IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	:	Chapter 11
HI-CRUSH INC., *et al.*,[1]	:	Case No. 20-33495 (DRJ)
Debtors.	:	(Jointly Administered)

NOTICE OF FILING OF PLAN SUPPLEMENT FOR THE JOINT PREPACKAGED PLAN OF REORGANIZATION FOR HI-CRUSH INC. AND ITS AFFILIATE DEBTORS UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

PLEASE TAKE NOTICE that, as contemplated by the *Joint Plan of Reorganization for Hi-Crush Inc. and its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code* (as may be amended, modified, or supplemented from time to time, and including all exhibits and supplements thereto, the "**Plan**"), the above-captioned debtors and debtors-in-possession (collectively, the "**Debtors**") hereby file the plan supplement (the "**Plan Supplement**") with the United States Bankruptcy Court for the Southern District of Texas (the "**Court**"). Capitalized terms used but not defined herein have the meanings set forth in the Plan.

PLEASE TAKE FURTHER NOTICE that the Plan Supplement includes the following exhibits (in each case, as may be amended, modified, or supplemented from time to time), which are included in this Plan Supplement as follows:

Exhibit A	Amended/New Organizational Documents
Exhibit B	Exit Facility Credit Agreement
Exhibit C	New Board Disclosure
Exhibit D	New Secured Convertible Notes Indenture
Exhibit E	New Stockholders Agreement
Exhibit F	Retained Causes of Action

[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Hi-Crush Inc. (0530), OnCore Processing LLC (9403), Hi-Crush Augusta LLC (0668), Hi-Crush Whitehall LLC (5562), PDQ Properties LLC (9169), Hi-Crush Wyeville Operating LLC (5797), D & I Silica, LLC (9957), Hi-Crush Blair LLC (7094), Hi-Crush LMS LLC, Hi-Crush Investments Inc. (6547), Hi-Crush Permian Sand LLC, Hi-Crush Proppants LLC (0770), Hi-Crush PODS LLC, Hi-Crush Canada Inc. (9195), Hi-Crush Holdings LLC , Hi-Crush Services LLC (6206), BulkTracer Holdings LLC (4085), Pronghorn Logistics Holdings, LLC (5223), FB Industries USA Inc. (8208), PropDispatch LLC, Pronghorn Logistics, LLC (4547), and FB Logistics, LLC (8641). The Debtors' address is 1330 Post Oak Blvd, Suite 600, Houston, Texas 77056.

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Exhibit G Schedule of Rejected Executory Contracts and Unexpired Leases

PLEASE TAKE FURTHER NOTICE that these documents remain subject to continuing negotiations in accordance with the terms of the Plan and the Restructuring Support Agreement and the final versions may contain material differences from the versions filed herewith. For the avoidance of doubt, the parties thereto have not consented to such document as being in final form and reserve all rights in that regard. The parties reserve all rights to amend, modify, or supplement the Plan Supplement and any of the documents contained therein in accordance with the terms of the Plan and the Restructuring Support Agreement. To the extent material amendments or modifications are made to any of these documents, the Debtors will file a redline version with the Court prior to the Confirmation Hearing.

PLEASE TAKE FURTHER NOTICE that the Plan Supplement is integral to, part of, and incorporated by reference into the Plan. Please note, however, these documents have not yet been approved by the Court. If the Plan is confirmed, the documents contained in the Plan Supplement will be approved by the Court pursuant to the order confirming the Plan.

PLEASE TAKE FURTHER NOTICE that the hearing to consider confirmation of the Plan (the "**Confirmation Hearing**") is scheduled to commence at 2:00 p.m. (prevailing Central Time) on September 23, 2020. The Confirmation Hearing will take place via videoconference.[2] **The Confirmation Hearing may be continued by the Court or by the Debtors without further notice other than by announcement of same in open court and/or by filing and serving a notice of adjournment.**

PLEASE TAKE FURTHER NOTICE that the deadline for filing objections to the confirmation of the Plan is **September 18, 2020 at 5:00 p.m. (prevailing Central Time)** (the "**Objection Deadline**").

PLEASE TAKE FURTHER NOTICE that the copies of the documents included in the Plan Supplement or the Plan, or any other document filed in the Debtors' Chapter 11 Cases, may be obtained free of charge by contacting the Debtors' Voting and Claims Agent Kurtzman Carson Consultants LLC, by: (i) calling the Debtors' restructuring hotline at 866-554-5810 (US and Canada) or 781-575-2032 (international); (ii) visiting the Debtors' restructuring website at: http://www.kccllc.net/hicrush; and/or (iii) writing to Hi-Crush Claims Processing Center, c/o

[2] The Court will utilize GoToMeeting for the hearing. You should download the free GoToMeeting application on each device that will be used to connect to the hearing. If you choose to connect via a web browser, available literature suggests that Chrome is the preferred browser. Please note that connecting through a browser may limit the availability of some GoToMeeting features. To connect to the hearing, you should enter the meeting code "JudgeJones". You can also connect using the link on Judge Jones' homepage on the Southern District of Texas website. Once connected to GoToMeeting, click the settings icon in the upper right corner and enter your name under the personal information setting. In either event, audio for the Confirmation Hearing will be available by using the Court's regular dial-in number. The dial-in number is +1 (832) 917-1510. You will be responsible for your own long-distance charges. You will be asked to key in the conference room number. Judge Jones' conference room number is 205691.

Kurtzman Carson Consultants LLC, 222 N. Pacific Coast Highway, Suite 300, El Segundo, CA 90245. You may also obtain copies of any pleadings filed in these Chapter 11 Cases for a fee via PACER at: http://www.txs.uscourts.gov or free of charge at http://www.kccllc.net/hicrush.

Dated: September 11, 2020
Houston, Texas

Respectfully Submitted,
/s/ Timothy A. ("Tad") Davidson II

Timothy A. ("Tad") Davidson II (TX Bar No. 24012503)
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Counsel for Debtors and Debtors-in-Possession

Exhibit A

Amended/New Organizational Documents

PLEASE TAKE FURTHER NOTICE that certain documents, or portions thereof, contained in this Exhibit A and the Plan Supplement remain subject to continuing negotiations among the Debtors and interested parties with respect thereto. The Debtors reserve all rights, subject to the terms and conditions set forth in the Plan and the Restructuring Support Agreement, to amend, revise, or supplement the Plan Supplement, and any of the documents and designations contained herein, at any time before the Effective Date of the Plan, or any such other date as may be provided for by the Plan or by order of the Bankruptcy Court.

AMENDED AND RESTATED

CERTIFICATE OF INCORPORATION

OF

HI-CRUSH INC.
(a Delaware corporation)

Hi-Crush Inc., a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), hereby certifies as follows:

1. On July 12, 2020 (the "Petition Date"), the Corporation and each of its direct and indirect wholly-owned domestic subsidiaries (collectively with the Corporation, the "Debtors") filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") with the United States Bankruptcy Court for the District of Texas (the "Bankruptcy Court").

