AT 450 PARK AVENUE, 30TH FLOOR, NEW YORK CITY, NEW YORK 10022.

(g) *Cancellation and/or Adjustment of Global Notes.* At such time as all beneficial interests in a particular Global Note have been exchanged for Definitive Notes or a particular Global Note has been redeemed, repurchased or canceled in whole and not in part, each such Global Note will be returned to or retained and canceled by the Trustee in accordance with Section 2.11 hereof. At any time prior to such cancellation, if any beneficial interest in a Global Note is exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Note or for Definitive Notes, the principal amount of Notes represented by such Global Note will be reduced accordingly and an endorsement will be made on such Global Note by the Trustee or by the Depository at the direction of the Trustee to reflect such reduction; and if the beneficial interest is being exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Note, such other Global Note will be increased accordingly and an endorsement will be made on such Global Note by the Trustee or by the Depository at the direction of the Trustee to reflect such increase.

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

(1) To permit registrations of transfers and exchanges, the Company will execute and the Trustee will authenticate Global Notes and Definitive Notes upon receipt of an Authentication Order in accordance with Section 2.02 hereof or at the Registrar’s request.

(2) No service charge will be made to a Holder of a beneficial interest in a Global Note or to a Holder of a Definitive Note 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 Sections 2.10, 3.06, 3.09, 4.12, 4.16 and 9.04 hereof).

(3) The Registrar will not be required to register the transfer of or exchange of any Note selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part.

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

(5) Neither the Registrar nor the Company will be required:

(A) to issue, to register the transfer of or to exchange any Notes during a period beginning at the opening of business 15 days before the mailing of a notice of redemption of Notes 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 Note selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part; or

(C) to register the transfer of or to exchange a Note between a record date and the next succeeding interest payment date.

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

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

(8) All certifications, certificates and Opinions of Counsel required to be submitted to the Registrar pursuant to this Section 2.06 to effect a registration of transfer or exchange may be submitted by facsimile.

(9) 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 Note 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. Neither the Trustee nor any Agent shall have any responsibility or liability for any actions taken or not taken by the Depositary.

Section 2.07 *Replacement Notes.*

If any mutilated Note is surrendered to the Trustee or the Company and the Trustee receives evidence to its satisfaction of the destruction, loss or theft of any Note, the Company will issue and the Trustee, upon receipt of an Authentication Order, will authenticate a replacement Note. An indemnity bond must be supplied by the Holder that is sufficient in the judgment of the Trustee and the Company to protect the Company, the Trustee, any Agent and any authenticating agent from any loss that any of them may suffer if a Note is replaced. The Company may charge for its expenses in replacing a Note, including the Trustee's expenses.

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

Section 2.08 *Outstanding Notes.*

The Notes outstanding at any time are all the Notes authenticated by the Trustee except for those canceled by it, those delivered to it for cancellation, those reductions in the interest in a Global Note effected by the Trustee in accordance with the provisions hereof, and those described in this Section 2.08 as not outstanding; *provided, however*, that in determining whether the holders of the requisite principal amount of outstanding Notes are present at a meeting of holders of Notes for quorum purposes or have consented to or voted in favor of any request, demand, authorization, direction, notice, consent, waiver, amendment or modification hereunder, Notes held for the account of the Company, any of its subsidiaries or any of their Affiliates shall be disregarded and deemed not to be outstanding, except that in determining whether the Trustee shall be protected in making such a determination or relying upon any such quorum, consent or vote, only Notes which a Responsible Officer of the Trustee actually knows to be so owned shall be so disregarded. Except as set forth in this Section 2.08, a Note does not cease to be outstanding because the Company or an Affiliate of the Company holds the Note.

If a Note is replaced pursuant to Section 2.07 hereof, it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Note is held by a protected purchaser.

If the principal amount of any Note is considered paid under Section 4.01 hereof, it ceases to be outstanding and interest on it ceases to accrue.

If the Paying Agent (other than the Company, a Subsidiary or an Affiliate of any thereof) holds, on a redemption date or maturity date, money sufficient to pay Notes payable on that date, then on and after that date such Notes will be deemed to be no longer outstanding and will cease to accrue interest.

Section 2.09 *Treasury Notes.*

[Reserved].

Section 2.10 *Temporary Notes.*

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

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

Section 2.11 *Cancellation.*

The Company at any time may deliver Notes to the Trustee for cancellation. The Registrar and Paying Agent will forward to the Trustee any Notes surrendered to them for registration of transfer, exchange or payment. The Trustee and no one else will cancel all Notes surrendered for registration of transfer, exchange, payment, replacement or cancellation and will dispose of canceled Notes (subject to the record retention requirements of the Exchange Act) in accordance with its customary procedures. Evidence of the destruction of all canceled Notes will be delivered to the Company at the Company's request. The Company

may not issue new Notes to replace Notes that it has paid or that have been delivered to the Trustee for cancellation.

Section 2.12 *Defaulted Interest.*

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

Section 2.13 *CUSIP Numbers.*

The Company in issuing the Notes may use CUSIP numbers (if then generally in use), and, if so, the Trustee shall use CUSIP numbers in notices of redemption as a convenience to Holders; *provided* that the Trustee shall have no liability for any defect in the CUSIP numbers as they appear on any Note, notice or elsewhere, and, *provided further* that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Notes, and any such redemption shall not be affected by any defect in or omission of such numbers. The Company will promptly notify the Trustee in writing of any change in the CUSIP numbers.

Article 3
REDEMPTION AND PREPAYMENT

Section 3.01 *Notices to Trustee.*

If the Company elects to redeem Notes pursuant to the optional redemption provisions of Section 3.07, 4.12(b) or 4.16(f) hereof, it must furnish to the Trustee, at least 30 days but not more than 60 days before a redemption date, an Officer's Certificate setting forth:

- (1) the clause of the Notes and/or the Section of this Indenture pursuant to which the redemption shall occur;
- (2) the redemption date;
- (3) the principal amount of Notes to be redeemed;
- (4) the redemption price; and
- (5) whether such redemption is subject to one or more conditions precedent and if so, shall specify such conditions precedent.

Section 3.02 *Selection of Notes to Be Redeemed or Purchased.*

If less than all of the Notes are to be redeemed or purchased in an offer to purchase at any time, DTC (or any successor thereof) will select Notes for redemption or purchase in accordance with its customary procedures unless otherwise required by law or applicable stock exchange or depository requirements.

In the event of partial redemption or purchase by lot, the particular Notes to be redeemed or purchased will be selected, unless otherwise provided herein, not less than 30 nor more than 60 days prior to the redemption or purchase date by DTC from the outstanding Notes not previously called for redemption or purchase.

The Trustee will promptly notify the Company in writing of the Notes selected for redemption or purchase and, in the case of any Note selected for partial redemption or purchase, the principal amount thereof to be redeemed or purchased. Notes and portions of Notes selected will be in amounts of \$2,000 or whole multiples of \$1,000 in excess thereof; except that if all of the Notes of a Holder are to be redeemed or purchased, the entire outstanding amount of Notes held by such Holder shall be redeemed or purchased. Except as provided in the preceding sentence, provisions of this Indenture that apply to Notes called for redemption or purchase also apply to portions of Notes called for redemption or purchase.

Section 3.03 Notice of Redemption.

Subject to the provisions of Section 3.08 hereof, at least 30 days but not more than 60 days before a redemption date, the Company will mail or cause to be mailed, by first class mail, a notice of redemption to each Holder whose Notes are to be redeemed at its registered address, except that redemption notices may be mailed more than 60 days prior to a redemption date if the notice is issued in connection with a defeasance of the Notes or a satisfaction and discharge of this Indenture pursuant to Article 8 or 12 hereof, respectively.

The notice will identify the Notes (including the CUSIPs) to be redeemed and will state:

- (1) the redemption date;
- (2) the redemption price;
- (3) if any Note is being redeemed in part, the portion of the principal amount of such Note to be redeemed and that, after the redemption date upon surrender of such Note, a new Note or Notes in principal amount equal to the unredeemed portion will be issued upon cancellation of the original Note;
- (4) the name and address of the Paying Agent;
- (5) that Notes called for redemption must be surrendered to the Paying Agent to collect the redemption price;
- (6) that, unless the Company defaults in making such redemption payment, interest on Notes called for redemption ceases to accrue on and after the redemption date;
- (7) the paragraph of the Notes and/or Section of this Indenture pursuant to which the Notes called for redemption are being redeemed;
- (8) whether such redemption is subject to one or more conditions precedent and if so, shall specify such conditions precedent; and

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

At the Company's request, the Trustee will give the notice of redemption in the Company's name and at its expense; *provided, however*, that the Company has delivered to the Trustee, at least 45 days prior to the redemption date, an Officer's 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.

Any such redemption may, at the Company's discretion, be subject to one or more conditions precedent, including any related Equity Offering or a Change of Control. In addition, if such redemption is subject to the satisfaction of one or more conditions precedent, the related notice shall describe each such condition, and if applicable, shall state that, in the Company's discretion, the redemption date may be delayed until such time as any or all such conditions shall be satisfied or waived (provided that in no event shall such redemption date be delayed to a date later than 30 days after the date on which such notice was mailed), or such redemption may not occur and such notice may be rescinded in the event that any or all such conditions shall not have been satisfied or waived by the redemption date, or by the redemption date as so delayed.

Section 3.04 *Effect of Notice of Redemption.*

Once notice of redemption is mailed in accordance with Section 3.03 hereof, Notes called for redemption become, subject to such Section 3.03, irrevocably due and payable on the redemption date at the redemption price unless any condition precedent to such redemption that is specified in such notice is not satisfied.

Section 3.05 *Deposit of Redemption or Purchase Price.*

One Business Day prior to the redemption or purchase date, the Company will deposit with the Trustee or with the Paying Agent an amount of money in immediately available funds sufficient to pay the redemption or purchase price of and accrued interest, if any, on all Notes to be redeemed or purchased on that date. The Trustee or the Paying Agent will 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 or purchase price of and accrued interest, if any, on all Notes to be redeemed or purchased.

If the Company complies with the provisions of the preceding paragraph, on and after the redemption or purchase date, interest will cease to accrue on the Notes or the portions of Notes called for redemption or purchase. If a Note is redeemed or purchased on or after 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 Person in whose name such Note was registered at the close of business on such record date. If any Note called for redemption or purchase is not so paid upon surrender for redemption or purchase because of the failure of the Company to comply with the preceding paragraph, interest shall be paid on the unpaid principal, from the redemption or purchase date until such principal is paid, and to the extent lawful on any interest not paid on such unpaid principal, in each case at the rate provided in the Notes and in Section 4.01 hereof.

Section 3.06 *Notes Redeemed or Purchased in Part.*

Upon surrender of a Note that is redeemed or purchased in part, the Company will issue and, upon receipt of an Authentication Order, the Trustee will authenticate for the Holder at the expense of the Company a new Note equal in principal amount to the unredeemed or unpurchased portion of the Note surrendered.

Section 3.07 *Optional Redemption.*

(a) At any time and from time to time prior to June 1, 2020, the Company may redeem the Notes at its option, in whole or in part, at a redemption price equal to 100% of the principal amount of Notes redeemed plus the Applicable Premium as of, and accrued and unpaid interest, if any, to, the applicable redemption date.

(b) At any time prior to June 1, 2020, the Company may on any one or more occasions redeem Notes with cash equal to the net cash proceeds received by the Company from any Equity Offering at a redemption price equal to 111.500% of the principal amount thereof plus accrued and unpaid interest, if any, to the redemption date (subject to the rights of Holders of Notes on the relevant record date to receive interest on the relevant interest payment date), in an aggregate principal amount for all such redemptions not to exceed 40% of the aggregate principal amount of the Notes issued under this Indenture, *provided that*:

(1) in each case, the redemption takes place not later than 180 days after the closing of the related Equity Offering, and

(2) not less than 60% of the aggregate principal amount of the Notes (excluding Notes held by the Company or any of its Subsidiaries) issued under this Indenture remains outstanding immediately thereafter.

(c) Except pursuant to the preceding paragraphs (a) and (b) and Section 4.12(b) and 4.16(f) hereof, the Notes will not be redeemable at the Company's option prior to June 1, 2020.

(d) On or after June 1, 2020, the Company may on any one or more occasions redeem all or a part of the Notes, upon not less than 30 nor more than 60 days' notice, at the redemption prices (expressed as percentages of principal amount) set forth below, plus accrued and unpaid interest, if any, on the Notes redeemed, to the applicable date of redemption, if redeemed during the periods set forth below, subject to the rights of Holders on the relevant record date to receive interest on the relevant interest payment date:

<u>Year</u>	<u>Percentage</u>
June 1, 2020 to December 1, 2020	105.750%
December 1, 2020 and thereafter	100.000%

Unless the Company defaults in the payment of the redemption price, interest will cease to accrue on the Notes or portions thereof called for redemption on the applicable redemption date.

(e) Any redemption pursuant to this Section 3.07 or Sections 4.12(b) or 4.16(f) hereof shall be made pursuant to the provisions of Sections 3.01 through 3.06 hereof.

Section 3.08 *Mandatory Redemption.*

The Company is not required to make mandatory redemption or sinking fund payments with respect to the Notes.

Section 3.09 *Offer to Purchase by Application of Net Cash Proceeds.*

In the event that, pursuant to Section 4.12 hereof, the Company is required to commence an offer to all Holders to purchase Notes (an "*Asset Sale Offer*"), it will follow the procedures specified below.

The Asset Sale Offer shall be made to all Holders. The Asset Sale Offer will remain open for a period of at least 20 Business Days following its commencement and not more than 30 Business Days, except to the extent that a longer period is required by applicable law (the “*Offer Period*”). No later than three Business Days after the termination of the Offer Period (the “*Purchase Date*”), the Company will apply the Net Cash Proceeds as required by Section 4.12 (the “*Offer Amount*”) to the purchase of Notes or, if less than the Offer Amount has been tendered, all Notes tendered in response to the Asset Sale Offer. Payment for any Notes so purchased shall be made in the same manner as interest payments are made.

If the Purchase Date is on or after an interest record date and on or before the related interest payment date, any accrued and unpaid interest, if any, will be paid to the Person in whose name a Note is registered at the close of business on such record date, and no additional interest will be payable to Holders who tender Notes pursuant to the Asset Sale Offer.

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

- (1) that the Asset Sale Offer is being made pursuant to this Section 3.09 and Section 4.12 hereof and the length of time the Asset Sale Offer will remain open;
- (2) the Offer Amount, the purchase price and the Purchase Date;
- (3) that any Note not tendered or accepted for payment will continue to accrue interest;
- (4) that, unless the Company defaults in making such payment, any Note accepted for payment pursuant to the Asset Sale Offer will cease to accrue interest after the Purchase Date;
- (5) that Holders electing to have a Note purchased pursuant to an Asset Sale Offer may elect to have Notes purchased in denominations of \$2,000 or an integral multiple of \$1,000 in excess thereof;
- (6) that Holders electing to have Notes purchased pursuant to any Asset Sale Offer will be required to surrender the Note, with the form entitled “Option of Holder to Elect Purchase” attached to the Notes completed, or transfer by book-entry transfer, to the Company, a Depository, if appointed by the Company, or a Paying Agent at the address specified in the notice at least three days before the Purchase Date;
- (7) that Holders will be entitled to withdraw their election if the Company, the Depository or the Paying Agent, as the case may be, receives, not later than the expiration of the Offer Period, a telegram, telex, facsimile transmission or letter setting forth the name of the Holder, the principal amount of the Note the Holder delivered for purchase and a statement that such Holder is withdrawing his election to have such Note purchased;
- (8) that, if the aggregate principal amount of Notes surrendered by Holders thereof exceeds the Offer Amount, the Company will select the Notes to be purchased on a *pro rata* basis based on the principal amount of Notes surrendered (with such adjustments as may be deemed appropriate by the Company so that only Notes in denominations of \$2,000, or an integral multiple of \$1,000 in excess thereof, will be purchased); and

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

On or before the Purchase Date, the Company will, to the extent lawful, accept for payment, on a *pro rata* basis to the extent necessary, the Offer Amount of Notes or portions thereof tendered pursuant to the Asset Sale Offer, or if less than the Offer Amount has been tendered, all Notes tendered, and will deliver or cause to be delivered to the Trustee the Notes properly accepted together with an Officer's Certificate stating that such Notes or portions thereof were accepted for payment by the Company in accordance with the terms of this Section 3.09. The Company, the Depository or the Paying Agent, as the case may be, will promptly (but in any case not later than five days after the Purchase Date) mail or deliver to each tendering Holder an amount equal to the purchase price of the Notes tendered by such Holder and accepted by the Company for purchase, and the Company will promptly issue a new Note, and the Trustee, upon written request from the Company, will authenticate and mail or deliver (or cause to be transferred by book entry) such new Note to such Holder, in a principal amount equal to any unpurchased portion of the Note surrendered. Any Note not so accepted shall be promptly mailed or delivered by the Company to the Holder thereof. The Company will publicly announce the results of the Asset Sale 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 Sections 3.01 through 3.06 hereof.

Article 4 COVENANTS

Section 4.01 *Payment of Notes.*

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

The Company will pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal at a rate that is 1% higher than the then applicable interest rate on the Notes to the extent lawful; it will pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest, if any (without regard to any applicable grace period), at the same rate to the extent lawful.

Section 4.02 *Maintenance of Office or Agency.*

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

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

The Company hereby designates the Corporate Trust Office of the Trustee as one such office or agency of the Company in accordance with Section 2.03 hereof.

Section 4.03 *Maintenance of Liquidity.*

The Company will not permit the aggregate amount of (i) all unrestricted cash and Cash Equivalents of the Company and the Subsidiary Guarantors, (ii) amounts then immediately available for drawing under revolving credit facilities and undrawn letters of credit of the Company and the Subsidiary Guarantors and (iii) dividends, distributions or payments that are immediately available to be paid to the Company (and, for the avoidance of doubt, only such pro rata portion of any such dividend, distribution or payments that is available to be paid to the Company) by any of its Restricted Subsidiaries (provided that (x) to the extent that the declaration or payment of such dividends or similar distributions or payments by a Restricted Subsidiary is not at any such time 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 Restricted Subsidiary or its stockholders or (y) if a Default or Event of Default has occurred and is continuing, then such dividends, distributions or payments shall be excluded from this calculation) at the end of any calendar month to be less than the Company's obligation to pay interest on the Notes and all other Debt (including mandatory cash dividends under the Convertible Preferred Stock or any other mandatory cash pay Preferred Stock but excluding any obligation to pay interest on Convertible Preferred Stock or any other mandatory cash pay Preferred Stock which, in each case, may be paid by accretion or in-kind in accordance with its terms) of the Company and its Subsidiary Guarantors for the next six months. In the case any such Debt bears interest at a floating rate, the Company may assume that the reference interest rate in effect on the applicable date of determination will be in effect for the remainder of such period.

Section 4.04 *Maintenance of Collateral Coverage.*

The Company will not permit the Collateral Coverage Ratio calculated as of the last day of each fiscal quarter of the Company (determined within 30 days of the end of each such quarter) to be less than 1.50 to 1.00.

Section 4.05 *Reports.*

(a) If the Company is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, the Company must provide the Trustee and noteholders with, or electronically file with the SEC, within the time periods specified in the SEC's rules and regulations:

- (1) all quarterly and annual reports on Forms 10-Q and 10-K, beginning with the annual report on Form 10-K for the year ended December 31, 2018, including a "Management's Discussion and Analysis of Financial Condition and Results of Operations" and, with respect to annual information only, a report thereon by the Company's certified independent accountants, and

(2) all current reports on Form 8-K.

(b) If the Company is not subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, the Company must provide the Trustee and noteholders with, within the time periods specified in the SEC's rules and regulations:

(1) substantially all the information that would be required to be contained in quarterly and annual reports that would be required to be filed with the SEC on Forms 10-Q and 10-K if the Company were required to file such reports (but only to the extent similar information was provided in the Offering Memorandum), including a "Management's Discussion and Analysis of Financial Condition and Results of Operations" for the Company (but not for any subsidiaries on a stand-alone basis) and, with respect to annual information only, a report thereon by the Company's certified independent accountants; *provided, however*, such reports (A) will not be required to contain information required by Items 1B, 4, 5, 9A, or 14 of Form 10-K or Items 2 or 4 of Part II of Form 10-Q and (B) will not be required to contain information required by Items 10 and 11 of Form 10-K (relating to management compensation) but in lieu of such information will include information of the type and scope contained in the Offering Memorandum under the caption "Management;"

(2) substantially all the information that would be required to be contained in current reports that would be required to be filed with the SEC on Form 8-K if the Company were required to file such reports; *provided, however*, that (A) no such current report will be required to be furnished if the Company determines in its good faith judgment that such event is not material to the noteholders or to the business, assets, operations, financial positions or prospects of the Company and their Restricted Subsidiaries, taken as a whole and (B) such reports will not be required to contain information required by Items 2.02, 3.01, 3.02 of Form 8-K or Items 5.02(c), (d) or (e) (except to the extent similar information is contained in the Offering Memorandum under the caption "Management") of Form 8-K.

(c) The foregoing reports under clause (b) will not (A) be required to comply with Section 302 or Section 404 of the Sarbanes-Oxley Act of 2002, or related Items 307 and 308 of Regulation S-K promulgated by the SEC, or Item 10(e)(1)(ii) of Regulation S-K promulgated by the SEC (with respect to any non-GAAP financial measures contained therein), (B) be required to contain the separate financial information for subsidiaries contemplated by Rule 3-09, Rule 3-10 or Rule 3-16 of Regulation S-X promulgated by the SEC or (C) be required to contain information required by Item 601 of Regulation S-K.

(d) In addition, whether or not required by the SEC, the Company will, if the SEC will accept the filing, file a copy of all of the information and reports referred to in clauses (a) and (b) with the SEC for public availability within the time periods specified in the SEC's rules and regulations. In addition, the Company will make the information and reports available to securities analysts and prospective investors upon request. The Company also will arrange and participate in quarterly conference calls, beginning with the three months ended December 31, 2018, to discuss its results of operations with holders of the Notes, beneficial owners of the Notes, prospective purchasers of the Notes, securities analysts and market makers no later than 15 days following the date on which the Company releases its results for the applicable quarterly or annual period or the quarterly and annual financial statements are made available as provided above. Dial-in conference call information will be included in or provided together with such financial statements, or provided in a public press release.