2. This Amended and Restated Certificate of Incorporation (this "Certificate of Incorporation") was duty adopted, without the need for approval of the board of directors of the Corporation (the "Board of Directors") or the stockholders of the Corporation in accordance with Sections 242, 245 and 303 of the General Corporation Law of the State of Delaware, as amended (the "DGCL"), and pursuant to Article V.M of the Joint Plan of Reorganization for the Debtors (the "Plan of Reorganization") confirmed by order, dated [●], 2020, of the Bankruptcy Court, jointly administered under the caption "*In re: Hi-Crush Inc., et al.*", Case No. 20-33495 (DRJ).

3. This Certificate of Incorporation shall become effective on the date of filing with the Secretary of State of Delaware.

4. The text of the Original Certificate is hereby amended and restated in its entirety to provide as herein set forth in full.

ARTICLE I
NAME

The name of the corporation is Hi-Crush Inc.

ARTICLE II
AGENT

The address of the Corporation's registered office in the State of Delaware is 1209 Orange Street, Wilmington, New Castle County, Delaware 19801.

The name of its registered agent at such address is The Corporation Trust Company.

ARTICLE III
PURPOSE

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may now or hereafter be organized under the DGCL.

ARTICLE IV
STOCK

Section 4.1 Authorized Stock. The total number of shares of capital stock which the Corporation shall have authority to issue is [•], par value $[0.001] per share (the "Common Stock") and [•] shall be designated as Preferred Stock, par value $[0.001] per share (the "Preferred Stock"). Except as otherwise provided by law and this Certificate of Incorporation, the shares of capital stock of the Corporation, regardless of class or series, may be issued by the Corporation from time to time in such amounts, for such lawful consideration and for such corporate purpose(s) as the Board of Directors may from time to time determine.

Section 4.2 Common Stock.

(a) Each holder of Common Stock, as such, shall be entitled to one (1) vote for each share of Common Stock held of record by such holder on all matters on which stockholders generally are entitled to vote; provided, however, that, except as otherwise required by applicable law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to this Certificate of Incorporation, including any certificate of designations relating to any series of Preferred Stock (each hereinafter referred to as a "Preferred Stock Designation"), that relates solely to the terms of one or more outstanding series of Preferred Stock, if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Certificate of Incorporation (including any Preferred Stock Designation). The holders of shares of Common Stock shall not have cumulative voting rights.

(b) Dividends. Subject to the rights of the holders of any outstanding series of Preferred Stock, the holders of shares of Common Stock shall be entitled to receive dividends to the extent permitted by applicable law when, as and if declared by the Board of Directors.

(c) Dissolution, Liquidation or Winding Up. Upon the dissolution, liquidation or winding up of the Corporation, after payment or provision for payment of the debts and other liabilities of the Corporation and subject to the rights of the holders of any outstanding series of Preferred Stock, the holders of all outstanding shares of Common Stock shall be entitled to receive the remaining assets of the Corporation available for distribution ratably in proportion to the number of shares held by each such stockholder.

Section 4.3 Preferred Stock.

(a) The Preferred Stock may be issued from time to time in one or more series. Subject to limitations prescribed by law and the provisions of this Article IV, the Board of Directors is hereby authorized to provide by resolution or resolutions and by causing the filing of a Preferred Stock Designation for the issuance of the shares of Preferred Stock in one or more series, and to establish from time to time the number of shares to be included in each such series,

and to fix the designations, powers, preferences, and relative, participating, optional or other rights, if any, and the qualifications, limitations or restrictions, if any, of the shares of each such series.

(b) There shall be no limitation or restriction on any variation between any of the different series of Preferred Stock as to the designations, powers, preferences, and relative, participating, optional or other rights, if any, and the qualifications, limitations or restrictions thereof; and the several series of Preferred Stock may, except as otherwise expressly provided in this Certificate of Incorporation (including any Preferred Stock Designation), vary in any and all respects as fixed and determined by the resolution or resolutions of the Board of Directors, providing for the issuance of the various series; provided, however, that all shares of any one series of Preferred Stock shall have the same designations, powers, preferences, and relative, participating, optional or other rights, if any, and the qualifications, limitations and restrictions.

Section 4.4 8.000%/10.000% Convertible Secured PIK Toggle Notes.

(a) In addition to the foregoing, so long as any obligations under the Corporation's 8.000%/10.000% Convertible Secured PIK Toggle Notes due 2026 (the "Convertible Notes"), pursuant to that certain Indenture, dated as of [•], by and between the Corporation, and [•], as trustee (the "Convertible Notes Indenture") remain outstanding and not discharged in full, the holders of the Convertible Notes shall have the right to vote, as provided herein pursuant to Section 221 of the DGCL. The holders of the Convertible Notes shall be entitled to vote upon all matters upon which holders of any class or classes of Common Stock have the right to vote under the DGCL or this Certificate of Incorporation together with the holders of Common Stock as a single class and on an as-converted to Common Stock basis (assuming the full conversion of each such Convertible Note into Common Stock subject to the terms and conditions of the Convertible Notes Indenture) and shall be deemed to be stockholders of the Corporation (and the Convertible Notes shall be deemed to be stock) for the purpose of any provision of the DGCL that requires the vote of stockholders as a prerequisite to any corporate action. The number of votes represented by each Convertible Note shall be equal to the largest number of whole shares of Common Stock (rounded down to the nearest whole share) into which such Convertible Note may be converted, in accordance with the Convertible Notes Indenture, at the record date for the determination of the stockholders entitled to vote on such matters or, if no such record date is established, at the date such vote is taken.

(b) Holders of Convertible Notes shall have the same right of inspection of the books, accounts and other records of the Corporation which the holders of Common Stock have or may have under the DGCL or this Certificate of Incorporation.

Section 4.5 No Class Vote on Changes in Authorized Number of Shares of Stock. Subject to the rights of the holders of any outstanding series of Preferred Stock, the number of authorized shares of any class or classes of stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of at least a majority of the voting power of the stock of the Corporation entitled to vote thereon irrespective of the provisions of Section 242(b)(2) of the DGCL (or any successor provision thereto).

Section 4.6 Nonvoting Equity Securities. To the extent prohibited by Section 1123(a)(6) of the Bankruptcy Code, the Corporation will not issue non-voting equity securities (which shall

be deemed to not include any warrants or options to purchase capital stock of the Corporation); *provided*, however, that this provision (a) will have no further force or effect beyond that required under Section 1123 of the Bankruptcy Code, (b) will have such force and effect, if any, only for so long as such section is in effect and applicable to the Corporation or any of its wholly-owned subsidiaries and (c) in all events may be amended or eliminated in accordance with applicable law as from time to time in effect. The prohibition on the issuance of nonvoting equity securities is included in this Certificate of Incorporation in compliance with Section 1123(a)(6) of the Bankruptcy Code.

ARTICLE V
BOARD OF DIRECTORS

Section 5.1 Number. Except as otherwise provided for or fixed pursuant to the provisions of this Certificate of Incorporation (including any Preferred Stock Designation), the Board of Directors shall initially consist of five (5) directors and the size of the Board of Directors shall thereafter be increased or decreased (but not to below five (5) directors) by the directors as necessary in accordance with the provisions of that certain Stockholders Agreement, dated as of [•], 2020, by and among the Corporation and certain of its stockholders (as amended from time to time, the "Stockholders Agreement"), or after termination of the Stockholders Agreement, by resolution of the Board of Directors. Any other changes to the number of directors on the Board of Directors shall require the affirmative vote of directors designated by one or more Major Stockholders (as defined in the Stockholders Agreement) collectively representing at least sixty percent (60%) of the issued and outstanding Common Stock (on an as-converted basis).[1]

Section 5.2 Election. The directors of the Corporation need not be stockholders of the Corporation (unless otherwise so required by this Certificate of Incorporation, including any Preferred Stock Designation) and need not be elected by written ballot unless the bylaws of the Corporation (as in effect from time to time, the "Bylaws") so provide.

Section 5.3 Composition of the Board of Directors.

(a) Effective as of the date hereof, the Board of Directors shall consist of the individual(s) designated in accordance with the Stockholders Agreement and identified in the Plan Supplement (as defined in the Plan of Reorganization) (such individuals, the "Initial Board"). Each member of the Initial Board shall hold office until his or her resignation or removal or until his or her respective successor is duly elected and qualified at the next annual meeting of stockholders in accordance with the provisions of the Stockholders Agreement, or after termination of the Stockholders Agreement in accordance with the terms thereof, in accordance with the terms of this Certificate of Incorporation and the Bylaws at the next annual meeting of stockholders.

(b) Each director is to hold office until his or her successor shall have been duly appointed and qualified or until his or her earlier death, retirement, resignation, disqualification or removal.

(c) Subject to the rights of the holders of any outstanding series of Preferred Stock, which may from time to time come into existence and be outstanding, and unless otherwise

[1] Note to Latham: Please refer to the footnote to Section 6.6(c) of the stockholders agreement.

required by law or resolution of the Board of Directors, newly created directorships resulting from any increase in the authorized number of directors and any vacancies in the Board of Directors resulting from death, resignation, retirement, disqualification, removal from office or other cause shall be filled in accordance with the provisions of the Stockholders Agreement, or after termination of the Stockholders Agreement in accordance with the terms thereof, by resolution of the Board of Directors. Any director elected to fill a vacancy or newly created directorship shall hold office until the next annual meeting and until his or her successor shall be elected and qualified, or until his or her earlier death, resignation, retirement, disqualification or removal from office or as otherwise provided in the Stockholders Agreement. No decrease in the authorized number of directors shall shorten the term of any incumbent director.

(d) Except for such additional directors, if any, as are elected by the holders of any series of Preferred Stock, which may from time to time come into existence and be outstanding, as provided for or fixed pursuant to the provisions of Article IV hereof (including any Preferred Stock Designation), any director, or the entire Board of Directors, may be removed from office at any time, but only for "cause" and only by the affirmative vote of at least a majority of the voting power of the stock of the Corporation outstanding and entitled to vote thereon.

(e) During any period when the holders of any series of Preferred Stock have the right to elect additional directors as provided for or fixed pursuant to the provisions of Article IV hereof (including any Preferred Stock Designation), and upon commencement and for the duration of the period during which such right continues: (i) the then otherwise total authorized number of directors of the Corporation shall automatically be increased by such number of directors that the holders of any series of Preferred Stock have a right to elect, and the holders of such Preferred Stock shall be entitled to elect the additional directors so provided for or fixed pursuant to said provisions; and (ii) each of those directors designated by the holders of any series of Preferred Stock provided for or fixed pursuant to the provisions of Article IV hereof (including any Preferred Stock Designation) (the "Preferred Stock Directors") shall serve until such Preferred Stock Director's successor shall have been duly elected and qualified, or until such director's right to hold such office terminates pursuant to said provisions, whichever occurs earlier, subject to his or her earlier death, disqualification, resignation or removal.

Section 5.4 Powers. Except as otherwise required by the DGCL or as provided in this Certificate of Incorporation (including any Preferred Stock Designation), the business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors, and the Board of Directors may exercise all such powers of the Corporation and do all such lawful acts and things as are not by law, the Certificate of Incorporation (including any Preferred Stock Designation) or the Bylaws required to be exercised or done by the stockholders.

Section 5.5 Annual Meeting of Stockholders.

(a) Notice. Advance notice of business to be proposed by stockholders for consideration at a meeting of stockholders of the Corporation shall be given in the manner and to the extent provided in the Bylaws.

(b) Annual Meeting. The annual meeting of stockholders for the transaction of business as may properly come before the meeting, shall be held at such place, if any, either within

or without the State of Delaware, on such date, and at such time as the Board of Directors shall fix.

ARTICLE VI
STOCKHOLDER ACTION

Except as otherwise provided for or fixed pursuant to the provisions of Article IV hereof (including any Preferred Stock Designation), any action that is required or permitted to be taken by the stockholders of the Corporation must be taken at a duly held annual or special meeting of the stockholders and may not be taken by any consent in writing of such stockholders in lieu of a meeting of stockholders.

ARTICLE VII
SPECIAL MEETINGS OF STOCKHOLDERS

Except as otherwise required by law, and except as otherwise provided for or fixed pursuant to the provisions of Article IV hereof (including any Preferred Stock Designation), a special meeting of the stockholders of the Corporation may be called at any time only by the Board of Directors. For the avoidance of doubt, subject to the rights of holders of any series of Preferred Stock, the stockholders of the Corporation shall not have the power to call or request a special meeting of stockholders of the Corporation. The Board of Directors may postpone, reschedule or cancel any special meeting of the stockholders previously scheduled by the Board of Directors. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting by or at the direction of the Board of Directors and included in the notice of such meeting.

ARTICLE VIII
EXISTENCE

The Corporation shall have perpetual existence.

ARTICLE IX
AMENDMENT

Section 9.1 Amendment of Certificate of Incorporation. Subject to such limitations as may be from time to time imposed by other provisions of this Certificate of Incorporation, by the DGCL or by the Stockholders Agreement (for so long as it shall remain in effect in accordance with its terms), the Corporation reserves the right at any time, and from time to time, to amend, alter, change or repeal any provision contained in this Certificate of Incorporation (including any Preferred Stock Designation), and other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted, in the manner now or hereafter prescribed by the laws of the State of Delaware, and all powers, preferences and rights of any nature conferred upon stockholders, directors or any other persons by and pursuant to this Certificate of Incorporation (including any Preferred Stock Designation) in its present form or as hereafter amended are granted subject to this reservation.