(e) For so long as any of the Notes remain outstanding and constitute “restricted securities” under Rule 144, the Company will furnish to the Holders of the Notes and prospective investors, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act.

(f) Any and all Defaults or Events of Default arising from a failure to furnish or file in a timely manner a report or to hold a conference call required by this covenant shall be deemed cured (and the Company shall be deemed to be in compliance with this covenant) upon furnishing or filing such report or certification or holding of such conference call as contemplated by this covenant (but without regard to the date on which such report or certification is so furnished or filed or such conference call is held); *provided* that such cure shall not otherwise affect the rights of the Holders under Article 6 hereof if the principal, premium, if any, and accrued interest have been accelerated in accordance with the terms of this Indenture and such acceleration has not been rescinded or cancelled prior to such cure.

(g) Any subsequent restatement of financial statements shall have no retroactive effect for purposes of calculations previously made pursuant to the covenants contained in this Indenture.

(h) If at any time the Notes are guaranteed by a direct or indirect parent company of the Company, and such company has furnished the financial reports described herein with respect to such company as required by this section as if such company were the Company (including any financial information required hereby), the Company shall be deemed to be in compliance with the provisions of this section. Any information filed with, or furnished to, the SEC within the time periods specified in this section shall be deemed to have been made available as required by this section, and to the extent such filings comply with the rules and regulations of the SEC regarding such filings, they will be deemed to comply with the requirements of this section. If the Company or a direct or indirect parent of the Company files with or furnishes to the SEC (a) an Annual Report on Form 10-K with respect to a fiscal year that complies in all material respects with the rules and regulations of the SEC regarding such filing, then such filing shall be deemed to comply with and satisfy the requirements of this section with respect to the relevant fiscal year; (b) a quarterly report on Form 10-Q with respect to a fiscal quarter that complies in all material respects with the rules and regulations of the SEC regarding such filing, then such filing shall be deemed to comply with and satisfy the requirements of this section with respect to the relevant fiscal quarter; and (c) a current report on Form 8-K with respect to any of the events required by the SEC to be described therein that complies in all material respects with the rules and regulations of the SEC regarding such filing, then such filing shall be deemed to comply with and satisfy the requirements of this section with respect to such event; *provided*, in each case of clause (a) through (c), that such filings include such disclosure as is reasonably necessary to describe any material differences between the consolidated financial information of such direct or indirect parent and the consolidated financial information of the Company

(i) The Trustee shall have no responsibility to determine whether any filings have been made with the SEC.

(j) Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates).

Section 4.06 *Compliance Certificate.*

(a) The Company and each Subsidiary Guarantor shall deliver to the Trustee, within 120 days after the end of each fiscal year, an Officer's Certificate stating that in the course of the performance of his

or her duties as an Officer of the Company, he or she would normally have knowledge of any Default of the Company in the performance of its obligations contained in this Indenture, a review of the activities of the Company and its 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 and 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 has 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, premium on, if any, or interest, if any, on the Notes 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 4.05 above 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 as they relate to accounting matters 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) So long as any of the Notes are outstanding, the Company will deliver to the Trustee, as soon as reasonably possible, and in any event within 30 days of any Officer's becoming aware of any Default or Event of Default, an Officer's Certificate specifying such Default or Event of Default and what action the Company is taking or proposes to take with respect thereto.

Section 4.07 *Taxes.*

The Company will pay, and will cause each of its Subsidiaries to pay, prior to delinquency, all material taxes, assessments, and governmental levies except such as are contested in good faith and by appropriate proceedings or where the failure to effect such payment is not adverse in any material respect to the Holders of the Notes.

Section 4.08 *Stay, Extension and Usury Laws.*

The Company and each of the Subsidiary Guarantors covenants (to the extent that it may lawfully do so) that it will 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 and each of the Subsidiary Guarantors (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law has been enacted.

Section 4.09 *Restricted Payments.*

(a) The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly: (i) declare or pay any dividend or make any distribution on its Equity Interests (other than dividends or distributions paid in the Company's Qualified Equity Interests) held by Persons other than the Company or any of its Subsidiaries; (ii) purchase, redeem or otherwise acquire or retire for value any Equity Interests of the Company or any direct or indirect parent of the Company held by Persons other than the Company or any of its Subsidiaries; (iii) repay, redeem, repurchase, defease or otherwise acquire or retire for value, or make any payment on or with respect to, any (A) Subordinated Debt of the Company or any Subsidiary Guarantor, (B) unsecured Debt of the Company (including the Convertible Notes) or any Subsidiary Guarantor and (C) Debt of the Company or any Subsidiary Guarantor that is secured by a Lien that ranks junior in priority to the Liens securing the Notes (the Debt included in the foregoing clauses (A), (B) and (C), collectively, "*Junior Debt*"), other than (1) any such payment at or within 6 months of Stated Maturity and (2) any such payments on any Junior Debt Incurred pursuant to pursuant to Section 4.11(b)(2) or (iv) make any Restricted Investment (all such payments and other actions set forth in these clauses (i) through (iv) above being collectively referred to as "*Restricted Payments*").

The amount expended in any Restricted Payment, if other than in cash, will be deemed to be the fair market value of the relevant non-cash assets, as determined by the Company in good faith or, if such fair market value may exceed \$10.0 million, by the Board of Directors of the Company.

(b) The provisions of Section 4.09(a) hereof will not prohibit:

(1) [Reserved];

(2) dividends or distributions by a Subsidiary payable, on a pro rata basis or on a basis more favorable than pro rata to the Company, to all holders of any class of Capital Stock of such Person;

(3) the repayment, redemption, repurchase, defeasance or other acquisition or retirement for value of Junior Debt with the proceeds of, or in exchange for, Permitted Refinancing Debt;

(4) the purchase, redemption or other acquisition or retirement for value of Equity Interests (including the Convertible Preferred Stock) of the Company or any direct or indirect parent of the Company in exchange for, or out of the proceeds of (i) an offering (occurring within 60 days of such purchase, redemption or other acquisition or retirement for value) of, Qualified Equity Interests of the Company or (ii) a contribution to the common equity capital of the Company;

(5) the making of any Restricted Payment in exchange for, or out of the proceeds of, (i) an issuance (occurring within 60 days of such Restricted Payment) of Qualified Equity Interests of the Company or (ii) a contribution to the common equity capital of the Company;

(6) the purchase, redemption or other acquisition or retirement for value of Equity Interests of the Company or any of its Restricted Subsidiaries held by officers, directors or employees or former officers, directors or employees (or their estates or beneficiaries under their estates of the Company or such Restricted Subsidiary), upon death, disability, retirement, severance or termination of employment or pursuant to any agreement under which the Equity Interests were issued; *provided* that the aggregate cash consideration paid therefor prior to the Stated Maturity of the Notes does not exceed an aggregate amount of \$5.0 million;

(7) [Reserved];

(8) Restricted Payments not otherwise permitted hereby in an aggregate amount not to exceed \$10.0 million;

(9) (a) repurchases of Equity Interests deemed to occur upon the exercise of stock options or warrants if the Equity Interests represent all or a portion of the exercise price thereof (or related withholding taxes) (b) Restricted Payments by the Company or any Restricted Subsidiary to allow the payment of cash in lieu of the issuance of fractional shares upon the exercise of options or warrants or upon the conversion or exchange of Equity Interests of the Company or any Restricted Subsidiary in an aggregate amount under this clause (b) not to exceed \$1.0 million; and (c) Restricted Payments by the Company to allow the payment in cash in lieu of the issuance of fractional shares upon the conversion of Convertible Notes into common shares of the Company in accordance with the terms thereof;

(10) payment of dividends or distributions on Disqualified Equity Interests of the Company (including the Convertible Preferred Stock) or any Subsidiary Guarantor or Preferred Stock of any non-guarantor Restricted Subsidiary and payment of any redemption price or liquidation value of any Disqualified Equity Interest when due in accordance with its terms, in each case, to the extent that such Disqualified Equity Interest or Preferred Stock was permitted to be Incurred in accordance with the provisions of this Indenture;

(11) [Reserved];

(12) dividends made by the Company in accordance with the Convertible Preferred Stock Documents; *provided* that dividends payable in cash pursuant to this clause (12) may only be paid with respect to Convertible Preferred Stock; *provided, further*, that if such Convertible Preferred Stock Documents are amended or supplemented any such dividend shall be permitted pursuant to this clause (12) so long as any such amendments or supplements does not increase the aggregate amount payable pursuant to the Convertible Preferred Stock Documents; and

(13) the redemption, repurchase or refinancing, at any time, of (a) all, or any portion of, the Convertible Preferred Stock at a price no greater than the mandatory redemption price thereof at the maturity date thereof, plus the maximum amount of dividends that may accrue thereunder pursuant to the Convertible Preferred Stock Documents through such maturity date or (b) any series of the Convertible Preferred Stock, in whole but not in part, at an aggregate purchase price no greater than the mandatory redemption price of all Convertible Preferred Stock of such series at the maturity date thereof, plus the maximum amount of dividends that may accrue thereunder pursuant to the Convertible Preferred Stock Documents through such maturity date (plus any common stock of the Company that may be issued in connection with such transaction (including by way of exchange or conversion)); provided that any such redemption, repurchase or refinancing must be with (i) the net proceeds from the issuance of Qualified Equity Interests, (ii) the net proceeds from the issuance of any new issuance of preferred stock of the Company, (iii) an exchange for common stock of the Company or a different class of preferred stock of the Company, and not, in each case, for the avoidance of doubt, for Debt (other than Debt consisting of preferred stock of the Company) or (iv) cash on hand (other than cash on hand at the Company, any Subsidiary Guarantor or any Specified Operating Subsidiary), provided that cash on hand at the Company shall not be deemed to include cash used to refinance Convertible Preferred Stock

substantially concurrent with the dividend to the Company of such cash from a subsidiary of the Company that is not a Specified Operating Subsidiary.

provided that, in the case of clauses (6), (10), (12) and (13), no Default has occurred and is continuing or would occur as a result thereof.

(c) For purposes of determining compliance with this covenant, in the event that a proposed Restricted Payment (or portion thereof) meets the criteria of more than one of the categories of Restricted Payments described in clauses (1) through (13) above, the Company will be entitled to divide, classify or re-classify (based on circumstances existing at the time of such re-classification) such Restricted Payment (or portion thereof) in any manner that complies with this covenant and such Restricted Payment will be treated as having been made pursuant to only such clause or clauses.

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

(a) Except as provided in Section 4.10(b), the Company will not, and will not permit any of its Restricted Subsidiaries to create or otherwise cause or permit to exist or become effective any encumbrance or restriction of any kind on the ability of any Restricted Subsidiary to:

- (1) pay dividends or make any other distributions on any Equity Interests of the Restricted Subsidiary owned by the Company or any other Restricted Subsidiaries;
- (2) pay any Debt or other obligation owed to the Company or any other Restricted Subsidiary;
- (3) make loans or advances to the Company or any of its Restricted Subsidiaries; or
- (4) transfer any of its property or assets to the Company or any other Restricted Subsidiary.

(b) The restrictions in Section 4.10(a) hereof will not apply to any encumbrances or restrictions:

(1) existing on the Issue Date in the Indenture or any other agreements in effect on the Issue Date, or contained in agreements governing Debt incurred by DBM Global and its Restricted Subsidiaries after the Issue Date pursuant to Section 4.11(b)(15) and any extensions, renewals, replacements or refinancings of any of the foregoing; provided that the encumbrances and restrictions in the extension, renewal, replacement or refinancing of the foregoing (a) are, in the determination of the Company, taken as a whole, no less favorable in any material respect to the noteholders than the encumbrances or restrictions being extended, renewed, replaced or refinanced or (b) are not, in the determination of the Company, expected to materially adversely affect the ability of the Company to make interest, principal and redemption payments on the Notes;

(2) existing under or by reason of applicable law, rule, regulation, order, permit or grant, including for the avoidance of doubt, any encumbrance or restriction on any Insurance Subsidiary by, or included in any agreement with, any governmental authority having the power to regulate such Insurance Subsidiary;

(3) existing with respect to any Person, or to the property or assets of any Person, at the time the Person is acquired by the Company or any Subsidiary, which encumbrances or

restrictions are not applicable to any other Person or the property or assets of any other Person (other than Subsidiaries of such Person) and any extensions, renewals, replacements, or refinancings of any of the foregoing, *provided* the encumbrances and restrictions in the extension, renewal, replacement or refinancing (a) are, in the determination of the Company, taken as a whole, no less favorable in any material respect to the noteholders than the encumbrances or restrictions being extended, renewed, replaced or refinanced or (b) are not, in the determination of the Company, expected to materially adversely affect the ability of the Company to make interest, principal and redemption payments on the Notes;

(4) of the type described in clause (a)(4) above (i) that restrict in a customary manner the subletting, assignment or transfer of any property or asset that is subject to a lease or license or (ii) by virtue of any Lien on, or agreement to transfer, option or similar right (including any asset sale or stock sale agreement) with respect to any property or assets of, the Company or any Subsidiary;

(5) with respect to a Subsidiary and imposed pursuant to an agreement that has been entered into for the sale or disposition of Capital Stock of, or property and assets of, the Subsidiary (or of other Subsidiaries of the Company that own such Subsidiary) that is not prohibited by Section 4.12 hereof;

(6) existing pursuant to provisions in partnership agreements, limited liability company organizational governance documents, joint venture and other similar agreements that (a) restrict the transfer of ownership interests in such partnership, limited liability company, joint venture or similar Person, (b) restrict non-pro-rata dividends or other distributions on any series of Equity Interests, or subject dividends or other distributions on any Equity Interests to the satisfaction of financial tests, (c) contain restrictions of the type set forth in clause (a)(3) or (a)(4) of this Section 4.10 or (d) are not, in the determination of the Company, expected to materially adversely affect the ability of the Company to make interest, principal and redemption payments on the Notes;

(7) consisting of restrictions on cash or other deposits or net worth imposed by customers, suppliers or landlords under contracts entered into in the ordinary course of business;

(8) existing pursuant to purchase money and capital lease obligations for property acquired in the ordinary course of business;

(9) restrictions or conditions contained in any trading, netting, operating, construction, service, supply, purchase or other agreement to which the Company or any of its Subsidiaries is a party entered into in the ordinary course of business; *provided* that such agreement prohibits the encumbrance solely of the property or assets of the Company or such Subsidiary (or their respective Subsidiaries) that are the subject of such agreement, the payment rights arising thereunder or the proceeds thereof and does not extend to any other asset or property of the Company or such Subsidiary or any other assets or property of any other Subsidiary;

(10) pursuant to agreements governing other Debt not prohibited to be incurred under Section 4.11 or contained or arising in connection with any Reinsurance Agreement or agreement entered into by an Insurance Subsidiary and any amendments, restatements, modifications, renewals, supplements, refundings, replacements or refinancings of those agreements; *provided* that the restrictions therein do not materially adversely affect the ability of the Company to make interest, principal and redemption payments on the Notes; and

(11) with respect to clause (4) above, customary encumbrances, restrictions or conditions with respect to the leasing of vessels similar to those contained in the credit documents evidencing Debt permitted under Section 4.11(b)(17).

(c) For purposes of determining compliance with this Section 4.10, (i) the priority of any Preferred Stock in receiving dividends or liquidating distributions prior to dividends or liquidating distributions being paid on common stock or other Preferred Stock shall not be deemed a restriction on the ability to make distributions on Equity Interests and (ii) the subordination of loans or advances made to the Company or any Subsidiary to other Debt Incurred by the Company or any such Subsidiary shall not be deemed a restriction on the ability to make loans or advances.

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

(a) The Company will not, nor will it permit any of its Restricted Subsidiaries, to Incur any Debt.

(b) Notwithstanding the provisions of Section 4.11(a), the Company and, to the extent provided below, any Restricted Subsidiary may Incur the following (“*Permitted Debt*”):

(1) Debt (which may include letters of credit) of the Company or any Subsidiary Guarantor constituting First-Out Obligations for which the Authorized Representative of such Debt holders has executed a joinder to the Collateral Trust Agreement as provided therein and Permitted Refinancing Debt with respect thereto in an aggregate principal amount outstanding at the date of Incurrence not to exceed \$15.0 million;

(2) intercompany Debt between or among the Company and any of its Restricted Subsidiaries; *provided, however,* that:

(A) if the Company or any Subsidiary Guarantor is the obligor on such Debt and the payee is not the Company or a Subsidiary Guarantor, such Debt must be unsecured and expressly subordinated to the prior payment in full in cash of all Obligations then due with respect to the Notes, in the case of the Company, or the Note Guarantee, in the case of a Subsidiary Guarantor; and

(B) (i) any subsequent issuance or transfer of Equity Interests that results in any such Debt being held by a Person other than the Company or a Restricted Subsidiary of the Company and (ii) any sale or other transfer of any such Debt to a Person that is not either the Company or a Restricted Subsidiary of the Company, will be deemed, in each case, to constitute an incurrence of such Debt by the Company or such Restricted Subsidiary, as the case may be, that was not permitted by this Section 4.11(b)(2);

(3) Debt of the Company pursuant to the Convertible Notes and Permitted Refinancing Debt with respect thereto;

(4) Debt of the Company pursuant to the Notes and Debt of any Subsidiary Guarantor pursuant to a Note Guarantee;

(5) Debt constituting an extension or renewal of, replacement of, or substitution for, or issued in exchange for, or the net proceeds of which are used to repay, redeem, repurchase, refinance or refund, including by way of defeasance (all of the foregoing, for purposes of this

clause, “*refinance*”) then outstanding Debt in an amount not to exceed the principal amount of the Debt so refinanced, plus interest, premiums, fees and expenses (“*Permitted Refinancing Debt*”); *provided that*

(A) if the Debt to be refinanced is Subordinated Debt, the new Debt, by its terms or by the terms of any agreement or instrument pursuant to which it is outstanding, is expressly made subordinate in right of payment to the Notes at least to the extent that the Debt to be refinanced is subordinated to the Notes or the Note Guarantees (as applicable),

(B) if the Debt to be refinanced is Subordinated Debt or unsecured Debt of the Company or a Subsidiary Guarantor, the new Debt does not have a Stated Maturity prior to the earlier of (i) the Stated Maturity of the Notes and (ii) the Stated Maturity of the Debt to be refinanced, and the Average Life of the new Debt is at least equal to the earlier of (i) the Stated Maturity of the Notes and (ii) the remaining Average Life of the Debt to be refinanced;

(C) Debt Incurred pursuant to clauses (1), (2), (6), (7), (9), (10), (11), (12), (14), (16), (17) and (18) of this Section 4.11(b) may not be refinanced pursuant to this clause; and

(D) in no event may Debt of the Company or any Subsidiary Guarantor be refinanced pursuant to this clause by means of any new Debt of a Restricted Subsidiary that is not a Subsidiary Guarantor;

(6) Hedging Agreements of the Company or any Restricted Subsidiary entered into in the ordinary course of business for the purpose of managing risks associated with the business of the Company or its Subsidiaries and not for speculation;

(7) Debt of the Company or any Restricted Subsidiary with respect to (A) letters of credit and bankers’ acceptances, including letters of credit supporting performance, surety or appeal bonds, workers’ compensation claims, health, disability or other benefits to employees or former employees or their families or property, casualty or liability insurance or self-insurance, and letters of credit in connection with the maintenance of, or pursuant to the requirements of, environmental or other permits or licenses from governmental authorities, or other Debt with respect to reimbursement type obligations regarding workers’ compensation claims and (B) indemnification, adjustment of purchase price, earn-out or similar obligations incurred in connection with the acquisition or disposition of any business or assets;

(8) Debt of the Company and any Restricted Subsidiary outstanding on the Issue Date (and not otherwise constituting Permitted Debt under clauses (1), (4) or (16) of this Section 4.11(b));

(9) subject to the proviso in Section 4.11(b)(23), the Guarantee by the Company or any Restricted Subsidiary of Debt of the Company or a Restricted Subsidiary of the Company, to the extent that the guaranteed Debt was permitted to be incurred by another provision of this covenant; *provided that* if the Debt being guaranteed is subordinated to or *pari passu* with the Notes, then the Guarantee must be subordinated or *pari passu*, as applicable, to the same extent as the Debt guaranteed;

(10) Debt of the Company or any Restricted Subsidiary Incurred on or after the Issue Date not otherwise permitted in an aggregate principal amount outstanding on the date of Incurrence not to exceed \$10.0 million;

(11) Debt arising from endorsing instruments of deposit and from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds, in each case, in the ordinary course of business; *provided* that such Debt is extinguished within five business days of Incurrence;

(12) Debt of the Company or any Restricted Subsidiary consisting of the financing of insurance premiums;

(13) [Reserved];

(14) Debt, which may include Capital Leases, Incurred on or after the Issue Date no later than 180 days after the date of acquisition, or completion of installation, construction, repair or improvement of property, for the purpose of financing all or any part of the cost of the acquisition, installation, construction, repair or improvement of property in an aggregate principal amount outstanding on the date of Incurrence not to exceed \$10.0 million at any one time outstanding;

(15) Debt incurred or acquired in connection with the GrayWolf Merger as described in the section titled “Summary—Recent Developments—GrayWolf Industrial Acquisition” of the Offering Memorandum and Permitted Refinancing Debt with respect thereto; *provided* that any Preferred Stock or Debt issued to a Restricted Subsidiary of the Company that is not a Subsidiary Guarantor in connection with the GrayWolf Merger must be issued by a Subsidiary Guarantor (in each case, other than Preferred Stock or Debt issued by DBM Global to DBM Intermediate) (provided that DBM Intermediate is a Subsidiary Guarantor);

(16) Debt of DBM Global and its Subsidiaries in an aggregate principal amount outstanding at the date of Incurrence not to exceed the greater of \$90.0 million and the Borrowing Base and Permitted Refinancing Debt with respect thereto;

(17) Debt of Global Marine and its Subsidiaries consisting of Purchase Money Obligations, for the purpose of financing all or any part of the cost of the acquisition or design, installation, construction, repair or improvement of marine assets in an aggregate principal amount outstanding at the date of Incurrence not to exceed 75% of the cost of such acquisition or anticipated cost of such design, installation, construction, repair or improvement (determined at the time of such Incurrence), as the case may be and Permitted Refinancing Debt with respect thereto;

(18) Debt of ANG and its Subsidiaries consisting of Purchase Money Obligations, for the purpose of financing all or any part of the cost of the acquisition or design, installation, construction, repair or improvement of gas distribution facilities and related assets in an aggregate principal amount outstanding at the date of Incurrence not to exceed 65% of the cost of such acquisition or anticipated cost of such design, installation, construction, repair or improvement (determined at the time of such Incurrence), as the case may be and Permitted Refinancing Debt with respect thereto;

(19) [Reserved];

(20) Debt in connection with Permitted Transactions entered into by Insurance Subsidiaries;

(21) Non-Recourse Debt of Insurance Subsidiaries incurred in the ordinary course of business resulting from the sale or securitization of non-admitted assets, policy loans, CBOs and CMOs;

(22) [Reserved]; and

(23) Debt of HC2 Broadcasting Holdings Inc. and its Restricted Subsidiaries to fund acquisition and other Investments, including capital expenditures, and working capital requirements of HC2 Broadcasting Holdings Inc. and its Restricted Subsidiaries; *provided* that no Subsidiary of the Company (other than HC2 Broadcasting Holdings Inc. or any of its Restricted Subsidiaries) shall Guarantee such Debt.