Section 9.2 Amendment of Bylaws. In furtherance and not in limitation of the powers conferred by the DGLC or other statutes or laws of the State of Delaware, the Board of Directors

is expressly authorized to adopt, amend or repeal, in whole or in part, the Bylaws. Subject to such limitations as may be from time to time imposed by other provisions of this Certificate of Incorporation (including the terms of any Preferred Stock Designation that require an additional vote), by the DGCL, any requirements of law, the Bylaws or by the Stockholders Agreement (for so long as it shall remain in effect in accordance with its terms), the stockholders of the Corporation may make additional Bylaws and may alter, amend or repeal any Bylaw whether adopted by them or otherwise. For the avoidance of doubt, abstentions shall not count as "votes cast," except as otherwise required by law or this Certificate of Incorporation (including any Preferred Stock Designation). No Bylaws hereafter made or adopted, nor any alteration or amendment thereto or repeal or rescission thereof, shall invalidate any prior act of the Board of Directors that was valid at the time it was taken.

ARTICLE X
LIABILITY OF DIRECTORS

Section 10.1 No Personal Liability. To the fullest extent permitted by the DGCL as the same exists or as may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader exculpation rights than permitted prior thereto), no person who is or at any time has been a director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, notwithstanding any provision of law imposing such liability.

Section 10.2 Amendment or Repeal. Any amendment, alteration or repeal of this Article X that adversely affects any right of a director shall be prospective only and shall not limit or eliminate any such right with respect to any proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to such amendment, alteration or repeal.

Section 10.3 Indemnification. In addition to and without limiting the generality of any right to indemnification provided under the Bylaws, each current and former director, officer, and manager in their respective capacities as such, and solely to the extent that such person was serving in such capacity on or any time after the Petition Date, shall be indemnified in accordance with Article VI.F of the Plan.

ARTICLE XI
FORUM FOR ADJUDICATION OF DISPUTES

Unless the Corporation consents in writing to the selection of an alternative forum, (a) the Court of Chancery of the State of Delaware (the "Court of Chancery") (or if the Court of Chancery lacks jurisdiction, the federal district court for the District of Delaware unless said court lacks subject matter jurisdiction in which case, the Superior Court of the State of Delaware) shall be the sole and exclusive forum for any stockholder of the Corporation (including a beneficial owner of stock) to bring (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim against the Corporation, its directors, officers or employees arising pursuant to any provision of the DGCL or this Certificate of Incorporation, the bylaws of the Corporation or

the Stockholders Agreement, or (iv) any action asserting a claim against the Corporation, its directors, officers or employees governed by the internal affairs doctrine, except as to each of (a) through (d) above, for any claim as to which the Court of Chancery determines that there is an indispensable party not subject to the jurisdiction of the Court of Chancery (and the indispensable party does not consent to the personal jurisdiction of the Court of Chancery within ten days following such determination), which is vested in the exclusive jurisdiction of a court or forum other than the Court of Chancery, or for which the Court of Chancery does not have subject matter jurisdiction, and (b) subject to the preceding provisions of this Article XI, the federal district courts of the United States of America shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933, as amended. If any action the subject matter of which is within the scope of the preceding sentence is filed in a court other than a court located within the State of Delaware (a "Foreign Action") in the name of any stockholder, such stockholder shall be deemed to have consented to (i) the personal jurisdiction of the state and federal courts located within the State of Delaware in connection with any action brought in any such court to enforce the preceding sentence and (ii) having service of process made upon such stockholder in any such action by service upon such stockholder's counsel in the Foreign Action as agent for such stockholder. If any provision or provisions of this Article XI shall be held to be invalid, illegal or unenforceable as applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Article XI (including, without limitation, each portion of any sentence of this Article XI containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) and the application of such provision to other persons or entities and circumstances shall not in any way be affected or impaired thereby.

ARTICLE XII
SEVERABILITY

If any provision or provisions of this Certificate of Incorporation shall be held to be invalid, illegal or unenforceable as applied to any circumstance for any reason whatsoever: (a) the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Certificate of Incorporation (including, without limitation, each portion of any paragraph of this Certificate of Incorporation containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) shall not, to the fullest extent permitted by applicable law, in any way be affected or impaired thereby and (b) to the fullest extent permitted by applicable law, the provisions of this Certificate of Incorporation (including, without limitation, each such portion of any paragraph of this Certificate of Incorporation containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to permit the Corporation to protect its directors, officers, employees and agents from personal liability in respect of their service to or for the benefit of the Corporation to the fullest extent permitted by law.

[The remainder of this page has been intentionally left blank.]

IN WITNESS WHEREOF, the Corporation has caused this Amended and Restated Certificate of Incorporation to be executed as of [•], 2020.

HI-CRUSH INC.

By:_____
Name: [•]
Title: [•]

AMENDED AND RESTATED BYLAWS[1]

OF

HI-CRUSH INC.
(a Delaware corporation)

ARTICLE I
CORPORATE OFFICES

Section 1.1 Registered Office. The registered office and registered agent of the Corporation shall be fixed in the Certificate of Incorporation of the Corporation as then in effect (as the same may be amended and/or restated from time to time, the "Certificate of Incorporation"). The Corporation may also have such principal and other offices, and keep the books and records of the Corporation, except as otherwise required by law, at such other places, either within or without the State of Delaware, and may change the Corporation's registered agent, in each case, as the Board of Directors may from time to time determine or the business of the Corporation may require as determined by the Chief Executive Officer of the Corporation.

Section 1.2 Books and Records. Any records maintained by the corporation in the regular course of its business, including its stock ledger, books of account, and minute books, may be kept on, or by means of, or be in the form of, any information storage device or method, provided that the records so kept can be converted into clearly legible paper form within a reasonable time.

ARTICLE II
MEETINGS OF STOCKHOLDERS

Section 2.1 Annual Meeting. The annual meeting of stockholders for the transaction of such business as may properly come before the meeting, shall be held at such place, if any, either within or without the State of Delaware, on such date, and at such time as the Board of Directors shall fix. The Board of Directors may, in its sole discretion, determine that meetings of stockholders shall not be held at any place, but may instead be held solely by means of remote communication as described in Section 2.11 and in accordance with Section 211(a)(2) of the General Corporation Law of the State of Delaware, as amended (the "DGCL"). If no such place is designated by the Board of Directors, the place of meeting shall be the principal business office of the Corporation. The Board of Directors may postpone, reschedule or cancel any annual meeting of stockholders previously scheduled by the Board of Directors.

Section 2.2 Special Meeting.

Except as otherwise required by law, and except as otherwise provided for or fixed pursuant to the Certificate of Incorporation, including any certificate of designations relating to any series of Preferred Stock (each hereinafter referred to as a "Preferred Stock Designation"), a special meeting of the stockholders of the Corporation may be called for any purpose or purposes only by

[1] Certain provisions to be conformed to the terms of the final draft of the Stockholders Agreement.

or at the direction of the Board of Directors and may be held at such place, if any, either within or without the State of Delaware, and at such time and date as the Board of Directors shall determine and state in the notice of meeting. For the avoidance of doubt, subject to the rights of holders of any series of Preferred Stock, the stockholders of the Corporation shall not have the power to call or request a special meeting of stockholders of the Corporation. The Board of Directors may postpone, reschedule or cancel any special meeting of stockholders previously scheduled by the Board of Directors. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting by or at the direction of the Board of Directors and included in the notice of such meeting.

Section 2.3 Notice of Stockholders' Meetings.

(a) Whenever stockholders are required or permitted to take any action at a meeting, notice of the place, if any, date, and time of the meeting of stockholders, the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for determining the stockholders entitled to notice of the meeting) and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, shall be given. The notice shall be given not less than ten (10) nor more than sixty (60) days before the date on which the meeting is to be held, to each stockholder entitled to vote at such meeting and each holder of the Corporation's 8.000%/10.000% Convertible Secured PIK Toggle Notes due 2026 (the "Convertible Notes" and, such holders, the "Convertible Noteholders"), as long as the Convertible Notes are outstanding, as of the record date for determining the stockholders entitled to notice of the meeting, except as otherwise provided by law, the Certificate of Incorporation (including any Preferred Stock Designation) or these Bylaws. In the case of a special meeting, the purpose or purposes for which the meeting is called also shall be set forth in the notice. Notice to each Convertible Noteholder will be provided through the Trustee (as defined herein). Except as otherwise required by law, notice may be given personally or by mail, or by electronic transmission to the extent permitted by Section 232 of the DGCL. If mailed, such notice shall be deemed given when deposited in the United States mail, postage prepaid, directed to each stockholder at such stockholder's address as it appears on the records of the Corporation. Notice by electronic transmission shall be deemed given as provided in Section 232 of the DGCL. An affidavit that notice has been given, executed by the Secretary of the Corporation, Assistant Secretary or any transfer agent or other agent of the Corporation, shall be prima facie evidence of the facts stated in the notice in the absence of fraud.

(b) When a meeting is adjourned to reconvene at another time or place, notice need not be given of the adjourned meeting if the place, if any, date and time thereof, and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken; provided, however, that if the adjournment is for more than thirty (30) days, a notice of the adjourned meeting shall be given to each stockholder and each Convertible Noteholder of record entitled to vote at the meeting. If after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting, the Board of Directors shall fix a new record date for notice of such adjourned meeting in accordance with Section 7.6(a), and shall give notice of the adjourned meeting to each stockholder and each Convertible Noteholder of record entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting.

Section 2.4 Organization.

(a) Meetings of stockholders shall be presided over by the Chairman of the Board of Directors, or in his or her absence, by the Chief Executive Officer or, in his or her absence, by another person designated by the Board of Directors. The Secretary of the Corporation, or in his or her absence, an Assistant Secretary, or in the absence of the Secretary and all Assistant Secretaries, a person whom the chairman of the meeting shall appoint, shall act as secretary of the meeting and keep a record of the proceedings thereof.

(b) The date and time of the opening and the closing of the polls for each matter upon which the stockholders and Convertible Noteholders shall vote at a meeting of stockholders shall be announced at the meeting. The Board of Directors may adopt such rules and regulations for the conduct of any meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the chairman of the meeting shall have the authority to adopt and enforce such rules and regulations for the conduct of any meeting of stockholders and the safety of those in attendance as, in the judgment of the chairman, are necessary, appropriate or convenient for the conduct of the meeting. Rules and regulations for the conduct of meetings of stockholders, whether adopted by the Board of Directors or by the chairman of the meeting, may include without limitation, establishing: (i) an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders entitled to vote at the meeting, their duly authorized and constituted proxies and such other persons as the chairman of the meeting shall permit; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; (v) limitations on the time allotted for consideration of each agenda item and for questions and comments by participants; (vi) regulations for the opening and closing of the polls for balloting and matters which are to be voted on by ballot (if any); and (vii) procedures (if any) requiring attendees to provide the Corporation advance notice of their intent to attend the meeting. Subject to any rules and regulations adopted by the Board of Directors, the chairman of the meeting may convene and, for any reason, from time to time, adjourn and/or recess any meeting of stockholders pursuant to Section 2.7. The chairman of the meeting, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall have the power to declare that certain business was not properly brought before the meeting if the facts warrant, and if such chairman should so declare, such business shall not be transacted.

Section 2.5 List of Stockholders and Convertible Noteholders. The officer who has charge of the stock ledger shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders and Convertible Noteholders entitled to vote at the meeting; provided, however, that if the record date for determining the stockholders and Convertible Noteholders entitled to vote is less than ten (10) days before the date of the meeting, the list shall reflect the stockholders and Convertible Noteholders entitled to vote as of the 10th day before the meeting date. Such list shall be arranged in alphabetical order and shall show the address of each stockholder and Convertible Noteholder and the number of shares registered in the name of each stockholder. Nothing in this Section 2.5 shall require the Corporation to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder and Convertible Noteholder, for any purpose germane to the meeting at least ten (10) days prior to the meeting: (a) on a reasonably accessible electronic

network, provided that the information required to gain access to such list is provided with the notice of meeting; or (b) during ordinary business hours at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation shall take reasonable steps to ensure that such information is available only to stockholders and Convertible Noteholders. If the meeting is to be held at a place, then a list of stockholders entitled to vote at the meeting shall be produced and kept at the time and place of the meeting during the whole time thereof and may be examined by any stockholder or Convertible Noteholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder or Convertible Noteholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Except as otherwise required by law, the stock ledger shall be the only evidence as to who are the stockholders and Convertible Noteholders entitled to examine the list of stockholders and Convertible Noteholders required by this Section 2.5 or to vote in person or by proxy at any meeting of stockholders.

Section 2.6 Quorum. Except as otherwise required by law, the Certificate of Incorporation (including any Preferred Stock Designation) or these Bylaws, at any meeting of stockholders, a majority of the voting power of the stock outstanding and entitled to vote at the meeting (including the Convertible Notes on an as-converted basis), present in person or represented by proxy, shall constitute a quorum for the transaction of business; provided, however, that where a separate vote by a class or series or classes or series is required, a majority of the voting power of the stock of such class or series or classes or series outstanding and entitled to vote on that matter (including the Convertible Notes on an as-converted basis), present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to such matter. If a quorum is not present or represented at any meeting of stockholders, then the chairman of the meeting, or a majority of the voting power of the stock (including the Convertible Notes on an as-converted basis) present in person or represented by proxy at the meeting and entitled to vote thereon, shall have power to adjourn or recess the meeting from time to time in accordance with Section 2.7, until a quorum is present or represented. Subject to applicable law, if a quorum initially is present at any meeting of stockholders, the stockholders may continue to transact business until adjournment or recess, notwithstanding the withdrawal of enough stockholders to leave less than a quorum, but if a quorum is not present at least initially, no business other than adjournment or recess may be transacted.