(c) Notwithstanding any other provision of this Section 4.11, for purposes of determining compliance with this covenant, increases in Debt solely due to fluctuations in the exchange rates of currencies will not be deemed to exceed the maximum amount that the Company or a Restricted Subsidiary may Incur under this covenant. For purposes of determining compliance with any U.S. dollar-denominated restriction on the Incurrence of Debt, the U.S. dollar-equivalent principal amount of Debt or the financial measure denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Debt was Incurred; *provided* that if such Debt is Incurred to refinance other Debt denominated or based on a financial measure in a foreign currency, and such refinancing would cause the applicable U.S. dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such U.S. dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Debt does not exceed the principal amount of such Debt being refinanced (including, for the avoidance of doubt, interest, premium, fees and expenses). The principal amount of any Debt Incurred to refinance other Debt, if Incurred in a different currency from the Debt being refinanced, shall be calculated based on the currency exchange rate applicable to the currencies in which such respective Debt is denominated that is in effect on the date of such refinancing.

(d) In the event that an item of Debt meets the criteria of more than one of the types of Debt described in this covenant, the Company, in its sole discretion, will classify items of Debt and will only be required to include the amount and type of such Debt in one of such clauses and the Company will be entitled to divide and classify an item of Debt in more than one of the types of Debt described in this covenant, and may, at any time after such Incurrence (based on circumstances existing at such time), change the classification of an item of Debt (or any portion thereof) to any other type of Debt described in this covenant at any time. For the avoidance of doubt, Convertible Preferred Stock may only be refinanced with (i) the net proceeds from the issuance of Qualified Equity Interests, (ii) the net proceeds from the issuance of any new issuance of preferred stock of the Company, (iii) an exchange for common stock of the Company or a different class of preferred stock of the Company, and not, in each case, for the avoidance of doubt, for Debt (other than Debt consisting of preferred stock of the Company) or (iv) cash on hand (other than cash on hand at the Company, any Subsidiary Guarantor or any Specified Operating Subsidiary), provided that cash on hand at the Company shall not be deemed to include cash used to refinance Convertible Preferred Stock substantially concurrent with the dividend to the Company of such cash from a subsidiary of the Company that is not a Specified Operating Subsidiary.

(e) Neither the Company nor any Subsidiary Guarantor may Incur any Debt that is subordinated in right of payment to other Debt of the Company or the Subsidiary Guarantor unless such Debt is also subordinated in right of payment to the Notes or the relevant Note Guarantee, as applicable, on substantially identical terms. This does not apply to distinctions between categories of Debt that exist by reason of any

Liens or Guarantees securing or in favor of some but not all of such Debt, or by reason of Liens of different seniority or priority.

(f) Accrual of interest or dividends, the accretion of accreted value, the accretion or amortization of original issue discount or liquidation preference, the payment of interest or dividends in the form of additional Debt, shares of Preferred Stock or Disqualified Equity Interests or the reclassification of commitments or obligations not treated as Debt due to a change in GAAP will not be deemed to be an Incurrence of Debt for purposes of this covenant. Notwithstanding any other provision of this covenant, the maximum amount of then-outstanding Debt permitted to be Incurred under any provision of this covenant shall not be deemed to be exceeded solely as a result of fluctuations in the applicable Borrowing Base, EBITDA or Loan Collateral amount or value subsequent to the date of such Incurrence.

(g) Additionally, in the case of clauses (1), (10), (14), (15), (16), (17) and (18) of Section 4.11(b), the aggregate amount of Debt permitted to be incurred under such clause shall be increased by the amount of interest, premiums, fees and expenses refinanced, paid or incurred in connection with any refinancing of Debt incurred under such clause.

Section 4.12 *Asset Sales; Specified Asset Sales.*

(a) Neither the Company nor any of its Restricted Subsidiaries will make any Asset Sale unless the following conditions are met:

(1) The Asset Sale is for fair market value (as of the date on which the binding agreement related thereto is entered into), as determined by the Company or the applicable Restricted Subsidiary, which determination, if in excess of \$15.0 million, shall be set forth in an Officer's Certificate executed on behalf of the Company or such Restricted Subsidiary by the chief financial, accounting or executive officer of the Company or, at the option of the Company, such Restricted Subsidiary.

(2) At least 75% of the consideration consists of cash or Cash Equivalents; *provided* that, notwithstanding anything to the contrary herein, 100% of the consideration for a Specified Asset Sale shall consist of cash. For purposes of this clause (2), each of the following shall be deemed to be Cash Equivalents:

(A) the assumption by the purchaser, or cancellation, of Debt or other obligations (other than Subordinated Debt) of the Company or a Restricted Subsidiary (including, without limitation, liabilities relating to insurance products) pursuant to a customary novation agreement or acknowledgment of such cancellation; *provided* that such cancellation permanently retires such Debt (and in the case of a revolving credit facility, permanently reduces the commitment thereunder by such amount), and

(B) instruments or securities received from the purchaser that are promptly, but in any event within 120 days of receipt, converted by the Company to Cash Equivalents, to the extent of the Cash Equivalents actually so received.

(b) If an Asset Sale is consummated, the Company may elect to redeem up to the maximum aggregate amount of Notes that can be redeemed with the Net Cash Proceeds therefrom (an "*Asset Sale Redemption*"), at a redemption price equal to 104.5% (100% if such redemption would occur on or after June 1, 2020) of the principal amount thereof, plus accrued and unpaid interest, to the redemption date (subject to the right of holders of record on the relevant record date to receive interest due on the relevant

interest payment date); *provided* that such redemption shall occur within 60 days after the date on which any such Net Cash Proceeds are received upon not less than 30 nor more than 60 days' notice (an "*Asset Sale Redemption Notice*") sent electronically or mailed to each holder of Notes being redeemed and otherwise in accordance with the procedures set forth herein. An Asset Sale Redemption Notice may not be conditional. If the Company does not so send or mail an Asset Sale Redemption Notice for the maximum aggregate amount of Notes that can be redeemed (at the redemption price set forth in the preceding sentence) with the proceeds from such Asset Sale on or prior to the 30th day following the receipt of the Net Cash Proceeds therefrom (such date, the "*Election Date*"), the Company shall, on or prior to the Election Date, make an Offer to Purchase (an "*Offer to Purchase*") the maximum aggregate principal of Notes that can be purchased with the Net Cash Proceeds from such Asset Sale (after giving effect to any redemption made pursuant to the preceding sentence) at a purchase price equal 104.5% (100% if such purchase would occur on or after June 1, 2020) of the principal amount thereof, plus accrued and unpaid interest, to the date of repurchase. Following an Offer to Purchase, any remaining Net Cash Proceeds not applied to redeem or repurchase the Notes may be used for any purpose not otherwise prohibited by this Indenture.

(c) If the Offer to Purchase is for less than all of the outstanding Notes and Notes in an aggregate principal amount in excess of the purchase amount are tendered and not withdrawn pursuant to the offer, the Company will purchase Notes having an aggregate principal amount equal to the purchase amount on a pro rata basis, by lot or any other method that the Trustee in its sole discretion deems fair and appropriate with adjustments so that only Notes in denominations of \$2,000 principal amount and higher integral multiples of \$1,000 will remain outstanding after such purchase. An "Offer to Purchase" must be made by written offer, which will specify the principal amount of Notes subject to the offer and the purchase price. The offer must specify an expiration date (the "*expiration date*") not less than 30 days or more than 60 days after the date of the offer and a settlement date for purchase (the "*purchase date*") not more than five business days after the expiration date. The offer will also contain instructions and materials necessary to enable Holders to tender Notes pursuant to the offer.

(d) Notwithstanding the foregoing, (i) to the extent that any of or all the Net Cash Proceeds of any Asset Sale (other than from a Specified Asset Sale) by a Restricted Subsidiary (x) are prohibited, delayed or restricted by applicable U.S., foreign or local law, rule, regulation, order, permit or grant or a limitation not prohibited by Section 4.10 (a "*Dividend Restriction*"), from being repatriated or distributed to the Company, or (y) would result in a material adverse tax consequence under U.S., foreign or local law or regulation (a "*Material Tax Consequence*"), the portion of such Net Cash Proceeds so affected will not be required to be applied in accordance with this covenant but may be retained by the applicable Restricted Subsidiary so long, but only so long, as applicable U.S., foreign or local law or regulation or a Dividend Restriction prohibits, delays or restricts such repatriation or distribution to the Company or such repatriation or distribution to the Company would result in a Material Tax Consequence (the Company hereby agreeing to cause the applicable Restricted Subsidiary to promptly take all commercially reasonable actions required by the applicable U.S., foreign or local law or regulation to permit such repatriation or distribution), and once such repatriation or distribution of any of such affected Net Cash Proceeds is not prohibited, delayed or restricted under applicable U.S., foreign or local law or regulation or a Dividend Restriction and would not result in a Material Tax Consequence, such repatriation or distribution will be effected and such repatriated or distributed Net Cash Proceeds will be promptly applied in accordance with this covenant if such Net Cash Proceeds have not already been applied in accordance with Sections 4.12(a) through (c) above; and (ii) if such Restricted Subsidiary is not wholly-owned by the Company, such Net Cash Proceeds (other than proceeds from a Specified Asset Sale) shall be reduced by any amounts required to be paid to Persons other than the Company prior to, or in connection with, a distribution of Net Cash Proceeds to the Company. For the avoidance of doubt, "foreign or local law or regulation" shall include, without limitation, any requirement of the U.K. Pension Regulator or similar authority.

(e) The Company will 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 repurchase of the Notes pursuant to this covenant. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Section 4.12, the Company will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under the provisions of this covenant by virtue of such compliance.

Section 4.13 *Transactions with Affiliates.*

(a) The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, enter into, renew or extend any transaction or arrangement including the purchase, sale, lease or exchange of property or assets, or the rendering of any service with any Affiliate of the Company or any Restricted Subsidiary (a “*Related Party Transaction*”), involving payments or consideration in excess of \$2.5 million except upon fair and reasonable terms that taken as a whole are no less favorable to the Company or the Restricted Subsidiary than could be obtained in a comparable arm’s-length transaction with a Person that is not an Affiliate of the Company.

(b) Any Related Party Transaction or series of Related Party Transactions with an aggregate value in excess of \$7.5 million must first be approved by a majority of the relevant Board of Directors who are disinterested in the subject matter of the transaction pursuant to a Board Resolution delivered to the Trustee. Prior to entering into any Related Party Transaction or series of Related Party Transactions with an aggregate value in excess of \$40.0 million, the Company must in addition obtain a favorable written opinion from an independent accounting, appraisal or investment banking firm of national standing as to the fairness of the transaction to the Company and its Restricted Subsidiary from a financial point of view.

(c) The foregoing Sections 4.13(a) and (b) do not apply to:

(%4) any transaction between the Company and any of its Restricted Subsidiaries or between Restricted Subsidiaries of the Company;

(%4) the payment by the Company or one of its Restricted Subsidiaries of reasonable and customary regular fees and compensation to, and reasonable and customary indemnification arrangements and similar payments on behalf of, directors of the Company or any Restricted Subsidiary who are not employees of the Company or such Restricted Subsidiary;

(%4) any Restricted Payments permitted by Section 4.09 hereof and any Permitted Investment;

(%4) transactions or payments, including the award of securities, pursuant to any employee, officer or director compensation or benefit plans or arrangements by the Company or a Restricted Subsidiary entered into in the ordinary course of business, or approved by the Board of Directors of the Company or the applicable Restricted Subsidiary;

(%4) transactions pursuant to any contract or agreement in effect on the Issue Date, as amended, modified or replaced from time to time so long as the terms of the amended, modified or new agreements, taken as a whole, are no less favorable to the Company and any applicable Restricted Subsidiary than those in effect on the date of this Indenture;

(%4) the entering into of a customary agreement providing registration rights to the direct or indirect stockholders of the Company or any Restricted Subsidiary and the performance of such agreements;

(%4) the issuance of Equity Interests (other than Disqualified Equity Interests) of the Company or a Restricted Subsidiary to any Person or any transaction with an Affiliate where the only consideration paid by the Company or any Restricted Subsidiary is Equity Interests (other than Disqualified Equity Interests) of the Company or such Restricted Subsidiary or any contribution to the capital of the Company or a Restricted Subsidiary;

(%4) the entering into of any tax sharing agreement or arrangement or any other transactions undertaken in good faith for the sole purpose of improving the tax efficiency of the Company and its Restricted Subsidiaries;

(%4) (A) transactions with customers, clients, suppliers or purchasers or sellers of goods or services, or transactions otherwise relating to the purchase or sale of goods or services, in each case in the ordinary course of business and otherwise in compliance with the terms of this Indenture, (B) transactions with joint ventures entered into in ordinary course of business and consistent with past practice or industry norm or (C) any management services or support agreement entered into on terms consistent with past practice or approved by a majority of the Board of Directors of the Company or the applicable Restricted Subsidiary (in each case, including a majority of the disinterested directors) in good faith;

(%4) transactions permitted by, and complying with, the provisions of Section 5.01 hereof, or any merger, consolidation or reorganization of the Company or a Restricted Subsidiary with an Affiliate, solely for the purposes of reincorporating the Company or such Restricted Subsidiary in a new jurisdiction;

(%4) (a) transactions between the Company or any of its Restricted Subsidiaries and any Person that is an Affiliate solely because one or more of its directors is also a director of the Company or the Restricted Subsidiary; *provided* that such director abstains from voting as a director of the Company or the Restricted Subsidiary on any matter involving such other Person, (b) transactions entered into with any of the Company's or its Restricted Subsidiaries or Affiliates for shared services, facilities and/or employee arrangements entered into on commercially reasonable terms (as determined in good faith by the Company or the applicable Restricted Subsidiary), (c) transactions between the Company and any of its Affiliates that is (i) not a Subsidiary of the Company and (ii) is an Affiliate solely because the Company (A) directly or indirectly holds Equity Interests in such Person and/or (B) the Company employees, acting in such capacity, are on the board of, or act in a management capacity with respect to, such Person or (d) transactions between the Company or any of its Restricted Subsidiaries and any Person that is an Affiliate solely because such Person or any of its Affiliates directly or indirectly holds Equity Interests in, is a director of or otherwise acts in a management capacity with respect to, one or more of the Company's Restricted Subsidiaries;

(%4) payments by the Company or any Restricted Subsidiary to any Affiliate for any financial advisory, financing, underwriting or placement services or in respect of other investment banking activities, including in connection with acquisitions or divestitures, which payments are on arms'-length terms and are approved by a majority of the members of the Board of Directors of the Company or the applicable Restricted Subsidiary (in each case, including a majority of the disinterested directors) in good faith;

(%4) any transaction pursuant to which any Affiliate provides the Company and/or its Subsidiaries, at cost, with services, including services to be purchased from third-party providers, such as legal and accounting, tax, consulting, financial advisory, corporate governance, insurance coverage and other services, which transaction is approved by a majority of the members of the Board of Directors of the Company or the applicable Restricted Subsidiary (in each case, including a majority of the disinterested directors) in good faith;

(%4) the entering into of customary investment management contracts between an Affiliate and any Restricted Subsidiary of the Company that, in the ordinary course of its business, makes Investments in private collective investment vehicles (including private collective investment vehicles other than those owned by such Affiliate), which investment management contracts are entered into on commercially reasonable terms and approved by a majority of the members of the Board of Directors of the Company or the applicable Restricted Subsidiary (in each case, including a majority of the disinterested directors) in good faith; and

(%4) transactions in which the Company or any Restricted Subsidiary, as the case may be, delivers to the Trustee a letter from an independent accounting, appraisal or investment banking firm of national standing stating that such transaction is fair to the Company or such Restricted Subsidiary from a financial point of view or meets the requirements of clause (a) above.

Section 4.14 *Liens.*

(a) Neither the Company nor any of its Restricted Subsidiaries will, create, incur, assume or otherwise cause or suffer to exist or become effective any Lien of any kind (other than Permitted Liens) upon any of their property or assets, now owned or hereafter acquired.

(b) For purposes of determining compliance with this Section 4.14, (A) a Lien securing an item of Debt need not be permitted solely by reference to one category of permitted Liens described in the definition of “Permitted Liens” but may be permitted in part under any combination thereof and (B) in the event that a Lien securing an item of Debt, Disqualified Equity Interests or Preferred Stock (or any portion thereof) meets the criteria of one or more of the categories of permitted Liens described in the definition of “Permitted Liens,” the Company shall, in its sole discretion, divide, classify or reclassify, or later divide, classify or reclassify, such Lien securing such item of Debt (or any portion thereof) in any manner that complies with this covenant and will only be required to include the amount and type of such Lien or such item of Debt secured by such Lien in one of the clauses of the definition of “Permitted Liens” and such Lien securing such item of Debt will be treated as being Incurred or existing pursuant to only one of such clauses.

(c) With respect to any Lien securing Debt that was permitted to secure such Debt at the time of the Incurrence of such Debt, such Lien shall also be permitted to secure any Increased Amount of such Debt *provided* that such Increased Amount is otherwise permitted to be Incurred. The “Increased Amount” of any Debt shall mean any increase in the amount of such Debt in connection with any accrual of interest or dividends, the accretion of accreted value, the accretion or amortization of original issue discount or liquidation preference, the payment of interest in the form of additional Debt with the same terms, the payment of dividends on Preferred Stock or Disqualified Equity Interests in the form of additional shares of Preferred Stock or Disqualified Equity Interests of the same class, and increases in the amount of Debt outstanding solely as a result of fluctuations in the exchange rate of currencies or increases in the value of property securing Debt described in clause (7) of the definition of “Debt.” Additionally, notwithstanding any other provision of this covenant, the maximum amount of then-outstanding Debt permitted to be secured by a Lien

under any provision of this covenant shall not be deemed to be exceeded solely as a result of fluctuations in the applicable Borrowing Base, EBITDA or Loan Collateral amount or value.

Section 4.15 *Corporate Existence.*

Subject to Article 5 hereof, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect:

(1) its corporate existence, and the corporate, partnership or other existence of each of its Subsidiaries, in accordance with the respective organizational documents (as the same may be amended from time to time) of the Company or any such Subsidiary; and

(2) the rights (charter and statutory), licenses and franchises of the Company and its Subsidiaries; *provided, however,* that the Company shall not be required to preserve any such right, license or franchise, or the corporate, partnership or other existence of any of its Subsidiaries, if the Board of Directors of the Company shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and its Subsidiaries, taken as a whole, and that the loss thereof is not adverse in any material respect to the Holders of the Notes.

Section 4.16 *Repurchase of Notes Upon Change of Control.*

(a) If a Change of Control occurs, each Holder of Notes will have the right to require the Company to repurchase all or any part of that Holder's Notes pursuant to a the terms set forth in this Indenture (a "*Change of Control Offer*"). In the Change of Control Offer, the Company will offer a payment (such payment, a "*Change of Control Payment*") in cash equal to 101% of the aggregate principal amount of Notes repurchased, plus accrued and unpaid interest thereon, to the date of purchase. Within 30 days following any Change of Control, the Company will mail or deliver electronically a notice to each Holder describing the transaction or transactions that constitute the Change of Control and offering to repurchase Notes on the date specified in such notice (the "*Change of Control Payment Date*"), which date shall be no earlier than 30 days and no later than 60 days from the date such notice is mailed or delivered electronically, pursuant to the procedures required by this Indenture and described in such notice. In addition to including information concerning the business of the Company and its Subsidiaries that the Company in good faith believes will enable the Holders to make an informed decision with respect to the Change of Control Offer, the offer shall also state, among other things:

(i) that a Change of Control has occurred and a Change of Control Offer is being made as provided for herein, and that, although Holders are not required to tender their Notes, all Notes that are validly tendered shall be accepted for payment;

(ii) the amount of the Change of Control Payment, the expected expiration date of the Change of Control Offer to Purchase and the Change of Control Payment Date;

(iii) that any Note accepted for payment pursuant to the Change of Control Offer (and duly paid for on the Change of Control Payment Date) shall cease to accrue interest after the Change of Control Payment Date;

(iv) that any Notes (or portions thereof) not validly tendered shall continue to accrue interest;

(v) that any Holder electing to have a Note purchased pursuant to any Change of Control Offer to shall be required to surrender the Note, with the form entitled "Option of Holder to Elect Purchase" on the reverse of the Note completed, or transfer by book-entry transfer, to the Company, a depository, if appointed by the Company, or a Paying Agent at the address specified in the notice at least one (1) Business Day before the Change of Control Payment Date; and

(vi) the instructions and any other information necessary to enable Holders to tender their Notes (or portions thereof) and have such Notes (or portions thereof) purchased pursuant to the Change of Control Offer.