Section 2.7 Adjourned or Recessed Meeting. Any annual or special meeting of stockholders, whether or not a quorum is present, may be adjourned or recessed for any reason from time to time by the chairman of the meeting, subject to any rules and regulations adopted by the Board of Directors pursuant to Section 2.4(b). Any such meeting may be adjourned for any reason (and may be recessed if a quorum is not present or represented) from time to time by a majority of the voting power of the stock present in person or represented by proxy at the meeting and entitled to vote thereon (including the Convertible Notes). At any such adjourned or recessed meeting at which a quorum may be present, any business may be transacted that might have been transacted at the meeting as originally called.

Section 2.8 Voting.

(a) In accordance with Article 4 of the Certificate of Incorporation, as long as the Convertible Notes are outstanding, the Convertible Noteholders shall be entitled to vote upon all matters upon which holders of any class or classes of the Corporation's common stock, par value $0.[001] per share ("Common Stock") have the right to vote. Except as otherwise required by law, the Certificate of Incorporation (including any Preferred Stock Designation) or that certain Stockholders Agreement, dated as of [•], 2020, by and among the Corporation and certain of its stockholders (as amended from time to time, the "Stockholders Agreement"), (i) each holder of Common Stock (such holder, a "Common Stockholder," and together with the Convertible Noteholders, the "Securityholders") shall be entitled to one vote for each outstanding share of Common Stock held of record by such Common Stockholder that has voting power upon the subject matter in question, and (ii) each Convertible Noteholder that has voting power upon the subject matter in question shall be entitled to one vote for each share of Common Stock (rounded down to the nearest whole share) into which the Convertible Notes held by such Convertible Noteholder may be converted in accordance with that certain Indenture, dated as of [•], by and between the Corporation, and [WSFS Financial Corporation], as trustee (the "Trustee").

(b) Except as otherwise required by law, the Certificate of Incorporation (including any Preferred Stock Designation), the Stockholders Agreement, these Bylaws or any law, rule or regulation applicable to the Corporation or its securities, at each meeting of stockholders at which a quorum is present, all corporate actions to be taken by vote of the Securityholders shall be authorized by the affirmative vote of at least a majority of the votes cast affirmatively or negatively, present in person or represented by proxy and entitled to vote on the subject matter and voting together as a single class, and where a separate vote by a class or series or classes or series is required, if a quorum of such class or series or classes or series is present, such act shall be authorized by the affirmative vote of at least a majority of the votes cast affirmatively or negatively by such class or series or classes or series, present in person or represented by proxy and entitled to vote on the subject matter. For the avoidance of doubt, abstentions shall not count as "votes cast," except as otherwise required by law, the Certificate of Incorporation (including any Preferred Stock Designation), these Bylaws or any law, rule or regulation applicable to the Corporation or its securities. Voting at meetings of stockholders need not be by written ballot.

Section 2.9 Proxies. Every Securityholder entitled to vote on any matter, shall have the right to do so either in person or by one or more persons authorized to act for such Securityholder by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the Corporation generally. A Securityholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by delivering to the Secretary of the Corporation a revocation of the proxy or executed new proxy bearing a later date.

Section 2.10 No Action by Written Consent.. Except as otherwise provided for or fixed pursuant to the Certificate of Incorporation (including any Preferred Stock Designation), no action that is required or permitted to be taken by the Securityholders of the Corporation may be effected by consent of Securityholders in lieu of a meeting of stockholders.

Section 2.11 Meetings by Remote Communications. The Board of Directors may, in its sole discretion, determine that a meeting of stockholders shall not be held at any place, but may instead be held solely by means of remote communication in accordance with Section 211(a)(2) of the DGCL. If authorized by the Board of Directors in its sole discretion, and subject to such guidelines and procedures as the Board of Directors may adopt, Securityholders and proxyholders not physically present at a meeting of stockholders may, by means of remote communication: (a) participate in a meeting of stockholders; and (b) be deemed present in person and vote at a meeting of stockholders whether such meeting is to be held at a designated place or solely by means of remote communication, provided that: (i) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a Securityholder or proxyholder; (ii) the Corporation shall implement reasonable measures to provide such Securityholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the Securityholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings; and (iii) if any Securityholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the Corporation.

ARTICLE III
DIRECTORS

Section 3.1 Powers. Except as otherwise required by the DGCL or as provided in the Certificate of Incorporation (including any Preferred Stock Designation), the business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. In addition to the powers and authorities these Bylaws expressly confer upon it, the Board of Directors may exercise all such powers of the Corporation and do all such lawful acts and things as are not by law, the Certificate of Incorporation (including any Preferred Stock Designation) or these Bylaws required to be exercised or done by the stockholders.

Section 3.2 Number and Appointment.

(a) Except as otherwise provided for or fixed pursuant to the Certificate of Incorporation (including any Preferred Stock Designation), the number of directors which shall constitute the initial Board of Directors shall be five, each director designated in accordance with the Stockholders Agreement. Thereafter, the number of directors shall be established from time to time in accordance with the provisions of the Stockholders Agreement, or after termination of the Stockholders Agreement, by resolution of the Board of Directors. Each director shall hold office until a successor is duly appointed and qualified or until his or her earlier death, resignation or removal as provided in the Stockholders Agreement.

(b) Directors need not be stockholders unless so required by the Certificate of Incorporation (including any Preferred Stock Designation), the Stockholders Agreement or these Bylaws, wherein other qualifications for directors may be prescribed.

Section 3.3 Voting. Each director shall have one vote, except, for so long as the Stockholders Agreement shall remain in effect in accordance with its terms, (i) in connection with the matters set forth in Section 6.6 of the Stockholders Agreement and (ii) each director that is

designated pursuant to Section 6.1(b)(iii) of the Stockholders Agreement will have 1.5 votes. All decisions of the Board of Directors will require the approval of a majority of all of the voting power of the directors, except for those actions set forth in Section 6.6 of the Stockholders Agreement.

Section 3.4 Vacancies and Newly Created Directorships. Subject to the rights of the holders of any outstanding series of Preferred Stock, and unless otherwise required by law or resolution of the Board of Directors, newly created directorships resulting from any increase in the authorized number of directors and any vacancies in the Board of Directors resulting from death, resignation, retirement, disqualification, removal from office or other cause shall be filled in accordance with the Stockholders Agreement, or after termination of the Stockholders Agreement in accordance with the terms thereof, by resolution of the Board of Directors. Any director elected to fill a vacancy or newly created directorship shall hold office until the next annual meeting and until his or her successor shall be elected and qualified, or until his or her earlier death, resignation, retirement, disqualification or removal from office or as otherwise provided in the Stockholders Agreement.

Section 3.5 Resignations. Any director may resign at any time upon notice given in writing or by electronic transmission to the Board of Directors, the Chairman of the Board of Directors or the Secretary of the Corporation. Such resignation shall take effect upon delivery, unless the resignation specifies a later effective date or time or an effective date or time determined upon the happening of an event or events. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 3.6 Regular Meetings. Regular meetings of the Board of Directors shall be held at such place or places, within or without the State of Delaware, on such date or dates and at such time or times, as shall have been established by the Board of Directors and publicized among all directors. A notice of each regular meeting shall not be required.

Section 3.7 Special Meetings. Special meetings of the Board of Directors for any purpose or purposes may be called at any time by the Chairman of the Board of Directors, the Chief Executive Officer or a majority of the directors then in office. The person or persons authorized to call special meetings of the Board of Directors may fix the place, within or without the State of Delaware, date and time of such meetings. Notice of each such meeting shall be given to each director, if by mail, addressed to such director at his or her residence or usual place of business, at least five days before the day on which such meeting is to be held, or shall be sent to such director by electronic transmission, or be delivered personally or by telephone, in each case at least twenty-four (24) hours prior to the time set for such meeting. A notice of special meeting need not state the purpose of such meeting, and, unless indicated in the notice thereof, any and all business may be transacted at a special meeting.

Section 3.8 Participation in Meetings by Conference Telephone. Members of the Board of Directors, or of any committee thereof, may participate in a meeting of such Board of Directors or committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation shall constitute presence in person at such meeting.

Section 3.9 Quorum and Voting. Except as otherwise required by law, the Certificate of Incorporation or these Bylaws, a majority of the whole Board of Directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, and the vote of a majority of the directors present at a duly held meeting at which a quorum is present shall be the act of the Board of Directors. The chairman of the meeting or a majority of the directors present may adjourn the meeting to another time and place whether or not a quorum is present. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called.

Section 3.10 Board of Directors Action by Written Consent Without a Meeting.

Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors, or any committee thereof, may be taken without a meeting, provided that all members of the Board of Directors or committee, as the case may be, consent in writing or by electronic transmission to such action, and the writing or writings or electronic transmission or transmissions are filed with the minutes or proceedings of the Board of Directors or committee in accordance with applicable law. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form. Any person (whether or not then a director) may provide, whether through instruction to an agent or otherwise, that a consent to action shall be effective at a future time (including a time determined upon the happening of an event), no later than sixty (60) days after such instruction is given or such provision is made and such consent shall be deemed to have been given at such effective time so long as such person is then a director and did not revoke the consent prior to such time. Any such consent shall be revocable prior to its becoming effective.

Section 3.11 Chairman of the Board of Directors. The Board of Directors shall elect a Chairman of the Board of Directors who must be a director and shall not be considered an officer of the Corporation. The Chairman of the Board of Directors shall preside at meetings of stockholders and directors and shall perform such other duties as the Board of Directors may from time to time determine. If the Chairman of the Board of Directors is not present at a meeting of the Board of Directors, another director chosen by the Board of Directors shall preside.

Section 3.12 Rules and Regulations. The Board of Directors shall adopt such rules and regulations not inconsistent with the provisions of law, the Certificate of Incorporation or these Bylaws for the conduct of its meetings and management of the affairs of the Corporation as the Board of Directors shall deem proper.

Section 3.13 Fees and Compensation of Directors. Unless otherwise restricted by the Certificate of Incorporation, directors may receive such compensation, if any, for their services on the Board of Directors and its committees, and such reimbursement of expenses, as may be fixed or determined by resolution of the Board of Directors.

Section 3.14 Emergency Bylaws. In the event of any emergency, disaster or catastrophe, as referred to in Section 110 of the DGCL, or other similar emergency condition, as a result of which a quorum of the Board of Directors or a standing committee of the Board of Directors cannot readily be convened for action, then the director or directors in attendance at the meeting shall

constitute a quorum. Such director or directors in attendance may further take action to appoint one or more of themselves or other directors to membership on any standing or temporary committees of the Board of Directors as they shall deem necessary and appropriate.

ARTICLE IV
COMMITTEES

Section 4.1 Committees of the Board of Directors. The Board of Directors may designate one or more committees, each such committee to consist of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee to replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent permitted by law and provided in the resolution of the Board of Directors establishing such committee, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it. All committees of the Board of Directors shall keep minutes of their meetings and shall report their proceedings to the Board of Directors when requested or required by the Board of Directors.

Section 4.2 Meetings and Action of Committees. Unless the Board of Directors provides otherwise by resolution, any committee of the Board of Directors may adopt, alter and repeal such rules and regulations not inconsistent with the provisions of law, the Certificate of Incorporation or these Bylaws for the conduct of its meetings as such committee may deem proper. Except as otherwise required by law, the Certificate of Incorporation or these Bylaws, and except as otherwise provided in a resolution of the Board of Directors: (a) a majority of the directors then serving on a committee shall constitute a quorum for the transaction of business by the committee; provided, however, that in no case shall a quorum be less than one-third of the directors then serving on the committee; and (b) the vote of a majority of the members of a committee present at a meeting at which a quorum is present shall be the act of the committee.

ARTICLE V
OFFICERS

Section 5.1 Officers. The officers of the Corporation shall consist of a Chief Executive Officer, a Chief Financial Officer, a Chief Operating Officer, a Secretary and such other officers as the Board of Directors may from time to time determine, each of whom shall be elected by the Board of Directors, each to have such authority, functions or duties as set forth in these Bylaws or as determined by the Board of Directors. Each officer shall be elected by the Board of Directors and shall hold office for such term as may be prescribed by the Board of Directors and until such person's successor shall have been duly elected and qualified, or until such person's earlier death, disqualification, resignation or removal. Any number of offices may be held by the same person; provided, however, that no officer shall execute, acknowledge or verify any instrument in more than one capacity if such instrument is required by law, the Certificate of Incorporation or these Bylaws to be executed, acknowledged or verified by two or more officers. The Board of Directors

may require any officer, agent or employee to give security for the faithful performance of his or her duties.

Section 5.2 Compensation. The salaries of the officers of the Corporation and the manner and time of the payment of such salaries shall be fixed and determined by the Board of Directors and may be altered by the Board of Directors from time to time as it deems appropriate, subject to the rights, if any, of such officers under any contract of employment.