(b) A Change of Control Offer may be made in advance of a Change of Control, conditional upon such Change of Control, if a definitive agreement is in place for the Change of Control at the time of making of the Change of Control Offer. The Company will 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 repurchase of the Notes as a result of a Change of Control. To the extent that the provisions of any securities laws or regulations conflict with the Change of Control provisions of this Indenture, the Company will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under the Change of Control provisions of this Indenture by virtue of such compliance.

(c) On or before the Change of Control Payment Date, the Company will, to the extent lawful:

(1) accept for payment all Notes or portions thereof properly tendered pursuant to the Change of Control Offer;

(2) deposit with the paying agent an amount equal to the Change of Control Payment in respect of all Notes or portions thereof properly tendered; and

(3) deliver or cause to be delivered to the Trustee the Notes so accepted together with an Officer's Certificate stating the aggregate principal amount of Notes or portions thereof being purchased by the Company.

(d) The paying agent will promptly mail or wire transfer to each Holder of Notes properly tendered the Change of Control Payment for such Notes, and the Trustee will promptly authenticate and mail (or cause to be transferred by book entry) to each Holder a new Note equal in principal amount to any unpurchased portion of the Notes surrendered, if any; *provided* that such new Note will be in a principal amount of \$2,000 or a higher integral multiple of \$1,000.

(e) The Company will not be required to make a Change of Control Offer upon a Change of Control if (1) a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Indenture applicable to a Change of Control Offer made by the Company and purchases all Notes validly tendered and not withdrawn under such Change of Control Offer or (2) notice of redemption has been given with respect to all the Notes pursuant to Section 3.07 hereof, unless and until there is a default in payment of the applicable redemption price.

(f) If Holders of not less than 90% in aggregate principal amount of the outstanding Notes validly tender and do not withdraw such Notes in a Change of Control Offer and the Company, or any third party making a Change of Control Offer in lieu of the Company as described above, purchases all of the Notes validly tendered and not withdrawn by such holders, the Company or such third party will have the right, upon not less than 10 nor more than 60 days' prior notice, given not more than 30 days following such

purchase pursuant to the Change of Control Offer described above, to redeem all Notes that remain outstanding following such purchase at a price in cash equal to 101% of the principal amount thereof plus accrued and unpaid interest to but excluding the date of redemption.

(g) Notes repurchased by the Company pursuant to a Change of Control Offer will have the status of Notes issued but not outstanding or will be retired and cancelled at the option of the Company. Notes purchased by a third party pursuant to this Section 4.16 will have the status of Notes issued and outstanding.

Section 4.17 Limitation on Sale and Leaseback Transactions.

(a) Neither the Company nor any of its Restricted Subsidiaries will enter into any Sale and Leaseback Transaction with respect to any property or asset unless the Company or the Restricted Subsidiary would be entitled to:

(1) Incur Debt in an amount equal to the Attributable Debt with respect to such Sale and Leaseback Transaction pursuant to Section 4.11 hereof, and

(2) create a Lien on such property or asset securing such Attributable Debt without equally and ratably securing the Notes pursuant to Section 4.14 hereof, in which case, the corresponding Debt and Lien will be deemed Incurred pursuant to those provisions.

Section 4.18 Additional Note Guarantees.

If any Domestic Subsidiary of the Company (other than an Insurance Subsidiary) Guarantees any Debt of the Company or a Subsidiary Guarantor after the date of this Indenture, then that Domestic Subsidiary will within 15 business days of the date on which it Guarantees any Debt of the Company or a Subsidiary Guarantor (i) execute and deliver to the Trustee a supplemental indenture substantially in the form attached to this Indenture pursuant to which such Domestic Subsidiary will guarantee the Notes, and (ii) execute and deliver to the Collateral Trustee joinder agreements or other similar agreements with respect the applicable Security Documents. Each Guarantee shall be automatically released as described under Section 11.05. The form of such supplemental indenture is attached as Exhibit F hereto.

Section 4.19 No Impairment of Security Interests.

Neither the Company nor any of the Subsidiary Guarantors shall take any action, or knowingly omit to take any action, which action or omission could reasonably be expected to have the result of materially impairing the perfection or priority of the security interest with respect to the Collateral for the benefit of the Trustee, the Collateral Trustee and the holders of Notes.

Section 4.20 Advances to Subsidiaries.

All Advances to Restricted Subsidiaries made by the Company after the date of this Indenture will be evidenced by intercompany notes in favor of the Company. These intercompany notes will be pledged pursuant to the Security Documents as Collateral to secure the Notes.

Section 4.21 Real Estate Mortgages and Filings

With respect to any Mortgaged Property owned in fee by the Company or any Subsidiary Guarantor, the Company or such Subsidiary Guarantor shall use commercially reasonable efforts to, within 90 days of the later of (x) the Issue Date and (y) the acquisition thereof:

(1) deliver to the Collateral Trustee, as mortgagee, for the benefit of the Holders of the Notes, fully executed counterparts of Mortgages, duly executed by the Company or the applicable Subsidiary Guarantor, as the case may be, and corresponding UCC fixture filings, together with evidence of the completion (or satisfactory arrangements for the completion) of all recordings and filings of such Mortgages and corresponding UCC fixture filings as may be necessary to create a valid, perfected Lien, subject to Permitted Liens, against the Premises purported to be covered thereby;

(2) deliver to the Collateral Trustee, (i) mortgagee's title insurance policies in favor of the Collateral Trustee in an amount equal to 100% of the fair market value of the Premises purported to be covered by the related Mortgages, insuring that title to such property is marketable and that the interests created by the Mortgage constitute valid Liens thereon free and clear of all Liens, defects and encumbrances other than Permitted Liens, and such policies shall also include, to the extent available and issued at commercially reasonable rates, customary endorsements and shall be accompanied by evidence of the payment in full (or satisfactory arrangements for the payment in full) of all premiums thereon and (ii) such affidavits, certificates, instruments of indemnification and other items (including a so-called "gap" indemnification) as shall be reasonably required to induce the title insurer to issue the title insurance policies and endorsements referenced herein with respect to each of the Premises;

(3) other than with respect to any Premises owned by the Company or a Subsidiary Guarantor on the Issue Date, deliver to the Collateral Trustee either (i) new ALTA surveys or (ii) the most recent existing surveys of such Premises, together with either (y) an updated survey certification in favor of the Collateral Trustee from the applicable surveyor stating that, based on a visual inspection of the property and the knowledge of the surveyor, there has been no change in the facts depicted in the survey or (z) an affidavit and/or indemnity from the Company or the applicable Subsidiary Guarantor, as the case may be, stating that, to its knowledge, there has been no change in the facts depicted in the survey, other than, in each case, changes that do not materially adversely affect the use by the Company or such Subsidiary Guarantor, as applicable, of such Premises for the Company or such Subsidiary Guarantor's business as so conducted at such Premises and in each case (i) and (ii), in form and substance sufficient for the title insurer issuing the title policies to remove the standard survey and survey-related exceptions from such policies and issue the survey, survey-related, and other endorsements required pursuant to clause (2) above to such policy;

(4) deliver opinions of counsel to the Collateral Trustee in the jurisdictions where such Premises are located and the jurisdiction of the Company or the applicable Subsidiary Guarantor, as the case may be, in each case, in form and substance customary in comparable financings, including, but not limited to, opinions stating that such Mortgage (i) has been duly authorized, executed and delivered by the Company or such Subsidiary Guarantor, (ii) constitutes a legal, valid, binding and enforceable obligation of the Company or such Subsidiary Guarantor and (iii) is in proper form for recording in order to create, when recorded in the appropriate recording office, a mortgage Lien on the property and a security interest in that part of the property constituting fixtures, and upon proper recording in the appropriate recording office, the Mortgage will make effective such Lien and security interest intended to be created thereby;

(5) deliver to the Collateral Trustee FEMA Standard Flood Hazard Determinations with respect to each of the Premises, notice about special flood hazard area status and flood disaster assistance, and, in the event any such Premises is located in a special flood hazard area, evidence of flood insurance;

(6) such other information, documentation, and certifications as may be necessary in order to create valid, perfected and subsisting Liens against the Premises covered by the Mortgages; and

(7) deliver to the Collateral Trustee an Officer's Certificate that the foregoing requirements have been satisfied.

Section 4.22 *Further Assurances; Insurance.*

(a) The Company and each Subsidiary Guarantor will take such further actions with respect to the Collateral, and execute and/or deliver to the Collateral Trustee and/or file such additional mortgages, financing statements, amendments, assignments, agreements, supplements, powers and instruments, as may be required from time to time in order to:

(1) create, perfect, preserve and protect the security interest in the Collateral and the rights and interests of the Collateral Trustee under the Security Documents;

(2) carry into effect the purposes of the Security Documents or better to assure and confirm the validity, enforceability and priority of the Collateral Trustee's security interest in the Collateral as provided in the Security Documents;

(3) permit the Collateral Trustee to exercise and enforce its rights, powers and remedies hereunder with respect to any Collateral in accordance with the Security Documents, including the filing of financing statements, continuation statements and other documents under the UCC (or other similar laws) in effect in any jurisdiction with respect to the security interest created in the Collateral (*provided, however*, that it shall be the Company's obligation to make all such filings) and, to the extent required by the Security Documents, the execution and delivery of Control Agreements; and

(4) perfect, continue and maintain the validity, enforceability and priority of the security interest in the Collateral as provided herein and to preserve the other rights and interests granted to the Collateral Trustee hereunder, as against third parties, with respect to the Collateral.

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

(c) the Company and each Subsidiary Guarantor will keep their respective material properties adequately insured at all times by financially sound and reputable insurers (including title insurance), maintain such liability and other insurance as is customary for companies in the same or similar business operating in the same or similar locations and maintain such other insurance as may be required by law.

Section 4.23 *Effectiveness of Covenants.*

(a) After the Issue Date, following the first day: (i) the Notes have Investment Grade Ratings from both Rating Agencies; and (ii) no Default has occurred and is continuing under this Indenture; the Company and its Restricted Subsidiaries shall not be subject to Sections 4.03, 4.09, 4.10, 4.11, 4.12, 4.13, 4.26, 4.27 and 5.01(a)(3) (collectively, the “*Suspended Covenants*”).

(b) In the event that the Company and the Restricted Subsidiaries are not subject to the Suspended Covenants for any period of time as a result of the foregoing, and on any subsequent date (the “*Reversion Date*”) the condition set forth in Section 4.23(a)(i) is no longer satisfied, then the Company and the Restricted Subsidiaries will thereafter again be subject to the Suspended Covenants with respect to future events.

(c) On each Reversion Date, all Debt Incurred during such time as the covenants referenced in Section 4.23(a) are suspended (a “*Suspension Period*”) prior to such Reversion Date will be deemed to be Debt Incurred pursuant to Section 4.11(b)(8) hereof. Notwithstanding that the Suspended Covenants may be reinstated, no Default or Event of Default shall be deemed to have occurred as a result of a failure to comply with the Suspended Covenants during a Suspension Period (or on the Reversion Date after a Suspension Period based solely on events that occurred during the Suspension Period).

(d) The Company shall deliver to the Trustee an Officer’s Certificate notifying the Trustee of any Reversion Date or the commencement of any Suspension Period and certifying that such suspension or reinstatement complied with the foregoing provisions, and in no event shall the Trustee be charged with the knowledge of such Suspension Period or Reversion Date, except to the extent that a Trust Officer has received such Officer’s Certificate. In the case of a Suspension Period such notice shall list the Suspended Covenants.

Section 4.24 *Limited Condition Transaction.*

With respect to any Limited Condition Transaction and any actions or transactions related thereto (including acquisitions, Investments, the incurrence or issuance of Debt, Disqualified Equity Interests or Preferred Stock and the use of proceeds thereof, the incurrence of Liens, repayments, Restricted Payments and Asset Sales) or similar Investment for which the Company or any of its Restricted Subsidiaries may not terminate its obligations due to a lack of financing for such Limited Condition Transaction (whether by merger, consolidation or other business combination or the acquisition of Capital Stock or otherwise) as applicable, for purposes of determining:

- (1) whether any Debt (including Acquired Indebtedness) that is being incurred in connection with such Limited Condition Transaction is permitted to be incurred in compliance with the Section 4.11;
- (2) whether any Lien being incurred in connection with such Limited Condition Transaction or to secure any such Debt is permitted to be incurred in accordance with Section 4.14 or the definition of “Permitted Liens”;
- (3) whether such Limited Condition Transaction complies with the covenants or agreements contained in this Indenture or the Notes; and
- (4) any calculation of the Borrowing Base, Collateral Coverage Ratio, Consolidated Net Income, Consolidated Amortization Expense, Consolidated Depreciation Expense, Consolidated Interest Expense, Consolidated Secured Debt, EBITDA, Loan Collateral, Loan Collateral Fair Market Value, Secured Net Leverage Ratio, Fixed Charge Coverage Ratio and, whether a Default or Event of Default exists in connection with the foregoing, at the option of the Company, the date

that the definitive agreement for such Limited Condition Transaction is entered into (the “*Transaction Agreement Date*”) may be used as the applicable date of determination, as the case may be, in each case with such pro forma adjustments as are appropriate and consistent with the pro forma adjustment provisions set forth in the definition of “Collateral Coverage Ratio”. For the avoidance of doubt, if the Company elects to use the date of the definitive agreement for such Limited Condition Transaction as the applicable date of determination in accordance with the foregoing, (a) any fluctuation or change in the Borrowing Base, Collateral Coverage Ratio, Consolidated Net Income, Consolidated Amortization Expense, Consolidated Depreciation Expense, Consolidated Interest Expense, Consolidated Secured Debt, EBITDA, Loan Collateral, Loan Collateral Fair Market Value, Secured Net Leverage Ratio, Fixed Charge Coverage Ratio and/or any component definition of any of the foregoing of the Company and its Restricted Subsidiaries or the Company and the Subsidiary Guarantors, as applicable, the target business or assets to be acquired subsequent to the Transaction Agreement Date and at or prior to the consummation of such Limited Condition Transaction, will not be taken into account for purposes of determining whether any Debt or Lien that is being incurred in connection with such Limited Condition Transaction is permitted to be incurred or in connection with compliance by the Company or any of the Restricted Subsidiaries with any other provision of this Indenture or the Notes or any other transaction undertaken in connection with such Limited Condition Transaction and (b) until such Limited Condition Transaction is consummated or such definitive agreements are terminated, such Limited Condition Transaction and all transactions proposed to be undertaken in connection therewith (including the incurrence of Debt and Liens) will be given pro forma effect when determining compliance of other transactions (including the incurrence of Debt and Liens unrelated to such Limited Condition Transaction) that are consummated after the Transaction Agreement Date and on or prior to the consummation of such Limited Condition Transaction and any such transactions (including any incurrence of Debt and the use of proceeds thereof) will be deemed to have occurred on the date the definitive agreements are entered and outstanding thereafter for purposes of calculating any baskets or ratios under this Indenture after the date of such agreement and before the consummation of such Limited Condition Transaction; *provided* that in connection with the making of Restricted Payments, the calculation of Consolidated Net Income (and any defined term a component of which is Consolidated Net Income) will not, in any case, assume such Limited Condition Transaction has been consummated.

Section 4.25 *No Investment Company Act Registration.*

Neither the Company nor any Subsidiary Guarantor will register, or be required to register, as an “investment company” as such term is defined in the Investment Company Act of 1940, as amended.

Section 4.26 *Maintenance of Secured Net Leverage Ratio.*

the Company will not permit the Secured Net Leverage Ratio calculated on a Pro Forma Basis after accounting for the net proceeds from any Asset Sale which the Company has determined to apply to the repayment of any Debt, including, but not limited to the net proceeds from any Specified Asset Sale, as of the last day of each fiscal quarter of the Company (determined within 30 days of the end of each such quarter) to exceed 7.75 to 1.00. Notwithstanding anything to the contrary contained herein, for purposes of determining whether an Event of Default has occurred under this Section 4.26 or Section 4.27 any equity contribution (in the form of common equity or Preferred Stock (that is not Disqualified Equity Interests)) made to the Company during the period beginning the day after the last day of any fiscal quarter and ending on or prior to the day that is 40 days after the last day of any fiscal quarter will, at the request of the Company, be included in the calculation of Specified Consolidated EBITDA or Specified Distributions, as applicable, solely for the purposes of determining compliance with such covenants at the end of such fiscal quarter and

any subsequent period that includes such fiscal quarter (any such equity contribution, a “*Specified Equity Contribution*”); *provided* that (a) the Company shall not be permitted to so request that a Specified Equity Contribution be included in the calculation of Specified Consolidated EBITDA or Specified Distributions with respect to any fiscal quarter unless, after giving effect to such requested Specified Equity Contribution, there will be a period of at least two consecutive fiscal quarters in the Relevant Four Fiscal Quarter Period in which no Specified Equity Contribution has been made, (b) the amount of any Specified Equity Contribution and the use of proceeds therefrom will be no greater than the amount required to cause the Company to be in compliance with such covenants, and (c) all Specified Equity Contributions and the use of proceeds therefrom will be disregarded for all other purposes under this Indenture. For purposes of this paragraph, the term “*Relevant Four Fiscal Quarter Period*” shall mean, with respect to any requested Specified Equity Contribution, the four fiscal quarter period ending on (and including) the fiscal quarter in which Specified Consolidated EBITDA or Specified Distributions will be increased as a result of such Specified Equity Contribution. Notwithstanding anything to the contrary herein, if within 40 days of the end of the preceding fiscal quarter, the Company receives Net Cash Proceeds from the sale of its common equity or an equity contribution (in the form of common stock) and such sale or contribution is not designated as a Specified Equity Contribution, then such sale or contribution shall be given pro forma effect as if such Net Cash Proceeds had been received, or such equity contribution had been made, on the last day of the preceding fiscal quarter; *provided* that any such Net Cash Proceeds may not be used to make Restricted Payments or to redeem the Notes pursuant to Section 3.07(b) or paragraph (5)(B) of the Notes.

Section 4.27 *Maintenance of Fixed Charge Coverage Ratio.*

The Company will not permit (i) the Fixed Charge Coverage Ratio calculated as of the last day of each fiscal year of the Company to be less than 1.00 to 1.00 or (ii) HC2 Corporate Overhead paid in cash in any fiscal year, commencing with the fiscal year ending December 31, 2019, to exceed the sum of (x) \$29.0 million for such fiscal year and (y) the net cash proceeds received by the Company from the sale of any Qualified Equity Interests during such fiscal year, in each case, determined within 30 days of the end of each such fiscal year.

Article 5 SUCCESSORS

Section 5.01 *Merger, Consolidation or Sale of Assets.*

(a) The Company shall not, directly or indirectly: (i) consolidate or merge with or into another Person; (ii) sell, convey, transfer or otherwise dispose of all or substantially all of its assets as an entirety or substantially an entirety, in one transaction or a series of related transactions, to any Person; or (iii) permit any Person to merge with or into the Company, unless:

(1) either:

(A) the Company is the continuing Person; or

(B) the resulting, surviving or transferee Person is a corporation organized and validly existing under the laws of the United States of America or any jurisdiction thereof and expressly assumes by supplemental indenture all of the obligations of the Company under this Indenture, the Notes and the Security Documents to which it is a party;

(2) immediately after giving effect to the transaction, no Default has occurred and is continuing;

(3) immediately after giving effect to the transaction on a pro forma basis, the Company or the resulting surviving or transferee Person would be in compliance with Sections 4.03, 4.04, 4.26 and 4.27 hereof (in the case of Sections 4.04, 4.26 and 4.27, calculated on a Pro Forma Basis giving effect to such transaction and, if applicable, the redemption or repurchase of the maximum principal amount of Notes as may be required under Section 4.12(b) as if the date of the transaction was a date on which such covenants are required to be tested); and

(4) the Company delivers to the Trustee an Officer's Certificate and an Opinion of Counsel (on which the Trustee may conclusively and exclusively rely), each stating that the consolidation, merger or transfer and the supplemental indenture (if any) comply with this Indenture; *provided*, that clauses (2) and (3) do not apply (i) to the consolidation or merger of the Company with or into a Wholly Owned Subsidiary or the consolidation or merger of a Wholly Owned Subsidiary with or into the Company or (ii) if, in the good faith determination of the Board of Directors, whose determination is evidenced by a Resolution of the Board of Directors, the sole purpose of the transaction is to change the jurisdiction of incorporation of the Company.

(b) The Company shall not lease all or substantially all of its assets, whether in one transaction or a series of transactions, to one or more other Persons.

(c) The foregoing clauses (a) and (b) shall not apply to (i) any transfer of assets among the Company and a Subsidiary Guarantor, (ii) any transfer of assets among Subsidiary Guarantors or (iii) any transfer of assets by a Subsidiary that is not a Subsidiary Guarantor to (x) another Subsidiary that is not a Subsidiary Guarantor or (y) the Company or any Subsidiary Guarantor.

(d) Upon the consummation of any transaction effected in accordance with these provisions, if the Company is not the continuing Person, the resulting, surviving or transferee Person will succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture and the Notes with the same effect as if such successor Person had been named as the Company in this Indenture. Upon such substitution, except in the case of a sale, conveyance, transfer or disposition of less than all its assets, the Company will be released from its obligations under this Indenture and the Notes.

(e) Notwithstanding anything to the contrary in the foregoing, a Specified Asset Sale shall not constitute a sale, conveyance, transfer or disposal of all or substantially all of the assets of the Company.

Section 5.02 *Successor Corporation Substituted.*

Upon any consolidation or merger, or any sale, assignment, transfer, lease, conveyance or other disposition of all or substantially all of the properties or assets of the Company in a transaction that is subject to, and that complies with the provisions of, Section 5.01 hereof, the successor Person formed by such consolidation or into or with which the Company is merged or to which such sale, assignment, transfer, lease, conveyance or other disposition is made shall succeed to, and be substituted for (so that from and after the date of such consolidation, merger, sale, assignment, transfer, lease, conveyance or other disposition, the provisions of this Indenture referring to the "Company" shall refer instead to the successor Person and not to the Company), and may exercise every right and power of the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein; *provided, however*, that the predecessor Company shall not be relieved from the obligation to pay the principal of, premium on, if any, and interest, if any, on, the Notes except in the case of a sale of all of the Company's assets in a transaction that is subject to, and that complies with the provisions of, Section 5.01 hereof.