Section 5.3 Removal, Resignation and Vacancies. Any officer of the Corporation may be removed, with or without cause, by the Board of Directors or by a duly authorized officer, without prejudice to the rights, if any, of such officer under any contract to which it is a party. Any officer may resign at any time upon notice given in writing or by electronic transmission to the Corporation, without prejudice to the rights, if any, of the Corporation under any contract to which such officer is a party. If any vacancy occurs in any office of the Corporation, the Board of Directors may elect a successor to fill such vacancy for the remainder of the unexpired term and until a successor shall have been duly elected and qualified.

Section 5.4 Chief Executive Officer. The Chief Executive Officer shall have general supervision and direction of the business and affairs of the Corporation, shall be responsible for corporate policy and strategy, and shall report directly to the Board of Directors. Unless otherwise provided in these Bylaws or determined by the Board of Directors, all other officers of the Corporation shall report directly to the Chief Executive Officer or as otherwise determined by the Chief Executive Officer. The Chief Executive Officer shall, if present and in the absence of the Chairman of the Board of Directors, preside at meetings of the stockholders.

Section 5.5 Chief Financial Officer. The Chief Financial Officer shall exercise all the powers and perform the duties of the office of the chief financial officer and in general have overall supervision of the financial operations of the Corporation. The Chief Financial Officer shall supervise and be responsible for all the funds and securities of the Corporation, the deposit of all moneys and other valuables to the credit of the Corporation in depositories of the Corporation, borrowings and compliance with the provisions of all indentures, agreements and instruments governing such borrowings to which the Corporation is a party, the disbursement of funds of the Corporation and the investment of its funds, and in general shall perform all of the duties incident to the office of the Chief Financial Officer. The Chief Financial Officer shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as the Board of Directors or the Chief Executive Officer may from time to time determine.

Section 5.6 Chief Operating Officer. The Chief Operating Officer shall have general responsibility for the management and control of the operations of the Corporation. The Chief Operating Officer shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as the Board of Directors or the Chief Executive Officer may from time to time determine.

Section 5.7 Secretary. The powers and duties of the Secretary are: (i) to act as Secretary at all meetings of the Board of Directors, of the committees of the Board of Directors and of the stockholders and to record the proceedings of such meetings in a book or books to be kept for that purpose; (ii) to see that all notices required to be given by the Corporation are duly given and

served; (iii) to act as custodian of the seal of the Corporation and affix the seal or cause it to be affixed to all certificates of stock of the Corporation and to all documents, the execution of which on behalf of the Corporation under its seal is duly authorized in accordance with the provisions of these Bylaws; (iv) to have charge of the books, records and papers of the Corporation and see that the reports, statements and other documents required by law to be kept and filed are properly kept and filed; and (v) to perform all of the duties incident to the office of Secretary. The Secretary shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as the Board of Directors or the Chief Executive Officer may from time to time determine.

Section 5.8 Additional Matters. The Chief Executive Officer and the Chief Financial Officer of the Corporation shall have the authority to designate employees of the Corporation to have the title of President, Vice President, Assistant Vice President, Treasurer, Assistant Treasurer, Controller or Assistant Secretary. Any employee so designated shall have the powers and duties determined by the officer making such designation. The persons upon whom such titles are conferred shall not be deemed officers of the Corporation unless elected by the Board of Directors.

Section 5.9 Checks; Drafts; Evidences of Indebtedness. From time to time, the Board of Directors shall determine the method, and designate (or authorize officers of the Corporation to designate) the person or persons who shall have authority, to sign or endorse all checks, drafts, other orders for payment of money and notes, bonds, debentures or other evidences of indebtedness that are issued in the name of or payable by the Corporation, and only the persons so authorized shall sign or endorse such instruments.

Section 5.10 Corporate Contracts and Instruments; How Executed. Except as otherwise provided in these Bylaws, the Board of Directors may determine the method, and designate (or authorize officers of the Corporation to designate) the person or persons who shall have authority to enter into any contract or execute any instrument in the name of and on behalf of the Corporation. Such authority may be general or confined to specific instances. Unless so authorized, or within the power incident to a person's office or other position with the Corporation, no person shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

Section 5.11 Action with Respect to Securities of Other Corporations or Entities. The Chief Executive Officer or any other officer of the Corporation authorized by the Board of Directors or the Chief Executive Officer is authorized to vote, represent, and exercise on behalf of the Corporation all rights incident to any and all shares or other equity interests of any other corporation or entity or corporations or entities, standing in the name of the Corporation. The authority herein granted may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by the person having such authority.

Section 5.12 Delegation. The Board of Directors may from time to time delegate the powers or duties of any officer to any other officers or agents, notwithstanding the foregoing provisions of this Article V.

ARTICLE VI
INDEMNIFICATION AND ADVANCEMENT OF EXPENSES

Section 6.1 Right to Indemnification. Each person who was or is a party or is threatened to be made a party to, or was or is otherwise involved in, any action, suit, arbitration, alternative dispute resolution mechanism, investigation, inquiry, judicial, administrative or legislative hearing, or any other threatened, pending or completed proceeding, whether brought by or in the right of the Corporation or otherwise, including any and all appeals, whether of a civil, criminal, administrative, legislative, investigative or other nature (hereinafter a "proceeding"), by reason of the fact that he or she is or was a director or an officer of the Corporation or while a director or officer of the Corporation is or was serving at the request of the Corporation as a director, officer, employee, agent or trustee of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter an "indemnitee"), or by reason of anything done or not done by him or her in any such capacity, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the DGCL, as the same exists or may hereafter be amended, against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes, penalties and amounts paid in settlement by or on behalf of the indemnitee) actually and reasonably incurred by such indemnitee in connection therewith, all on the terms and conditions set forth in these Bylaws; provided, however, that, except as otherwise required by law or provided in Section 6.3 with respect to suits to enforce rights under this Article VI, the Corporation shall indemnify any such indemnitee in connection with a proceeding, or part thereof, voluntarily initiated by such indemnitee (including claims and counterclaims, whether such counterclaims are asserted by: (i) such indemnitee; or (ii) the Corporation in a proceeding initiated by such indemnitee) only if such proceeding, or part thereof, was authorized or ratified by the Board of Directors or the Board of Directors otherwise determines that indemnification or advancement of expenses is appropriate.

Section 6.2 Right to Advancement of Expenses.

(a) In addition to the right to indemnification conferred in Section 6.1, an indemnitee shall, to the fullest extent permitted by law, also have the right to be paid by the Corporation the expenses (including attorneys' fees) incurred in defending any proceeding in advance of its final disposition (hereinafter an "advancement of expenses"); provided, however, that an advancement of expenses shall be made only upon delivery to the Corporation of an undertaking (hereinafter an "undertaking"), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision of a court of competent jurisdiction from which there is no further right to appeal (hereinafter a "final adjudication") that such indemnitee is not entitled to be indemnified for such expenses under this Article VI or otherwise.

(