Article 6
DEFAULTS AND REMEDIES

Section 6.01 *Events of Default.*

Each of the following is an “*Event of Default*”:

(a) the Company defaults in the payment of the principal of any Note when the same becomes due and payable at maturity, upon acceleration or redemption, or otherwise (other than pursuant to an Offer to Purchase);

(b) the Company defaults in the payment of interest on any Note when the same becomes due and payable, and the default continues for a period of 30 days;

(c) failure by the Company to comply with the provisions of Sections 4.12 or 4.16 hereof or failure by the Company or any of its Restricted Subsidiaries to comply with the provisions of Sections 5.01 or 11.04 hereof;

(d) failure by the Company to comply with the provisions of Section 4.03, 4.04, 4.26 or 4.27 hereof and such default or breach is not cured within (i) 15 days after the date of any default under Section 4.03 or (ii) 45 days after the date of any default under Section 4.04, 4.26 or 4.27;

(e) the Company defaults in the performance of or breaches any other covenant or agreement of the Company in this Indenture, any Security Document or under the Notes and the default or breach continues for a period of 60 consecutive days after written notice to the Company by the Trustee or to the Company and the Trustee by the Holders of 25% or more in aggregate principal amount of the Notes);

(f) the failure by the Company or any Significant Subsidiary to pay any Debt within any applicable grace period after final maturity or the acceleration of any such Debt by the Holders thereof because of a default, in each case, if the total amount of such Debt unpaid or accelerated exceeds \$35.0 million;

(g) one or more final judgments or orders for the payment of money are rendered against the Company or any of its Significant Subsidiaries and are not paid or discharged, and there is a period of 60 consecutive days following entry of the final judgment or order that causes the aggregate amount for all such final judgments or orders outstanding and not paid or discharged against all such Persons to exceed \$35.0 million (in excess of amounts covered under insurance policies provided by policies with creditworthy insurance carriers that have not otherwise been denied or disclaimed) during which a stay of enforcement, by reason of a pending appeal or otherwise, is not in effect;

(h) the Company or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries of the Company that, taken together, would constitute a Significant Subsidiary pursuant to or within the meaning of Bankruptcy Law:

- (1) commences a voluntary case,
- (2) consents to the entry of an order for relief against it in an involuntary case,
- (3) consents to the appointment of a custodian of it or for all or substantially all of its property,

- (4) makes a general assignment for the benefit of its creditors, or
 - (5) generally is not paying its debts as they become due;
- (i) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:
- (1) is for relief against the Company or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries of the Company that, taken together, would constitute a Significant Subsidiary in an involuntary case;
 - (2) appoints a custodian of the Company or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries of the Company that, taken together, would constitute a Significant Subsidiary or for all or substantially all of the property of the Company or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries of the Company that, taken together, would constitute a Significant Subsidiary; or
 - (3) orders the liquidation of the Company or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries of the Company that, taken together, would constitute a Significant Subsidiary;

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

(j) any Note Guarantee of a Significant Subsidiary ceases to be in full force and effect, other than in accordance the terms of this Indenture, or a Guarantor that is a Significant Subsidiary denies or disaffirms its obligations under its Note Guarantee; or

(k) (a) the Liens created by the Security Documents shall at any time not constitute a valid and perfected Lien on any portion of the Collateral (with a fair market value in excess of \$35.0 million) intended to be covered thereby (to the extent perfection by filing, registration, recordation or possession is required by this Indenture or the Security Documents), (b) any of the Security Documents shall for whatever reason be terminated or cease to be in full force and effect (except for expiration in accordance with its terms or amendment, modification, waiver, termination or release in accordance with the terms of this Indenture) or (c) the enforceability of the Liens created by the Security Documents shall be contested by the Company or any Subsidiary Guarantor that is a Significant Subsidiary.

The Trustee shall not be charged with knowledge of an Event of Default unless written notice thereof shall have been given to a Responsible Officer of the Trustee by the Company or another Person.

Section 6.02 *Acceleration.*

If an Event of Default, other than an Event of Default under Section 6.01(h) or (i) with respect to the Company, occurs and is continuing under this Indenture, the Trustee or the Holders of at least 25% in aggregate principal amount of the Notes then outstanding, by written notice to the Company (and to the Trustee if the notice is given by the Holders), may, and the Trustee at the request of such Holders shall, declare the principal of and accrued interest on the Notes to be immediately due and payable. Upon a declaration of acceleration, such principal and interest will become immediately due and payable. If an Event of Default under Section 6.01(h) or (i) occurs with respect to the Company, the principal of and accrued interest on the Notes then outstanding will become immediately due and payable without any declaration or other act on the part of the Trustee or any Holder.

The Holders of a majority in principal amount of the outstanding Notes by written notice to the Company and to the Trustee may waive all past defaults and rescind and annul a declaration of acceleration and its consequences if (i) all existing Events of Default, other than the nonpayment of the principal of, premium, if any, and interest on the Notes that have become due solely by the declaration of acceleration, have been cured or waived, and (ii) the rescission would not conflict with any judgment or decree of a court of competent jurisdiction.

Except as otherwise provided in this section or Section 9.02 below, the Holders of a majority in principal amount of the outstanding Notes may, by written notice to the Trustee, waive an existing Default and its consequences. Upon such waiver, the Default will cease to exist, and any Event of Default arising therefrom will be deemed to have been cured, but no such waiver will extend to any subsequent or other Default or impair any right consequent thereon.

In the event of a declaration of acceleration of the Notes because an Event of Default under Section 6.01(f) has occurred and is continuing, the declaration of acceleration of the Notes shall be automatically annulled if the event of default or payment default triggering such Event of Default pursuant to Section 6.01(f) shall be remedied or cured, or waived by the holders of the Debt, or the Debt that gave rise to such Event of Default shall have been discharged in full, within 30 days after the declaration of acceleration with respect thereto and if (1) the annulment of the acceleration of the Notes would not conflict with any judgment or decree of a court of competent jurisdiction and (2) all existing Events of Default, except nonpayment of principal, premium or interest on the Notes that became due solely because of the acceleration of the Notes, have been cured or waived.

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

If any Default occurs and is continuing and is actually known to a Responsible Officer of the Trustee, the Trustee will send notice of the Default to each Holder within 90 days of the Trustee's receipt of notice of the Default, unless the Default has been cured; *provided* that, except in the case of a default in the payment of the principal of or interest on any Note, the Trustee may withhold the notice if and so long as the Trustee in good faith determines that withholding the notice is in the interest of the Holders.

Section 6.03 *Other Remedies.*

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

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

Section 6.04 *Waiver of Past Defaults.*

The Holders of a majority in aggregate principal amount of the then outstanding Notes by written notice to the Trustee may, on behalf of the Holders of all of the Notes waive any existing Default or Event of Default and its consequences hereunder, except a continuing Default or Event of Default in the payment of principal of, premium on, if any, or interest, if any, on, the Notes (including in connection with an offer to purchase); *provided, however*, that the Holders of a majority in aggregate principal amount of the then outstanding Notes may rescind an acceleration and its consequences, including any related payment default that resulted from such acceleration. Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

Section 6.05 *Control by Majority.*

Holders of a majority in aggregate principal amount of the then outstanding Notes may direct the time, method and place of conducting any proceeding for exercising any remedy available to the Trustee or exercising any trust or power conferred on it. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture that the Trustee determines may be unduly prejudicial to the rights of other Holders of Notes or that may involve the Trustee in personal liability.

Section 6.06 *Limitation on Suits.*

No Holder of a Note may institute any proceeding, judicial or otherwise, with respect to this Indenture or the Notes, or for the appointment of a receiver or Trustee, or for any other remedy with respect to this Indenture or the Notes unless:

- (1) such Holder has previously given the Trustee written notice that an Event of Default is continuing;
- (2) Holders of at least 25% in aggregate principal amount of outstanding Notes have made written request to the Trustee to institute proceedings in respect of the Event of Default in its own name as Trustee under this Indenture;
- (3) Holders have offered to the Trustee indemnity reasonably satisfactory to the Trustee, in its sole discretion, against any losses, claims, costs, liabilities or expenses to be incurred in compliance with such request;
- (4) the Trustee for 60 days after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding; and
- (5) during such 60-day period, the Holders of a majority in aggregate principal amount of the outstanding Notes have not given the Trustee a direction that is inconsistent with such written request.

A Holder of a Note may not use this Indenture to prejudice the rights of another Holder of a Note or to obtain a preference or priority over another Holder of a Note (it being understood that the Trustee does not have an affirmative duty to ascertain whether or not such actions or forbearances are unduly prejudicial to such Holders).

Section 6.07 *Rights of Holders of Notes to Receive Payment.*

Notwithstanding any other provision of this Indenture, the contractual right of any Holder of a Note to receive payment of principal of, premium on, if any, or interest, if any, on the Note, on or after the respective due dates expressed in the Note (including in connection with an offer to purchase), or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder; *provided* that a Holder shall not have the right to institute any such suit for the enforcement of payment if and to the extent that the institution or prosecution thereof or the entry of judgment therein would, under applicable law, result in the surrender, impairment, waiver or loss of the Lien of this Indenture upon any property subject to such Lien. For the avoidance of doubt, no amendment to, or deletion of, any of the covenants described under Article 4 or release of Collateral or Note Guarantees in accordance with Articles 10 and 11 (or Article 9, as applicable), shall be deemed to impair or affect any rights of holders of the Notes to receive payments of principal or interest on their Notes.

Section 6.08 *Collection Suit by Trustee.*

If an Event of Default specified in Section 6.01(a) or (b) hereof occurs and is continuing, without the possession of any of the Notes or the production thereof in any proceeding related thereto, 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 of principal of, premium on, if any, and interest, if any, remaining unpaid on the Notes and interest on overdue principal and, to the extent lawful, interest and such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee (including without limitation any amounts due to the Trustee pursuant to Section 7.07 hereof), its agents and counsel.

Section 6.09 *Trustee May File Proofs of Claim.*

The Trustee is authorized to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and the Holders of the Notes allowed in any judicial proceedings relative to the Company (or any other obligor upon the Notes), its creditors or its property and shall be entitled and empowered to collect, receive and distribute any money or other property payable or deliverable on any such claims and any custodian in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.07 hereof. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.07 hereof out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

Section 6.10 *Priorities.*

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

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

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

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

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

Section 6.11 *Undertaking for Costs.*

In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as a Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.11 does not apply to a suit by the Trustee, a suit by a Holder of a Note pursuant to Section 6.07 hereof, or a suit by Holders of more than 10% in aggregate principal amount of the then outstanding Notes.

Article 7 TRUSTEE

Section 7.01 *Duties of Trustee.*

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

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

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

(2) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, the Trustee will examine the certificates and opinions to determine whether or not they conform on their face 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 liabilities for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

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

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

(3) the Trustee will not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to the terms hereof.

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

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

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

Section 7.02 *Rights of Trustee.*

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

(b) Before the Trustee acts or refrains from acting, it may require an Officer's 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 Officer's 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.

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

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

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

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

(g) Except with respect to Section 4.01 hereof, the Trustee shall have no duty to inquire as to the performance of the Company with respect to the covenants contained in Article 4 hereof. In addition, the

Trustee shall not be deemed to have knowledge of an Event of Default except (i) any Default or Event of Default occurring pursuant to Section 4.01 or (ii) any Default or Event of Default of which a Responsible Officer of the Trustee shall have received written notification or obtained actual knowledge.

(h) In no event shall the Trustee 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) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

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

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

(k) 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.

Section 7.03 *Individual Rights of Trustee.*

The Trustee in its individual or any other capacity may become the owner or pledgee of Notes and may otherwise deal with the Company or any Affiliate of the Company with the same rights it would have if it were not Trustee. However, in the event that the Trustee acquires any conflicting interest it must eliminate such conflict within 90 days or resign. Any Agent may do the same with like rights and duties. The Trustee is also subject to Sections 7.09 and 7.10 hereof.

Section 7.04 *Trustee's Disclaimer.*

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

Section 7.05 *Notice of Defaults.*

If a Default or Event of Default occurs and is continuing and if it is actually known to a Responsible Officer of the Trustee, the Trustee will mail to Holders of Notes a notice of the Default or Event of Default within 90 days after receipt of notice of the occurrence of the Event of Default. Except in the case of a Default or Event of Default in payment of principal of, premium on, if any, or interest, if any, on, any Note, the Trustee may withhold the notice if and so long as a Responsible Officer or Responsible Officers in good faith determine that withholding the notice is in the interests of the Holders of the Notes.

Section 7.06 *Reports by Trustee to Holders of the Notes.*

(a) Within 60 days after each November 1 beginning with the November 1 following the date of this Indenture, and for so long as Notes remain outstanding, the Trustee will mail to the Holders of the Notes a brief report dated as of such reporting date.

(b) A copy of each report at the time of its mailing to the Holders of Notes will be mailed by the Trustee to the Company and filed by the Trustee with the SEC and each stock exchange on which the Notes are listed. The Company will promptly notify the Trustee in writing when the Notes are listed on any stock exchange.

Section 7.07 Compensation and Indemnity.

(a) The Company will pay to the Trustee from time to time such compensation as the Company and the Trustee shall from time to time agree to in writing for its acceptance of this Indenture and services hereunder. The Trustee's compensation will not be limited by any law on compensation of a trustee of an express trust. The Company will reimburse the Trustee promptly upon request for all reasonable disbursements, advances and expenses incurred or made by it in addition to the compensation for its services. Such expenses will include the reasonable compensation, disbursements and expenses of the Trustee's agents and counsel.

(b) The Company and the Subsidiary Guarantors will jointly and severally indemnify the Trustee (which for purposes of this Section 7.07 shall include its officers, directors, stockholders, employees, and agents) against any and all losses, liabilities or expenses (including without limitation taxes other than taxes based on the income of the Trustee) incurred by it arising out of or in connection with the acceptance or administration of its duties under this Indenture, including the costs and expenses of enforcing this Indenture against the Company and the Subsidiary Guarantors (including this Section 7.07) and defending itself against any claim (whether asserted by the Company, the Subsidiary Guarantors, any Holder or any other Person) or liability in connection with the exercise or performance of any of its powers or duties hereunder, except to the extent any such claim, loss, liability or expense may be attributable to its negligence or bad faith. The Trustee will notify the Company promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Company will not relieve the Company or any of the Subsidiary Guarantors of their obligations hereunder. The Company or such Subsidiary Guarantor will defend the claim and the Trustee will cooperate in the defense. The Trustee may have separate counsel and the Company will pay the reasonable fees and expenses of such counsel. Neither the Company nor any Subsidiary Guarantor need pay for any settlement made without its consent, which consent will not be unreasonably withheld.

(c) The obligations of the Company and the Subsidiary Guarantors under this Section 7.07 will survive the satisfaction and discharge or termination for any reason of this Indenture, including any termination or rejection hereof under any Bankruptcy Law, or the resignation or removal of the Trustee.

(d) To secure the Company's and the Subsidiary Guarantors' payment obligations in this Section 7.07, the Trustee will have a Lien prior to the Notes on all money or property held or collected by the Trustee, except that held in trust to pay principal of, premium on, if any, or interest, if any, on, particular Notes. Such Lien will survive the satisfaction and discharge or termination for any reason of this Indenture, or the resignation or removal of the Trustee.

(e) In addition, and without prejudice to the rights provided to the Trustee under any provision of this Indenture, when the Trustee incurs expenses or renders services after an Event of Default specified in clause (g) or (h) of Section 6.01 hereof occurs, the expenses and the compensation for the services (including the fees and expenses of its agents and counsel) are intended to constitute expenses of administration under any Bankruptcy Law.

Section 7.08 Replacement of Trustee.

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

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

- (1) the Trustee fails to comply with Section 7.10 hereof;
- (2) the Trustee is adjudged a bankrupt or an insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law;
- (3) a custodian or public officer takes charge of the Trustee or its property; or
- (4) the Trustee becomes incapable of acting.

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

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

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

(f) A successor Trustee will deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Thereupon, the resignation or removal of the retiring Trustee will become effective, and the successor Trustee will have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee will mail a notice of its succession to Holders. The retiring Trustee will promptly transfer all property held by it as Trustee to the successor Trustee; *provided* all sums owing to the Trustee hereunder have been paid and subject to the Lien provided for in Section 7.07 hereof. Notwithstanding replacement of the Trustee pursuant to this Section 7.08, the Company's obligations under Section 7.07 hereof will continue for the benefit of the retiring Trustee.

Section 7.09 *Successor Trustee by Merger, etc.*

If the Trustee consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation, the successor corporation without any further act will be the successor Trustee.

Section 7.10 *Eligibility; Disqualification.*

There will at all times be a Trustee hereunder that is a corporation organized and doing business under the laws of the United States of America or of any state thereof that is authorized under such laws to

exercise corporate trustee power, that is subject to supervision or examination by federal or state authorities and that has a combined capital and surplus of at least \$50.0 million as set forth in its most recent published annual report of condition.

Article 8
LEGAL DEFEASANCE AND COVENANT DEFEASANCE

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

The Company may at any time, at the option of its Board of Directors evidenced by a resolution set forth in an Officer's Certificate, elect to have either Section 8.02 or 8.03 hereof be applied to all outstanding Notes upon compliance with the conditions set forth below in this Article 8.

Section 8.02 *Legal Defeasance and Discharge.*

The Company may irrevocably discharge its obligations under the Notes and this Indenture by irrevocably depositing with the Trustee, in trust, for the benefit of the Holders of the Notes, cash in U.S. dollars, non-callable U.S. Government Obligations, or a combination thereof, in amounts as will be sufficient to pay the principal of, premium on, if any, and interest, if any, on, the outstanding Notes to maturity or redemption within one year, subject to meeting certain other conditions.

The Company may at any time, at the option of its Board of Directors evidenced by a resolution set forth in an Officer's Certificate, elect to have all of its obligations discharged with respect to the outstanding Notes and all obligations of the Subsidiary Guarantors discharged with respect to their Note Guarantees ("*Legal Defeasance*") except for:

- (a) the rights of Holders of outstanding Notes to receive payments in respect of the principal of, premium on, if any, or interest, if any, on, such Notes when such payments are due from the trust referred to below;
- (b) the Company's obligations with respect to the Notes concerning issuing temporary Notes, registration of Notes, mutilated, destroyed, lost or stolen Notes and the maintenance of an office or agency for payment and money for security payments held in trust;
- (c) the rights, powers, trusts, duties and immunities of the Trustee under this Indenture, and the Company's and the Subsidiary Guarantors' obligations in connection therewith; and
- (d) the Legal Defeasance and Covenant Defeasance provisions of this Indenture.

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 of the Subsidiary Guarantors will, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, be released from each of their obligations under Sections 4.03, 4.04, 4.09, 4.10, 4.11, 4.12, 4.13, 4.14, 4.15, 4.16, 4.17, 4.18, 4.19, 4.20, 4.21, 4.22, 4.23, 4.26 and 4.27 hereof and 5.01(a)(3) hereof with respect to the outstanding Notes on and after the date the conditions set forth in Section 8.04 hereof are satisfied (hereinafter, "*Covenant Defeasance*"), and the Notes will thereafter be deemed not

“outstanding” for the purposes of any direction, waiver, consent or declaration or act of Holders (and the consequences of any thereof) in connection with such covenants, but will continue to be deemed “outstanding” for all other purposes hereunder (it being understood that such Notes will not be deemed outstanding for accounting purposes). For this purpose, Covenant Defeasance means that, with respect to the outstanding Notes and Note Guarantees, the Company and the Subsidiary Guarantors may omit to comply with and will have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document and such omission to comply will not constitute a Default or an Event of Default under Section 6.01 hereof, but, except as specified above, the remainder of this Indenture and such Notes and Note Guarantees will be unaffected thereby. In addition, upon the Company’s exercise under Section 8.01 hereof of the option applicable to this Section 8.03, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, Sections 6.01(c) (except to the extent it relates to Section 5.01 (other than Section 5.01(a)(3))), (d), (e), (f), (g), (j) and (k) hereof will not constitute Events of Default.

Section 8.04 *Conditions to Legal or Covenant Defeasance.*

In order to exercise either Legal Defeasance or Covenant Defeasance or discharge the Indenture under either Section 8.02 or 8.03 hereof:

(1) the Company must irrevocably deposit with the Trustee, in trust, for the benefit of the Holders of the Notes, cash in U.S. dollars, non-callable U.S. Government Obligations, or a combination thereof, in amounts as will be sufficient, in the opinion of a nationally recognized investment bank, appraisal firm or firm of independent public accountants reasonably satisfactory to the Trustee, to pay the principal of, premium on, if any, and interest, if any, on, the outstanding Notes on the stated date for payment thereof or on the applicable redemption date, as the case may be, and the Company must specify whether the Notes are being defeased to such stated date for payment or to a particular redemption date;

(2) in the case of Legal Defeasance, the Company must deliver to the Trustee an Opinion of Counsel 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 date of this Indenture, 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 will confirm that, the Holders and beneficial owners of the outstanding Notes 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;

(3) in the case of Covenant Defeasance, the Company must deliver to the Trustee an Opinion of Counsel reasonably acceptable to the Trustee confirming that the Holders and beneficial owners of the outstanding Notes 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;

(4) no Default or Event of Default has occurred and is continuing on the date of such deposit (other than a Default or Event of Default resulting from the borrowing of funds to be

applied to such deposit (and any similar concurrent deposit relating to other Debt), and the granting of Liens to secure such borrowings);

(5) such Legal Defeasance or Covenant Defeasance will not result in a breach or violation of, or constitute a default under, any material agreement or instrument (other than this Indenture and the agreements governing any other Debt being defeased, discharged or replaced) to which the Company or any of the Subsidiary Guarantors is a party or by which the Company or any of the Subsidiary Guarantors is bound;

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

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

Section 8.05 Deposited Money and U.S. Government Obligations to be Held in Trust; Other Miscellaneous Provisions.

Subject to Section 8.06 hereof, all money and non-callable U.S. Government Obligations (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee, collectively for purposes of this Section 8.05, the "Trustee") pursuant to Section 8.04 hereof in respect of the outstanding Notes will be held in trust and applied by the Trustee, in accordance with the provisions of such Notes 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 Notes of all sums due and to become due thereon in respect of principal, premium, if any, and interest, if any, but such money need not be segregated from other funds except to the extent required by law.

The Company will pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the cash or non-callable U.S. Government Obligations deposited pursuant to Section 8.04 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 Notes.

Notwithstanding anything in this Article 8 to the contrary, the Trustee will deliver or pay to the Company from time to time upon the request of the Company any money or non-callable U.S. Government Obligations held by it as provided in Section 8.04 hereof which, in the opinion of a nationally recognized firm of independent public accountants reasonably acceptable to the Trustee, expressed in a written certification thereof delivered to the Trustee (which may be the opinion delivered under Section 8.04(1) 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 8.06 Repayment to Company.

Any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of, premium on, if any, or interest, if any, on any Note and remaining unclaimed for two years after such principal, premium, if any, or interest, if any, has become due and payable shall be paid to the Company on its request or (if then held by the Company) will be discharged from such trust; and the Holder of such Note will thereafter be permitted to look only to the Company for payment

thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, will thereupon cease.

Section 8.07 *Reinstatement.*

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

Article 9
AMENDMENTS AND WAIVERS

Section 9.01 *Without Consent of Holders of Notes.*

Notwithstanding Section 9.02 of this Indenture, without the consent of any Holder of Notes, the Company and the Trustee may amend or supplement this Indenture, the Notes, the Note Guarantees or any Security Document, and the Company, the Trustee and the Collateral Trustee may amend or supplement the Security Documents:

- (1) to cure any ambiguity, defect or inconsistency in this Indenture or the Notes;
- (2) to comply with Sections 5.01 or Section 11.04 hereof;
- (3) to comply with any requirement of the SEC in connection with the qualification of this Indenture under the TIA, in the event that the Company determines that this Indenture be so qualified;
- (4) to evidence and provide for the acceptance of an appointment by a successor Trustee;
- (5) to provide for uncertificated Notes in addition to or in place of certificated Notes, *provided* that the uncertificated Notes are issued in registered form for purposes of Section 163(f) of the Code, or in a manner such that the uncertificated Notes are described in Section 163(f)(2)(B) of the Code (or any successor provisions);
- (6) to provide for any Note Guarantee, to secure the Notes or any Note Guarantee or to confirm and evidence the release, termination or discharge of any Note Guarantee of or Lien securing the Notes or any Note Guarantee when such release, termination or discharge is permitted by this Indenture;
- (7) [Reserved];

- (8) to make any other change that does not materially and adversely affect the rights of any Holder;
- (9) to conform any provision to the “Description of Notes” section of the Offering Memorandum, as certified by an Officer’s Certificate; or
- (10) to evidence the issuance of any Pari Passu Obligations and secure such obligations with Liens on the Collateral.

Upon the request of the Company accompanied by a resolution of its Board of Directors authorizing the execution of any such amended or supplemental indenture, and upon receipt by the Trustee of the documents described in Section 7.02 hereof, the Trustee (and the Collateral Trustee, as the case may be) will join with the Company and the Subsidiary Guarantors in the execution of any amended or supplemental indenture authorized or permitted by the terms of this Indenture and to make any further appropriate agreements and stipulations that may be therein contained, but the Trustee will not be obligated to enter into such amended or supplemental indenture that affects its own rights, duties or immunities under this Indenture or otherwise.

Section 9.02 *With Consent of Holders of Notes.*

Except as provided below in this Section 9.02, the Company and the Trustee may amend or supplement this Indenture (including, without limitation, Section 3.09, 4.12 and 4.16 hereof) and the Notes and the Note Guarantees with the consent of the Holders of at least a majority in aggregate principal amount of the then outstanding Notes voting as a single class (including, without limitation, consents obtained in connection with a tender offer or exchange offer for, or purchase of, the Notes), and, subject to Sections 6.04 and 6.07 hereof, any existing Default or Event of Default (other than a Default or Event of Default in the payment of the principal of, premium on, if any, or interest, if any, on, the Notes, except a payment default resulting from an acceleration that has been rescinded) or compliance with any provision of this Indenture, the Notes, the Note Guarantees or any Security Document may be waived with the consent of the Holders of a majority in aggregate principal amount of the then outstanding Notes voting as a single class (including, without limitation, consents obtained in connection with a tender offer or exchange offer for, or purchase of, the Notes).

Upon the request of the Company accompanied by a resolution of its Board of Directors authorizing the execution of any such amended or supplemental indenture, and upon the filing with the Trustee of evidence satisfactory to the Trustee of the consent of the Holders of Notes as aforesaid, and upon receipt by the Trustee of the documents described in Section 7.02 hereof, the Trustee will join with the Company and the Subsidiary Guarantors in the execution of such amended or supplemental indenture unless such amended or supplemental indenture directly affects the Trustee’s own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but will not be obligated to, enter into such amended or supplemental Indenture.

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

After an amendment or waiver under this Section 9.02 becomes effective, the Company will mail to the Holders of Notes affected thereby a notice briefly describing the amendment or waiver. Any failure of the Company to mail such notice, or any defect therein, will not, however, in any way impair or affect the validity of any such amended or supplemental indenture or waiver. Subject to Sections 6.04 and 6.07

hereof, the Holders of a majority in aggregate principal amount of the Notes then outstanding voting as a single class may waive compliance in a particular instance by the Company with any provision of this Indenture, the Notes, the Note Guarantees or any Security Document. However, notwithstanding anything to the contrary in the foregoing, without the consent of each Holder affected, an amendment or waiver under this Section 9.02 may not (with respect to any Notes held by a non-consenting Holder):

- (1) reduce the principal amount of or change the Stated Maturity of any installment of principal of any Note,
- (2) reduce the rate of or change the Stated Maturity of any interest payment on any Note,
- (3) reduce the amount payable upon the redemption of any Note or change the time of any mandatory redemption or, in respect of an optional redemption, the times at which any Note may be redeemed,
- (4) after the time an Offer to Purchase is required to have been made, reduce the purchase amount or purchase price, or extend the latest expiration date or purchase date thereunder,
- (5) make any Note payable in money other than that stated in the Note,
- (6) impair the contractual right of any holder of Notes to receive any principal payment or interest payment on such holder's Notes, on or after the due dates thereof, or to institute suit for the enforcement of any such payment,
- (7) make any change in the percentage of the principal amount of the Notes required for amendments or waivers,
- (8) modify or change any provision of this Indenture affecting the ranking (as to contractual right of payment) of the Notes or any Note Guarantee in a manner adverse to the Holders of the Notes, or
- (9) release any Note Guarantee other than as otherwise permitted in this Indenture.

Section 9.03 *Revocation and Effect of Consents.*

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

Section 9.04 *Notation on or Exchange of Notes.*

The Trustee may place an appropriate notation about an amendment or waiver on any Note thereafter authenticated. The Company in exchange for all Notes may issue and the Trustee shall, upon receipt of an Authentication Order, authenticate new Notes that reflect the amendment or waiver.

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

Section 9.05 *Trustee to Sign Amendments, etc.*

The Trustee will sign any amended or supplemental indenture authorized pursuant to this Article 9 if the amendment or supplement does not adversely affect the rights, duties, liabilities or immunities of the Trustee. The Company may not sign an amended or supplemental indenture until the Board of Directors of the Company approves it. In executing any amended or supplemental indenture, the Trustee shall receive and (subject to Section 7.01 hereof) will be fully protected in relying upon an Officer's Certificate and an Opinion of Counsel stating that the execution of such amended or supplemental indenture is authorized or permitted by this Indenture.

Article 10
COLLATERAL AND SECURITY

Section 10.01 *Security Documents.*

The due and punctual payment of the principal of, premium on, if any, and interest, if any, on, the Notes 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, premium on, if any, and interest, if any (to the extent permitted by law), on the Notes and performance of all other obligations of the Company to the Holders of Notes or the Trustee under this Indenture and the Notes (including, without limitation, the Note Guarantees), according to the terms hereunder or thereunder, are secured as provided in the Security Documents which the Company has entered into simultaneously with the execution of this Indenture. Each Holder of Notes, by its acceptance thereof, consents and agrees to the terms of the Security Documents (including, without limitation, the provisions providing for foreclosure and release of Collateral) 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 Trustee to enter into the Security Documents and to perform its obligations and exercise its rights thereunder in accordance therewith. At the expense of the Company, the Company will deliver to the Trustee copies of all documents delivered to the Collateral Trustee pursuant to the Security Documents, 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 Security Documents, to assure and confirm to the Trustee and the Collateral Trustee the security interest in the Collateral contemplated hereby, by the Security Documents 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 Notes secured hereby, according to the intent and purposes herein expressed. At the written request of the Collateral Trustee, or as otherwise required by the Security Documents, the Company will take, and will cause each Subsidiary Guarantor to take, any and all actions reasonably required to cause the Security Documents to create and maintain, as security for the Obligations of the Company hereunder, a valid and enforceable perfected first priority Lien in and on all the Collateral (subject to Permitted Liens) to the extent provided in the Security Documents, in favor of the Collateral Trustee for the benefit of the Holders of Notes, superior to and prior to the rights of all third Persons and subject to no other Liens than Permitted Liens.

Section 10.02 *Release of Liens.*

- (a) The Liens on the Collateral securing the Notes and the Note Guarantees will automatically be released:

(1) upon payment in full of principal, interest and all other Obligations (other than contingent indemnity obligations) on the Notes and the Note Guarantees or satisfaction and discharge of this Indenture in accordance with Article 12 hereof or defeasance (including covenant defeasance of the Notes) in accordance with Article 8 hereof;

(2) upon release of a Note Guarantee (with respect to the Liens securing such Note Guarantee granted by such Subsidiary Guarantor);

(3) in connection with any sale, transfer or other disposition of Collateral to any Person other than the Company or any Subsidiary Guarantor (but excluding any transaction subject to Sections 5.01 or 11.04 hereof) that is not prohibited by this Indenture (with respect to the Lien on such Collateral); *provided* that, except in the case of any disposition in the ordinary course of business, upon such disposition and after giving effect thereto, no Default shall have occurred and be continuing, and the Company would be in compliance with the covenants set forth under Sections 4.03, 4.04, 4.26 and 4.27 (in the case of Sections 4.04, 4.26 and 4.27, calculated on a Pro Forma Basis giving effect to such transaction and, if applicable, the redemption or repurchase of the maximum principal amount of Notes as may be required under Section 4.12(b) hereof as if the date of the transaction was a date on which such covenants are required to be tested); *provided, further*, that any products or proceeds received by the Company or such Subsidiary Guarantor in respect of any such Collateral shall continue to constitute Collateral to the extent required by this Indenture and the Security Documents;

(4) in whole or in part, with the consent of the Holders of the requisite percentage of Notes in accordance with Article 9 hereof, including the release of all or substantially all of the Collateral if approved by Holders of at least 66⅔% of the aggregate principal amount of the Notes;

(5) with respect to assets that become Excluded Assets; or

(6) as contemplated by Section 4.1 and 4.4 of the Collateral Trust Agreement.

Each of the releases described in clauses (1), (2), (3) and (5) shall be effected by the Collateral Trustee upon receipt of appropriate written notice of instruction, to the extent required, without the consent of Holders or any action on the part of the Trustee.

(b) Upon compliance by the Company or any Subsidiary Guarantor, as the case may be, with the conditions precedent required by this Indenture, the Trustee or the Collateral Trustee shall promptly cause to be released and re-conveyed to the Company or the Subsidiary Guarantor, as the case may be, the released Collateral.

(c) Any release of Liens on the Collateral in accordance with this Section 10.02 and the Security Documents will not be deemed to impair the security under this Indenture or the right of a Holder of a Note to receive payment of principal or interest thereon (including for purposes of Section 4.19 hereof).

Section 10.03 *Certificates of the Company.*

The Company will furnish to the Trustee and the Collateral Trustee, prior to each proposed release of Collateral pursuant to the Security Documents an Officer's Certificate requesting such release and certifying that such release of Collateral is authorized or permitted under this Indenture.

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 Officer's Certificate.

Section 10.04 [Intentionally Omitted.]

Section 10.05 *Authorization of Actions to Be Taken by the Trustee Under the Security Documents.*

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

- (1) enforce any of the terms of the Security Documents; 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 Security Documents 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 of Notes 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 of Notes or of the Trustee). Notwithstanding the foregoing, it is understood that the Trustee shall have no obligation to take any action whatsoever under this Section 10.05

Section 10.06 *Authorization of Receipt of Funds by the Trustee Under the Security Documents.*

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

Section 10.07 *Termination of Security Interest.*

Upon the full and final payment and performance of all Obligations (other than contingent indemnity obligations) of the Company under this Indenture and the Notes or upon Legal Defeasance or Covenant Defeasance or satisfaction and discharge of this Indenture in accordance with Article 12 hereof, the Trustee will, at the written request of the Company, deliver a certificate to the Collateral Trustee stating that such Obligations have been paid in full, and instruct the Collateral Trustee to release the Liens pursuant to this Indenture and the Security Documents.

Section 10.08 *Collateral Trustee Not a Fiduciary.*

Without limiting the generality of the foregoing sentences, the use of the term "trustee" in this Agreement with reference to the Collateral Trustee is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

Section 10.09 Limitation on Duty of Collateral Trustee in Respect of Collateral.

(a) Beyond the exercise of reasonable care in the custody thereof and the accounting for moneys actually received by it hereunder, the Collateral Trustee 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 Collateral Trustee 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 Collateral Trustee 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 Collateral Trustee in good faith.

(b) The Collateral Trustee 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 Collateral Trustee, 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. The Collateral Trustee shall have no duty to ascertain or inquire as to the performance or observance of any of the terms of this Indenture, the Collateral Agency Agreement or the Security Documents by the Company or any other parties.

(c) All of the rights, immunities and protections, including the right to indemnification, extended to the Trustee in Article 7 of this Indenture shall be applicable to the Collateral Trustee as if fully set forth herein.

Article 11
NOTE GUARANTEES

Section 11.01 *Note Guarantees.*

(a) Subject to this Article 11, each of the Subsidiary Guarantors hereby, jointly and severally, unconditionally guarantees to each Holder of a Note authenticated and delivered by the Trustee and to the Trustee and its successors and assigns, irrespective of the validity and enforceability of this Indenture, the Notes or the obligations of the Company hereunder or thereunder, that:

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

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

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

(b) The Subsidiary Guarantors hereby agree that their obligations hereunder are unconditional, irrespective of the validity, regularity or enforceability of the Notes or this Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder of the Notes with respect to any provisions hereof or thereof, the recovery of any judgment against the 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 Subsidiary 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 Note Guarantee will not be discharged except by complete performance of the obligations contained in the Notes and this Indenture.

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

(d) Each Subsidiary 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 Subsidiary Guarantor further agrees that, as between the Subsidiary Guarantors, on the one hand, and the Holders and the Trustee, 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 Note 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 Subsidiary Guarantors for the purpose of this Note Guarantee. The Subsidiary Guarantors will have the right to seek contribution from any non-paying Subsidiary Guarantor so long as the exercise of such right does not impair the rights of the Holders under the Note Guarantee.

Section 11.02 *Limitation on Subsidiary Guarantor Liability.*

Each Subsidiary Guarantor, and by its acceptance of Notes, each Holder, hereby confirms that it is the intention of all such parties that the Note Guarantee of such Subsidiary Guarantor not constitute a fraudulent transfer or conveyance for purposes of Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state law to the extent applicable to any Note Guarantee. To effectuate the foregoing intention, the Trustee, the Holders and the Subsidiary Guarantors hereby irrevocably agree that the obligations of such Subsidiary 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 Subsidiary 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 Subsidiary Guarantor in respect of the obligations of such other Subsidiary Guarantor under this Article 11, result in the obligations of such Subsidiary Guarantor under its Note Guarantee not constituting a fraudulent transfer or conveyance.

Section 11.03 *Execution and Delivery of Note Guarantee.*

To evidence its Note Guarantee set forth in Section 11.01 hereof, each Subsidiary Guarantor hereby agrees that a notation of such Note Guarantee substantially in the form attached as Exhibit E hereto will be endorsed by an Officer of such Subsidiary Guarantor on each Note authenticated and delivered by the Trustee and that this Indenture will be executed on behalf of such Subsidiary Guarantor by one of its Officers.

Each Subsidiary Guarantor hereby agrees that its Note Guarantee set forth in Section 11.01 hereof will remain in full force and effect notwithstanding any failure to endorse on each Note a notation of such Note Guarantee.

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

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

In the event that the Company or any of its Restricted Subsidiaries creates or acquires any Domestic Subsidiary after the date of this Indenture, if required by Section 4.18 hereof, the Company will cause such Domestic Subsidiary to comply with the provisions of Section 4.18 hereof and this Article 11, to the extent applicable.

Section 11.04 *Subsidiary Guarantors May Consolidate, etc., on Certain Terms.*

(a) Except as otherwise provided in Section 11.05 hereof, no Subsidiary Guarantor may sell, convey, transfer or dispose of, all or substantially all the assets of the Company and its Restricted Subsidiaries as an entirety or substantially as an entirety, in one transaction or a series of related transactions, to any Person, unless the resulting, surviving or transferee Person expressly assumes by supplemental indenture all of the obligations of the Subsidiary Guarantor under its Note Guarantee, this Indenture and the Security Documents on the terms set forth herein or therein, pursuant to a supplemental indenture and appropriate Security Documents in form and substance reasonably satisfactory to the Trustee; *provided* that any such sale, conveyance, transfer or disposition to a Person that is not a Restricted Subsidiary shall instead comply with Section 5.01 hereof.

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

(c) Except as set forth in Articles 4 and 5 hereof, and notwithstanding clause (a) above, nothing contained in this Indenture or in any of the Notes will prevent any consolidation or merger of a Subsidiary Guarantor with or into the Company or another Subsidiary Guarantor, or will prevent any sale, assignment,

transfer, or conveyance of the property of a Subsidiary Guarantor as an entirety or substantially as an entirety to the Company or another Subsidiary Guarantor.

(d) Notwithstanding anything to the contrary in the foregoing, a Specified Asset Sale shall not constitute a sale, conveyance, transfer or disposal of all or substantially all of the assets of the Company and its Restricted Subsidiaries.

Section 11.05 *Releases.*

(a) In the event of any sale, assignment, transfer, conveyance, or other disposition of all or substantially all of the assets of any Subsidiary Guarantor, by way of merger, consolidation or otherwise, to a Person that is not (either before or after giving effect to such transaction) the Company or a Restricted Subsidiary of the Company, if the sale or other disposition does not otherwise violate Section 4.12 hereof (and subject to Section 11.04 hereof), then such Subsidiary Guarantor will be released and relieved of any obligations under its Note Guarantee;

(b) In the event of any sale, assignment, transfer, conveyance, or other disposition of Capital Stock of any Subsidiary Guarantor to a Person that is not (either before or after giving effect to such transaction) the Company or a Restricted Subsidiary of the Company and such Subsidiary Guarantor ceases to be a Restricted Subsidiary of the Company as a result of the sale or other disposition, then such Subsidiary Guarantor will be released and relieved of any obligations under its Note Guarantee; *provided*, in both cases, that the Net Cash Proceeds of such sale, assignment, transfer, conveyance, or other disposition are applied in accordance with the applicable provisions of this Indenture, including without limitation Section 4.12 hereof. Upon delivery by the Company to the Trustee of an Officer's Certificate and an Opinion of Counsel to the effect that such sale, assignment, transfer, conveyance, or other disposition was made by the Company in accordance with the provisions of this Indenture, including without limitation Section 4.12 hereof, the Trustee will execute any documents reasonably required in order to evidence the release of any Subsidiary Guarantor from its obligations under its Note Guarantee.

(c) [Reserved].

(d) Upon Legal Defeasance or Covenant Defeasance in accordance with Article 8 hereof or satisfaction and discharge of this Indenture in accordance with Article 12 hereof, each Subsidiary Guarantor will be released and relieved of any obligations under its Note Guarantee.

(e) Upon the liquidation or dissolution of a Subsidiary Guarantor.

(f) Upon such Subsidiary Guarantor becoming an Insurance Subsidiary, such Subsidiary Guarantor will be released and relieved of any obligations under its Note Guarantee.

(g) Upon such Subsidiary Guarantor consolidating with, merging into or transferring all or substantially all of its properties or assets to the Company or another Subsidiary Guarantor, such Subsidiary Guarantor will be released and relieved of any obligations under its Note Guarantee.

Any Subsidiary Guarantor not released from its obligations under its Note Guarantee as provided in this Section 11.05 will remain liable for the full amount of principal of, premium on, if any, and interest, if any, on, the Notes and for the other obligations of any Subsidiary Guarantor under this Indenture as provided in this Article 11.

Article 12
SATISFACTION AND DISCHARGE

Section 12.01 *Satisfaction and Discharge.*

This Indenture will be discharged and will cease to be of further effect as to all Notes issued hereunder, when:

(a) either:

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

(2) all Notes that have not been delivered to the Trustee for cancellation have become due and payable by reason of the mailing of a notice of redemption or otherwise or will become due and payable within one year and the Company or any Subsidiary Guarantor has irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust solely for the benefit of the Holders, cash in U.S. dollars, non-callable U.S. Government Obligations, or a combination thereof, in such amounts as will be sufficient, without consideration of any reinvestment of interest, to pay and discharge the entire Debt on the Notes not delivered to the Trustee for cancellation for principal, premium, if any, and interest, if any, to the date of maturity or redemption; *provided*, that upon any redemption that requires the payment of the Applicable Premium, the amount deposited shall be sufficient for purposes of this Indenture to the extent that an amount is deposited with the Trustee equal to the Applicable Premium calculated as of the date of the notice of redemption, with any deficit as of the redemption date only required to be deposited with the Trustee on or prior to the redemption date;

(b) in respect of subclause (2) of clause (a) of this Section 12.01, no Default or Event of Default has occurred and is continuing on the date of the deposit (other than a Default or Event of Default resulting from the borrowing of funds to be applied to such deposit and any similar deposit relating to other Debt and, in each case, the granting of Liens to secure such borrowings) and the deposit will not result in a breach or violation of, or constitute a default under, any other instrument to which the Company or any Subsidiary Guarantor is a party or by which the Company or any Subsidiary Guarantor is bound (other than with respect to the borrowing of funds to be applied concurrently to make the deposit required to effect such satisfaction and discharge and any similar concurrent deposit relating to other Debt, and in each case the granting of Liens to secure such borrowings);

(c) the Company or any Subsidiary Guarantor has paid or caused to be paid all sums payable by it under this Indenture; and

(d) the Company has delivered irrevocable instructions to the Trustee under this Indenture to apply the deposited money toward the payment of the Notes at maturity or on the redemption date, as the case may be.

In addition, the Company must deliver an Officer's Certificate and an Opinion of Counsel to the Trustee stating that all conditions precedent to satisfaction and discharge have been satisfied.

Notwithstanding the satisfaction and discharge of this Indenture, if money has been deposited with the Trustee pursuant to Section 12.01(a)(2), the provisions of Sections 12.02 and 8.06 hereof will survive.

In addition, nothing in this Section 12.01 will be deemed to discharge those provisions of Section 7.07 hereof, that, by their terms, survive the satisfaction and discharge of this Indenture.

Section 12.02 *Application of Trust Money.*

Subject to the provisions of Section 8.06 hereof, all money deposited with the Trustee pursuant to Section 11.01 hereof shall be held in trust and applied by it, in accordance with the provisions of the Notes 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, premium, if any, and interest, if any, 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.

If the Trustee or Paying Agent is unable to apply any money or U.S. Government Obligations in accordance with Section 12.01 hereof by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's and any Subsidiary Guarantor's obligations under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 12.01 hereof; *provided* that if the Company has made any payment of principal of, premium on, if any, or interest, if any, on, any Notes because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money or U.S. Government Obligations held by the Trustee or Paying Agent.

Article 13
MISCELLANEOUS

Section 13.01 *Notices.*

Any notice or communication by the Company, any Subsidiary Guarantor or the Trustee to the others is duly given if in writing and delivered in Person, electronically or by first class mail (registered or certified, return receipt requested), facsimile transmission or overnight air courier guaranteeing next day delivery, to the others' address:

If to the Company and/or any Subsidiary Guarantor:

HC2 Holdings, Inc.
Attention: Joseph Ferraro
450 Park Avenue, 30th Floor
New York, NY 10022
with a copy to:

Latham & Watkins, LLP
Attention: Senet Bischoff
885 Third Avenue
New York, NY, 10022-4834

If to the Trustee:

U.S. Bank National Association
Global Corporate Trust Services
Mailcode: EP MN WS3C
60 Livingston Avenue
St. Paul, MN 55107-2292
Facsimile No.: (651) 466-4730
Attention: Rick Prokosch – Vice President and Account Manager
with a copy to:

Thompson Hine LLP
Attention: Irving Apar
335 Madison Ave., 12th Floor
New York, NY 10017

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

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

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

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

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

The Trustee agrees to accept and act upon instructions or directions pursuant to this Indenture sent by unsecured email, facsimile transmission or other similar unsecured electronic methods; provided, however, that (a) the party providing such written instructions, subsequent to such transmission of written instructions, shall provide the originally executed instructions or directions to the Trustee in a timely manner, and (b) such originally executed instructions or directions shall be signed by an authorized representative of the party providing such instructions or directions. If the party elects to give the Trustee email or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling.

The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The party providing electronic instructions agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to

the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk or interception and misuse by third parties.

Section 13.02 Certificate and Opinion as to Conditions Precedent.

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

- (1) an Officer's Certificate in form and substance reasonably satisfactory to the Trustee (which must include the statements set forth in Section 13.03 hereof) stating that, in the opinion of the signers, all conditions precedent and covenants, if any, provided for in this Indenture relating to the proposed action have been satisfied; and
- (2) an Opinion of Counsel in form and substance reasonably satisfactory to the Trustee (which must include the statements set forth in Section 13.03 hereof) stating that, in the opinion of such counsel, all such conditions precedent and covenants have been satisfied.

Section 13.03 Statements Required in Certificate or Opinion.

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture must include:

- (1) a statement that the Person making such certificate or opinion has read such covenant or condition;
- (2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;
- (3) a statement that, in the opinion of such Person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been satisfied; and
- (4) a statement as to whether or not, in the opinion of such Person, such condition or covenant has been satisfied.

Section 13.04 Rules by Trustee and Agents.

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

Section 13.05 No Personal Liability of Directors, Officers, Employees and Stockholders.

No director, officer, employee, incorporator, member or stockholder of the Company or any Subsidiary Guarantor, as such, will have any liability for any obligations of the Company or the Subsidiary Guarantors under the Notes, this Indenture, the Note Guarantees or the Security Documents or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder of Notes by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes.

Section 13.06 Governing Law.

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

Section 13.07 *No Adverse Interpretation of Other Agreements.*

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

Section 13.08 *Successors.*

All agreements of the Company in this Indenture and the Notes will bind its successors. All agreements of the Trustee in this Indenture will bind its successors. All agreements of each Subsidiary Guarantor in this Indenture will bind its successors, except as otherwise provided in Section 11.05 hereof.

Section 13.09 *Severability.*

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

Section 13.10 *Counterpart Originals.*

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

Section 13.11 *Table of Contents, Headings, etc.*

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

Section 13.12 *Force Majeure.*

In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations under this Indenture arising out of or caused by, directly or indirectly, forces beyond its reasonable control, including without limitation strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software or hardware) services.

Section 13.13 *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.

Section 13.14 *Waiver of Jury Trial.*

EACH OF THE COMPANY, THE HOLDERS AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR THE TRANSACTION CONTEMPLATED HEREBY.

Section 13.15 *Consent to Jurisdiction and Service.*

To the fullest extent permitted by applicable law, the Company hereby irrevocably submits to the jurisdiction of any Federal or State court located in the Borough of Manhattan in The City of New York, New York in any suit, action or proceeding based on or arising out of or relating to this Indenture or any Securities and irrevocably agrees that all claims in respect of such suit or proceeding may be determined in any such court. The Company 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 an inconvenient forum. The Company agrees that final judgment in any such suit, action or proceeding brought in such a court shall be conclusive and binding upon the Company, and may be enforced in any courts to the jurisdiction of which the Company is subject by a suit upon such judgment, provided, that service of process is effected upon the Company in the manner specified herein or as otherwise permitted by law. To the extent the Company has or hereafter may acquire any immunity from jurisdiction of any court or from any legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, executor or otherwise) with respect to itself or its property, the Company hereby irrevocably waives such immunity in respect of its obligations under this Indenture to the extent permitted by law.

[Signature pages follow.]

SIGNATURES

Dated as of November 20, 2018

HC2 Holdings, Inc.

By: _____
Name:
Title:

ICS Group Holdings Inc.

By: _____
Name:
Title:

HC2 International Holding, Inc.

By: _____
Name:
Title:

HC2 Holdings 2, Inc.

By: _____
Name:
Title:

[Signature page to Indenture]

U.S. Bank National Association,
as Trustee

By: _____
Name:
Title:

U.S. Bank National Association,
as Collateral Trustee

By: _____
Name:
Title:

[Signature page to Indenture]

[Face of Note]

CUSIP/CINS [●]

11.500% Senior Secured Notes due 2021

No. ____ \$ _____

HC2 Holdings, Inc.

promises to pay to _____ or registered assigns,

the principal sum of _____ DOLLARS (or such amount as indicated on the Schedule of Exchanges of Interests attached hereto) on December 1, 2021.

Interest Payment Dates: June 1 and December 1

Record Dates: May 15 and November 15

Dated: November 20, 2018

HC2 Holdings, Inc.

By: ____

Name:

Title:

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

U.S. Bank National Association,
as Trustee

By: ____
Authorized Signatory

[Back of Note]
11.500% Senior Secured Notes due 2021

[Insert the Global Note Legend]

[Insert the Private Placement Legend]

[Insert the OID Legend]

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

(1) *INTEREST*. HC2 Holdings, Inc., a Delaware corporation (the “*Company*”), promises to pay or cause to be paid interest on the principal amount of this Note at 11.500% per annum until maturity. The Company will pay interest, if any, semi-annually in arrears on June 1 and December 1 of each year, or if any such day is not a Business Day, on the next succeeding Business Day (each, an “*Interest Payment Date*”). Interest on the Notes will accrue from the most recent date to which interest has been paid or, if no interest has been paid, from the date of issuance; *provided* that, if this Note is authenticated between a record date referred to on the face hereof and the next succeeding Interest Payment Date, interest shall accrue from such next succeeding Interest Payment Date; *provided further* that the first Interest Payment Date shall be June 1, 2019. The Company will pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal at a rate that is 1% higher than the then applicable interest rate on the Notes to the extent lawful; it will pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest, if any (without regard to any applicable grace period), at the same rate to the extent lawful.

Interest will be computed on the basis of a 360-day year comprised of twelve 30-day months.

(2) *METHOD OF PAYMENT*. The Company will pay interest on the Notes (except defaulted interest), if any, to the Persons who are registered Holders of Notes at the close of business on the May 15 or November 15 next preceding the Interest Payment Date, even if such Notes are canceled after such record date and on or before such Interest Payment Date, except as provided in Section 2.12 of the Indenture with respect to defaulted interest. The Notes will be payable as to principal, premium, if any, and interest, if any, at the office or agency of the Paying Agent and Registrar within the City and State of New York, or, at the option of the Company, payment of interest, if any, may be made by check mailed to the Holders at their addresses set forth in the register of Holders; *provided* that payment by wire transfer of immediately available funds will be required with respect to principal of, premium on, if any, and interest, if any, on, all Global Notes and all other Notes the Holders of which will have provided wire transfer instructions to the Company or the Paying Agent. Such payment will be in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts.

(3) *PAYING AGENT AND REGISTRAR*. Initially, U.S. Bank National Association, the Trustee under the Indenture, will act as Paying Agent and Registrar. The Company may change the Paying Agent or Registrar without prior notice to the Holders of the Notes. The Company or any of its Subsidiaries may act as Paying Agent or Registrar.

(4) *INDENTURE AND PLEDGE AGREEMENT.* The Company issued the Notes under an Indenture dated as of November 20, 2018 (the “*Indenture*”) among the Company, the Subsidiary Guarantors, the Trustee and the Collateral Trustee. The terms of the Notes include those stated in the Indenture. The Notes are subject to all such terms, and Holders are referred to the Indenture for a statement of such terms. To the extent any provision of this Note conflicts with the express provisions of the Indenture, the provisions of the Indenture shall govern and be controlling. The Notes are secured by a pledge of substantially all present and future Collateral pursuant to the Pledge Agreement referred to in the Indenture. The Indenture does not limit the aggregate principal amount of Notes that may be issued thereunder.

(5) *OPTIONAL REDEMPTION.*

(A) At any time and from time to time prior to June 1, 2020, the Company may redeem the Notes at its option, in whole or in part, at a redemption price equal to 100% of the principal amount of Notes redeemed plus the Applicable Premium as of, and accrued and unpaid interest, if any, to, the applicable redemption date.

(B) At any time prior to June 1, 2020, the Company may on any one or more occasions redeem Notes with cash equal to the net cash proceeds received by the Company from any Equity Offering at a redemption price equal to 111.500% of the principal amount thereof plus accrued and unpaid interest, if any, to the redemption date (subject to the rights of Holders of Notes on the relevant record date to receive interest on the relevant interest payment date), in an aggregate principal amount for all such redemptions not to exceed 40% of the aggregate principal amount of the Notes issued under the Indenture, *provided that*:

(1) in each case the redemption takes place not later than 180 days after the closing of the related Equity Offering, and

(2) not less than 60% of the aggregate principal amount of the Notes (excluding Notes held by the Company or any of its Subsidiaries) issued under the Indenture remains outstanding immediately thereafter.

(A) Except pursuant to the preceding clauses (A) and (B) and paragraph (7) below, the Notes will not be redeemable at the Company’s option prior to June 1, 2020.

(B) On or after June 1, 2020, the Company may on any one or more occasions redeem all or a part of the Notes, upon not less than 30 nor more than 60 days’ notice, at the redemption prices (expressed as percentages of principal amount) set forth below, plus accrued and unpaid interest, if any, on the Notes redeemed, to the applicable date of redemption, if redeemed during the periods set forth below, subject to the rights of Holders on the relevant record date to receive interest on the relevant Interest Payment Date:

<u>Year</u>	<u>Percentage</u>
June 1, 2020 to December 1, 2020	105.750%
December 1, 2020 and thereafter	100.000%

Unless the Company defaults in the payment of the redemption price, interest will cease to accrue on the Notes or portions thereof called for redemption on the applicable redemption date.

(6) *MANDATORY REDEMPTION.* The Company is not required to make mandatory redemption or sinking fund payments with respect to the Notes.

(7) *REPURCHASE AT THE OPTION OF HOLDER.*

(A) Upon the occurrence of a Change of Control, the Company will be required to make an offer (a “*Change of Control Offer*”) to each Holder to repurchase all or any part (equal to \$2,000 or an integral multiple of \$1,000 in excess thereof) of that Holder’s Notes at a purchase price in cash equal to 101% of the aggregate principal amount of Notes repurchased, plus accrued and unpaid interest, if any, on the Notes repurchased to the date of purchase, subject to the rights of Holders of Notes on the relevant record date to receive interest due on the relevant interest payment date (the “*Change of Control Payment*”). Within 30 days following any Change of Control, the Company will mail a notice to each Holder setting forth the procedures governing the Change of Control Offer as required by the Indenture. A Change of Control Offer may be made in advance of a Change of Control, conditional upon such Change of Control, if a definitive agreement is in place for the Change of Control at the time of making of the Change of Control Offer. If Holders of not less than 90% in aggregate principal amount of the outstanding Notes validly tender and do not withdraw such Notes in a Change of Control Offer and the Company, or any third party making a Change of Control Offer in lieu of the Company as described above, purchases all of the Notes validly tendered and not withdrawn by such holders, the Company or such third party will have the right, upon not less than 10 nor more than 60 days’ prior notice, given not more than 30 days following such purchase pursuant to the Change of Control Offer described above, to redeem all Notes that remain outstanding following such purchase at a price in cash equal to 101% of the principal amount thereof plus accrued and unpaid interest to but excluding the date of redemption.

(B) If an Asset Sale is consummated, the Company may elect to redeem up to the maximum aggregate amount of Notes that can be redeemed with the Net Cash Proceeds therefrom (an “*Asset Sale Redemption*”), at a redemption price equal to 104.5% (100% if such redemption would occur on or after June 1, 2020) of the principal amount thereof, plus accrued and unpaid interest, to the redemption date (subject to the right of holders of record on the relevant record date to receive interest due on the relevant interest payment date); provided that such redemption shall occur within 60 days after the date on which any such Net Cash Proceeds are received upon not less than 30 nor more than 60 days’ notice (an “*Asset Sale Redemption Notice*”) sent electronically or mailed to each holder of Notes being redeemed and otherwise in accordance with the procedures set forth in the Indenture. An Asset Sale Redemption Notice may not be conditional. If the Company does not so send or mail an Asset Sale Redemption Notice for the maximum aggregate amount of Notes that can be redeemed (at the redemption price set forth in the preceding sentence) with the proceeds from such Asset Sale on or prior to the 30th day following the receipt of the Net Cash Proceeds therefrom (such date, the “*Election Date*”), the Company shall, on or prior to the Election Date, make an Offer to Purchase (an “*Offer to Purchase*”) the maximum aggregate principal of Notes that can be purchased with the Net Cash Proceeds from such Asset Sale (after giving effect to any redemption made pursuant to the preceding sentence) at a purchase price equal 104.5% (100% if such purchase would occur on or after June 1, 2020) of the principal amount thereof, plus accrued and unpaid interest, to the date of repurchase. Following an Offer to Purchase, any remaining Net Cash Proceeds not applied to redeem or repurchase the Notes may be used for any purpose not otherwise prohibited by the Indenture

(8) *NOTICE OF REDEMPTION.* At least 30 days but not more than 60 days before a redemption date, the Company will mail or cause to be mailed, by first class mail, a notice of

redemption to each Holder whose Notes are to be redeemed at its registered address, except that redemption notices may be mailed more than 60 days prior to a redemption date if the notice is issued in connection with a defeasance of the Notes or a satisfaction and discharge of the Indenture pursuant to Article 8 or 12 thereof. Notes and portions of Notes selected will be in amounts of \$2,000 or whole multiples of \$1,000 in excess thereof; except that if all of the Notes of a Holder are to be redeemed or purchased, the entire outstanding amount of Notes held by such Holder shall be redeemed or purchased.

Any such redemption may, at the Company's discretion, be subject to one or more conditions precedent, including any related Equity Offering or a Change of Control. In addition, if such redemption is subject to the satisfaction of one or more conditions precedent, the related notice shall describe each such condition, and if applicable, shall state that, in the Company's discretion, the date of redemption may be delayed until such time as any or all such conditions shall be satisfied or waived (provided that in no event shall such date of redemption be delayed to a date later than 30 days after the date on which such notice was mailed), or such redemption or purchase may not occur and such notice may be rescinded in the event that any or all such conditions shall not have been satisfied or waived by the date of redemption, or by the date of redemption as so delayed.

(9) *DENOMINATIONS, TRANSFER, EXCHANGE*. The Notes are in registered form in denominations of \$2,000 and integral multiples of \$1,000 in excess thereof. The transfer of Notes may be registered and Notes may be exchanged as provided in the Indenture. The Registrar and the Trustee may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and the Company may require a Holder to pay any taxes and fees required by law or permitted by the Indenture. The Company need not exchange or register the transfer of any Note or portion of a Note selected for redemption, except for the unredeemed portion of any Note being redeemed in part. Also, the Company need not exchange or register the transfer of any Notes for a period of 15 days before a selection of Notes to be redeemed or during the period between a record date and the next succeeding Interest Payment Date.

(10) *PERSONS DEEMED OWNERS*. The registered Holder of a Note may be treated as the owner of it for all purposes. Only registered Holders have rights under the Indenture.

(11) *AMENDMENT AND WAIVER*. Subject to certain exceptions, the Indenture, the Notes, the Note Guarantees or any Security Document may be amended or supplemented with the consent of the Holders of at least a majority in aggregate principal amount of the then outstanding Notes voting as a single class, and any existing Default or Event of Default or compliance with any provision of the Indenture or the Notes or the Note Guarantees may be waived with the consent of the Holders of a majority in aggregate principal amount of the then outstanding Notes voting as a single class. Without the consent of any Holder of Notes, the Indenture, the Notes, the Note Guarantees or any Security Document may be amended or supplemented to cure any ambiguity, defect or inconsistency, to provide for uncertificated Notes in addition to or in place of certificated Notes, to provide for the assumption of the Company's or a Subsidiary Guarantor's obligations to Holders of the Notes and Note Guarantees by a successor to the Company or such Subsidiary Guarantor pursuant to the Indenture, to make any change that would provide any additional rights or benefits to the Holders of the Notes or that does not adversely affect the legal rights under the Indenture of any Holder, to conform the text of the Indenture, the Notes, the Note Guarantees or the Security Documents to any provision of the "Description of Notes" section of the Company's Offering Memorandum dated November 14, 2018, relating to the initial offering of the Notes, to the extent that such provision in that "Description of Notes" was intended to be a verbatim recitation

of a provision of the Indenture, the Notes, the Note Guarantees or the Security Documents, which intent may be evidenced by an Officer's Certificate to that effect, to enter into additional or supplemental Security Documents, to release Collateral in accordance with the terms of the Indenture and the Security Documents, to allow any Subsidiary Guarantor to execute a supplemental indenture to the Indenture and/or a Note Guarantee with respect to the Notes, to evidence a successor Trustee or to comply with any requirement of the SEC in connection with the qualification of the Indenture under the TIA, in the event that the Company determines that the Indenture be so qualified.

(12) *DEFAULTS AND REMEDIES*. Events of Default include: (i) default for 30 days in the payment when due of interest, if any, on, the Notes; (ii) default in the payment when due (at maturity, upon redemption or otherwise) of the principal of, or premium on, if any, the Notes, (iii) failure by the Company to comply with the provisions of Sections 4.12 or 4.16 of the Indenture, or failure by the Company or any of its Restricted Subsidiaries to comply with the provisions of Sections 5.01 or 11.04 of the Indenture; (iv) failure by the Company to comply with the provisions of Section 4.03, 4.04, 4.26 or 4.27 of the Indenture and such default or breach is not cured within (A) 15 days after the date of any default under Section 4.03 or (B) 45 days after the date of any default under Sections 4.04, 4.26 or 4.27 it being understood that the date of default in the case of covenants tested at the end of a fiscal period is the last day of such fiscal period; (v) failure by the Company or any of its Restricted Subsidiaries for 60 days after notice to the Company by the Trustee or the Holders of at least 25% in aggregate principal amount of the Notes then outstanding voting as a single class to comply with any of the other agreements in the Indenture or the Security Documents; (vi) the failure by the Company or any Significant Subsidiary to pay any Debt within any applicable grace period after final maturity or the acceleration of any such Debt by the holders thereof because of a default, in each case, if the total amount of such Debt unpaid or accelerated exceeds \$35.0 million; (vii) one or more final judgments or orders for the payment of money are rendered against the Company or any of its Significant Subsidiaries and are not paid or discharged, and there is a period of 60 consecutive days following entry of the final judgment or order that causes the aggregate amount for all such final judgments or orders outstanding and not paid or discharged against all such Persons to exceed \$35.0 million (in excess of amounts covered under insurance policies provided by policies with creditworthy insurance carriers that have not otherwise been denied or disclaimed) during which a stay of enforcement, by reason of a pending appeal or otherwise, is not in effect; (viii) certain bankruptcy defaults occur with respect to the Company or any Significant Subsidiary; (ix) any Note Guarantee of a Significant Subsidiary ceases to be in full force and effect, other than in accordance the terms of the Indenture, or a Guarantor that is a Significant Subsidiary denies or disaffirms its obligations under its Note Guarantee; or (x) (A) the Liens created by the Security Documents shall at any time not constitute a valid and perfected Lien on any portion of the Collateral (with a fair market value in excess of \$35.0 million) intended to be covered thereby (to the extent perfection by filing, registration, recordation or possession is required by the Indenture or the Security Documents), (B) any of the Security Documents shall for whatever reason be terminated or cease to be in full force and effect (except for expiration in accordance with its terms or amendment, modification, waiver, termination or release in accordance with the terms of the Indenture) or (C) the enforceability of the Liens created by the Security Documents shall be contested by the Company or any Subsidiary Guarantor that is a Significant Subsidiary. In the case of an Event of Default arising from certain events of bankruptcy or insolvency with respect to the Company, any Restricted Subsidiary of the Company that is a Significant Subsidiary or any group of Restricted Subsidiaries of the Company that, taken together, would constitute a Significant Subsidiary, all outstanding Notes will become due and payable immediately without further action or notice. If any other Event of Default occurs and is continuing, the Trustee or the Holders of at least 25% in aggregate principal amount of the then outstanding Notes may declare all the Notes to be due and payable immediately.

Holders may not enforce the Indenture or the Notes except as provided in the Indenture. Subject to certain limitations, Holders of a majority in aggregate principal amount of the then outstanding Notes may direct the time, method and place of conducting any proceeding for exercising any remedy available to the Trustee or exercising any trust or power conferred on it. The Trustee may withhold from Holders of the Notes notice of any continuing Default or Event of Default (except a Default or Event of Default relating to the payment of principal, premium, if any, or interest, if any,) if it determines that withholding notice is in their interest. The Holders of a majority in aggregate principal amount of the then outstanding Notes by notice to the Trustee may, on behalf of all the Holders of Notes, rescind an acceleration or waive an existing Default or Event of Default and its respective consequences under the Indenture except a continuing Default or Event of Default in the payment of principal of, premium on, if any, or interest, if any, on, the Notes (including in connection with an offer to purchase). The Company is required to deliver to the Trustee annually a statement regarding compliance with the Indenture, and the Company is required, upon becoming aware of any Default or Event of Default, to deliver to the Trustee a statement specifying such Default or Event of Default.

(13) *TRUSTEE DEALINGS WITH COMPANY.* The Trustee, in its individual or any other capacity, may make loans to, accept deposits from, and perform services for the Company or its Affiliates, and may otherwise deal with the Company or its Affiliates, as if it were not the Trustee.

(14) *NO RECOURSE AGAINST OTHERS.* No director, officer, employee, incorporator or stockholder of the Company or any Subsidiary Guarantor, as such, will have any liability for any obligations of the Company or the Subsidiary Guarantors under the Notes, the Indenture, the Note Guarantees, the Security Documents or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder of Notes by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes. The waiver may not be effective to waive liabilities under the federal securities laws.

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

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

(17) *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 Notes, and the Trustee may use CUSIP numbers in notices of redemption as a convenience to Holders. No representation is made as to the accuracy of such numbers either as printed on the Notes or as contained in any notice of redemption, and reliance may be placed only on the other identification numbers placed thereon.

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

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

HC2 Holdings, Inc.
450 Park Avenue, 30th Floor
New York, NY 10022
Attention: Joseph Ferraro

ASSIGNMENT FORM

To assign this Note, fill in the form below:

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

(Insert assignee's legal name)

(Insert assignee's soc. sec. or tax I.D. no.)

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

and irrevocably appoint ___

to transfer this Note on the books of the Company. The agent may substitute another to act for him.

Date: _____

Your Signature:___

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

Signature Guarantee*: _____

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

Option of Holder to Elect Purchase

If you want to elect to have this Note purchased by the Company pursuant to Section 4.12 or 4.16 of the Indenture, check the appropriate box below:

Section 4.12 Section 4.16

If you want to elect to have only part of the Note purchased by the Company pursuant to Section 4.12 or Section 4.16 of the Indenture, state the amount you elect to have purchased:

\$ _____

Date: _____

Your Signature:___

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

Tax Identification No.:___

Signature Guarantee*: _____

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

SCHEDULE OF EXCHANGES OF INTERESTS IN THE GLOBAL NOTE*

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

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

FORM OF CERTIFICATE OF TRANSFER

HC2 Holdings, Inc.
450 Park Avenue, 30th Floor
New York, NY 10022

U.S. Bank National Association
60 Livingston Avenue
EP-MN-WS3C
St. Paul, Minnesota 55107

Re: 11.500% Senior Secured Notes due 2021

Reference is hereby made to the Indenture, dated as of November 20, 2018 (the “*Indenture*”), among HC2 Holdings, Inc., as issuer (the “*Company*”), the Subsidiary Guarantors party thereto, U.S. Bank National Association, as trustee, and the collateral agent party thereto. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

_____, (the “*Transferor*”) owns and proposes to transfer the Note[s] or interest in such Note[s] specified in Annex A hereto, in the principal amount of \$_____ in such Note[s] or interests (the “*Transfer*”), to _____ (the “*Transferee*”), as further specified in Annex A hereto. In connection with the Transfer, the Transferor hereby certifies that:

[CHECK ALL THAT APPLY]

1. Check if Transferee will take delivery of a beneficial interest in the 144A Global Note or a Restricted Definitive Note pursuant to Rule 144A. The Transfer is being effected pursuant to and in accordance with Rule 144A under the Securities Act of 1933, as amended (the “*Securities Act*”), and, accordingly, the Transferor hereby further certifies that the beneficial interest or Definitive Note is being transferred to a Person that the Transferor reasonably believes is purchasing the beneficial interest or Definitive Note 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, and such Transfer is in compliance with any applicable blue sky securities laws of any state of the United States. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the 144A Global Note and/or the Restricted Definitive Note and in the Indenture and the Securities Act.

2. Check if Transferee will take delivery of a beneficial interest in the Regulation S Global Note or a Restricted Definitive Note pursuant to Regulation S. The Transfer is being effected pursuant to and in accordance with Rule 903 or Rule 904 under the Securities Act and, accordingly, the Transferor hereby further certifies that (i) the Transfer is not being made to a Person in the United States and (x) at the time the buy order was originated, the Transferee was outside the United States or such Transferor and any Person acting on its behalf reasonably believed and believes that the Transferee was outside the United States or (y) the transaction was executed in, on or through the facilities of a designated offshore securities market and neither such Transferor nor any Person acting on its behalf knows that the transaction was prearranged with a buyer in the United States, (ii) no directed selling efforts have been made in contravention of the

requirements of Rule 903(b) or Rule 904(b) of Regulation S under the Securities Act, (iii) the transaction is not part of a plan or scheme to evade the registration requirements of the Securities Act and (iv) if the proposed transfer is being made prior to the expiration of the Restricted Period, the transfer is not being made to a U.S. Person or for the account or benefit of a U.S. Person (other than an Initial Purchaser). Upon consummation of the proposed transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will be subject to the restrictions on Transfer enumerated in the Private Placement Legend printed on the Regulation S Global Note and/or the Restricted Definitive Note and in the Indenture and the Securities Act.

3. Check and complete if Transferee will take delivery of a beneficial interest in the IAI Global Note or a Restricted Definitive Note pursuant to any provision of the Securities Act other than Rule 144A or Regulation S. The Transfer is being effected in compliance with the transfer restrictions applicable to beneficial interests in Restricted Global Notes and Restricted Definitive Notes and pursuant to and in accordance with the Securities Act and any applicable blue sky securities laws of any state of the United States, and accordingly the Transferor hereby further certifies that (check one):

(a) such Transfer is being effected pursuant to and in accordance with Rule 144 under the Securities Act;

or

(b) such Transfer is being effected to the Company or a subsidiary thereof;

or

(c) such Transfer is being effected pursuant to an effective registration statement under the Securities Act and in compliance with the prospectus delivery requirements of the Securities Act;

or

(d) such Transfer is being effected to an Institutional Accredited Investor and pursuant to an exemption from the registration requirements of the Securities Act other than Rule 144A, Rule 144, Rule 903 or Rule 904, and the Transferor hereby further certifies that it has not engaged in any general solicitation within the meaning of Regulation D under the Securities Act and the Transfer complies with the transfer restrictions applicable to beneficial interests in a Restricted Global Note or Restricted Definitive Notes and the requirements of the exemption claimed, which certification is supported by (1) a certificate executed by the Transferee in the form of Exhibit D to the Indenture and (2) an Opinion of Counsel provided by the Transferor or the Transferee (a copy of which the Transferor has attached to this certification), to the effect that such Transfer is in compliance with the Securities Act. Upon consummation of the proposed transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the IAI Global Note and/or the Restricted Definitive Notes and in the Indenture and the Securities Act.

4. Check if Transferee will take delivery of a beneficial interest in an Unrestricted Global Note or of an Unrestricted Definitive Note.

(a) **Check if Transfer is pursuant to Rule 144.** (i) The Transfer is being effected pursuant to and in accordance with Rule 144 under the Securities Act and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any state of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will no longer be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes, on Restricted Definitive Notes and in the Indenture.

(b) **Check if Transfer is Pursuant to Regulation S.** (i) The Transfer is being effected pursuant to and in accordance with Rule 903 or Rule 904 under the Securities Act and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any state of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will no longer be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes, on Restricted Definitive Notes and in the Indenture.

(c) **Check if Transfer is Pursuant to Other Exemption.** (i) The Transfer is being effected pursuant to and in compliance with an exemption from the registration requirements of the Securities Act other than Rule 144, Rule 903 or Rule 904 and in compliance with the transfer restrictions contained in the Indenture and any applicable blue sky securities laws of any State of the United States and (ii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act. Upon consummation of the proposed Transfer in accordance with the terms of the Indenture, the transferred beneficial interest or Definitive Note will not be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Global Notes or Restricted Definitive Notes and in the Indenture.

This certificate and the statements contained herein are made for your benefit and the benefit of the Company.

[Insert Name of Transferor]

By: _____
Name:
Title:

Dated: _____

ANNEX A TO CERTIFICATE OF TRANSFER

1. The Transferor owns and proposes to transfer the following:

[CHECK ONE OF (a) OR (b)]

(a) a beneficial interest in the:

(i) 144A Global Note (CUSIP _____), or

(ii) Regulation S Global Note (CUSIP _____), or

(iii) IAI Global Note (CUSIP _____); or

(b) a Restricted Definitive Note.

2. After the Transfer the Transferee will hold:

[CHECK ONE]

(a) a beneficial interest in the:

(i) 144A Global Note (CUSIP _____), or

(ii) Regulation S Global Note (CUSIP _____), or

(iii) IAI Global Note (CUSIP _____); or

(iv) Unrestricted Global Note (CUSIP _____); or

(b) a Restricted Definitive Note; or

(c) an Unrestricted Definitive Note,

in accordance with the terms of the Indenture.

FORM OF CERTIFICATE OF EXCHANGE

HC2 Holdings, Inc.
450 Park Avenue, 30th Floor
New York, NY 10022

U.S. Bank National Association
60 Livingston Avenue
EP-MN-WS3C
St. Paul, Minnesota 55107

Re: 11.500% Senior Secured Notes due 2021

(CUSIP [])

Reference is hereby made to the Indenture, dated as of November 20, 2018 (the “*Indenture*”), among HC2 Holdings, Inc., as issuer (the “*Company*”), the Subsidiary Guarantors party thereto, U.S. Bank National Association, as trustee, and the collateral agent party thereto. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

_____, (the “*Owner*”) owns and proposes to exchange the Note[s] or interest in such Note[s] specified herein, in the principal amount of \$_____ in such Note[s] or interests (the “*Exchange*”). In connection with the Exchange, the Owner hereby certifies that:

1. Exchange of Restricted Definitive Notes or Beneficial Interests in a Restricted Global Note for Unrestricted Definitive Notes or Beneficial Interests in an Unrestricted Global Note

(a) **Check if Exchange is from beneficial interest in a Restricted Global Note to beneficial interest in an Unrestricted Global Note.** In connection with the Exchange of the Owner’s beneficial interest in a Restricted Global Note for a beneficial interest in an Unrestricted Global Note in an equal principal amount, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner’s own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Global Notes and pursuant to and in accordance with the Securities Act of 1933, as amended (the “*Securities Act*”), (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the beneficial interest in an Unrestricted Global Note is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

(b) **Check if Exchange is from beneficial interest in a Restricted Global Note to Unrestricted Definitive Note.** In connection with the Exchange of the Owner’s beneficial interest in a Restricted Global Note for an Unrestricted Definitive Note, the Owner hereby certifies (i) the Definitive Note is being acquired for the Owner’s own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Restricted Global Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the Definitive Note is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

(c) **Check if Exchange is from Restricted Definitive Note to beneficial interest in an Unrestricted Global Note.** In connection with the Owner’s Exchange of a Restricted Definitive Note for a beneficial interest in an Unrestricted Global Note, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner’s own account without transfer, (ii) such Exchange has been effected in compliance with the

transfer restrictions applicable to Restricted Definitive Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the beneficial interest is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

(d) **Check if Exchange is from Restricted Definitive Note to Unrestricted Definitive Note.** In connection with the Owner's Exchange of a Restricted Definitive Note for an Unrestricted Definitive Note, the Owner hereby certifies (i) the Unrestricted Definitive Note is being acquired for the Owner's own account without transfer, (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to Restricted Definitive Notes and pursuant to and in accordance with the Securities Act, (iii) the restrictions on transfer contained in the Indenture and the Private Placement Legend are not required in order to maintain compliance with the Securities Act and (iv) the Unrestricted Definitive Note is being acquired in compliance with any applicable blue sky securities laws of any state of the United States.

2 . **Exchange of Restricted Definitive Notes or Beneficial Interests in Restricted Global Notes for Restricted Definitive Notes or Beneficial Interests in Restricted Global Notes**

(a) **Check if Exchange is from beneficial interest in a Restricted Global Note to Restricted Definitive Note.** In connection with the Exchange of the Owner's beneficial interest in a Restricted Global Note for a Restricted Definitive Note with an equal principal amount, the Owner hereby certifies that the Restricted Definitive Note is being acquired for the Owner's own account without transfer. Upon consummation of the proposed Exchange in accordance with the terms of the Indenture, the Restricted Definitive Note issued will continue to be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the Restricted Definitive Note and in the Indenture and the Securities Act.

(b) **Check if Exchange is from Restricted Definitive Note to beneficial interest in a Restricted Global Note.** In connection with the Exchange of the Owner's Restricted Definitive Note for a beneficial interest in the [CHECK ONE] 144A Global Note, Regulation S Global Note, IAI Global Note with an equal principal amount, the Owner hereby certifies (i) the beneficial interest is being acquired for the Owner's own account without transfer and (ii) such Exchange has been effected in compliance with the transfer restrictions applicable to the Restricted Global Notes and pursuant to and in accordance with the Securities Act, and in compliance with any applicable blue sky securities laws of any state of the United States. Upon consummation of the proposed Exchange in accordance with the terms of the Indenture, the beneficial interest issued will be subject to the restrictions on transfer enumerated in the Private Placement Legend printed on the relevant Restricted Global Note and in the Indenture and the Securities Act.

This certificate and the statements contained herein are made for your benefit and the benefit of the Company.

[Insert Name of Transferor]

By: _____
Name:
Title:

Dated: _____

FORM OF CERTIFICATE FROM
ACQUIRING INSTITUTIONAL ACCREDITED INVESTOR

HC2 Holdings, Inc.
450 Park Avenue, 30th Floor
New York, NY 10022

U.S. Bank National Association
60 Livingston Avenue
EP-MN-WS3C
St. Paul, Minnesota 55107

Re: 11.500% Senior Secured Notes due 2021

Reference is hereby made to the Indenture, dated as of November 20, 2018 (the “*Indenture*”), among HC2 Holdings, Inc., as issuer (the “*Company*”), the Subsidiary Guarantors party thereto, U.S. Bank National Association, as trustee, and the collateral agent party thereto. Capitalized terms used but not defined herein shall have the meanings given to them in the Indenture.

In connection with our proposed purchase of \$ _____ aggregate principal amount of:

(a) a beneficial interest in a Global Note, or

(b) a Definitive Note,

we confirm that:

1. We understand that any subsequent transfer of the Notes or any interest therein is subject to certain restrictions and conditions set forth in the Indenture and the undersigned agrees to be bound by, and not to resell, pledge or otherwise transfer the Notes or any interest therein except in compliance with, such restrictions and conditions and the Securities Act of 1933, as amended (the “*Securities Act*”).

2. We understand that the offer and sale of the Notes have not been registered under the Securities Act, and that the Notes and any interest therein may not be offered or sold except as permitted in the following sentence. We agree, on our own behalf and on behalf of any accounts for which we are acting as hereinafter stated, that if we should sell the Notes or any interest therein, we will do so only (A) to the Company or any subsidiary thereof, (B) in accordance with Rule 144A under the Securities Act to a “qualified institutional buyer” (as defined therein), (C) to an institutional “accredited investor” (as defined below) that, prior to such transfer, furnishes (or has furnished on its behalf by a U.S. broker-dealer) to you and to the Company a signed letter substantially in the form of this letter and an Opinion of Counsel in form reasonably acceptable to the Company to the effect that such transfer is in compliance with the Securities Act, (D) outside the United States in accordance with Rule 904 of Regulation S under the Securities Act, (E) pursuant to the provisions of Rule 144 under the Securities Act or (F) pursuant to an effective registration statement under the Securities Act, and we further agree to provide to any Person purchasing the Definitive Note or beneficial interest in a Global Note from us in a transaction meeting the requirements of clauses (A) through (E) of this paragraph a notice advising such purchaser that resales thereof are restricted as stated herein.

3. We understand that, on any proposed resale of the Notes or beneficial interest therein, we will be required to furnish to you and the Company such certifications, legal opinions and other information

as you and the Company may reasonably require to confirm that the proposed sale complies with the foregoing restrictions. We further understand that the Notes purchased by us will bear a legend to the foregoing effect.

4. We are an institutional “accredited investor” (as defined in Rule 501(a)(1), (2), (3) or (7) of Regulation D under the Securities Act) and have such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of our investment in the Notes, and we and any accounts for which we are acting are each able to bear the economic risk of our or its investment.

5. We are acquiring the Notes or beneficial interest therein purchased by us for our own account or for one or more accounts (each of which is an institutional “accredited investor”) as to each of which we exercise sole investment discretion.

You and the Company are entitled to rely upon this letter and are irrevocably authorized to produce this letter or a copy hereof to any interested party in any administrative or legal proceedings or official inquiry with respect to the matters covered hereby.

[Insert Name of Accredited Investor]

By: _____

Name:

Title:

Dated: _____

[FORM OF NOTATION OF GUARANTEE]

For value received, each Subsidiary Guarantor (which term includes any successor Person under the Indenture) has, jointly and severally, unconditionally guaranteed, to the extent set forth in the Indenture and subject to the provisions in the Indenture dated as of November 20, 2018 (the "*Indenture*") among HC2 Holdings, Inc., (the "*Company*"), the Subsidiary Guarantors party thereto, U.S. Bank National Association, as trustee (the "*Trustee*") and the collateral trustee party thereto, (a) the due and punctual payment of the principal of, premium on, if any, and interest, if any, on, the Notes, whether at maturity, by acceleration, redemption or otherwise, the due and punctual payment of interest on overdue principal of, premium on, if any, and interest, if any, on, the Notes, if any, if lawful, and the due and punctual performance of all other obligations of the Company to the Holders or the Trustee all in accordance with the terms of the Indenture and (b) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, that the 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. The obligations of the Subsidiary Guarantors to the Holders of Notes and to the Trustee pursuant to the Note Guarantee and the Indenture are expressly set forth in Article 11 of the Indenture and reference is hereby made to the Indenture for the precise terms of the Note Guarantee.

Capitalized terms used but not defined herein have the meanings given to them in the Indenture.

[NAME OF SUBSIDIARY GUARANTOR(S)]

By: __
Name:
Title:

[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 HC2 Holdings, Inc. (or its permitted successor), a Delaware corporation (the "*Company*"), the Company, the other Subsidiary Guarantors (as defined in the Indenture referred to herein), U.S. Bank National Association, as trustee under the Indenture referred to below (the "*Trustee*"), and the Collateral Agent (as defined in the Indenture).

WITNESSETH

WHEREAS, the Company has heretofore executed and delivered to the Trustee an indenture (the "*Indenture*"), dated as of November 20, 2018 providing for the issuance of 11.500% Senior Secured Notes due 2021 (the "*Notes*");

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

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

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

1. CAPITALIZED TERMS. Capitalized terms used herein without definition shall have the meanings assigned to them in the Indenture.
 2. AGREEMENT TO GUARANTEE. The Guarantoring Subsidiary hereby agrees to provide an unconditional Guarantee on the terms and subject to the conditions set forth in the Note Guarantee and in the Indenture including but not limited to Article 11 thereof.
 4. NO RECOURSE AGAINST OTHERS. No director, officer, employee, incorporator or stockholder of the Company or any Subsidiary Guarantor, as such, will have any liability for any obligations of the Company or the Subsidiary Guarantors under the Notes, this Indenture, the Note Guarantees, the Security Documents or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder of Notes by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes. The waiver may not be effective to waive liabilities under the federal securities laws.
 5. NEW YORK LAW TO GOVERN. THE INTERNAL LAW OF THE STATE OF NEW YORK SHALL GOVERN AND BE USED TO CONSTRUE THIS SUPPLEMENTAL INDENTURE WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.
 6. 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.
-

7. EFFECT OF HEADINGS. The Section headings herein are for convenience only and shall not affect the construction hereof.

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

[GUARANTEEING SUBSIDIARY]

By: _____

Name:

Title:

HC2 Holdings, Inc.

By: _____

Name:

Title:

U.S. Bank National Association

By: _____
Name:
Title: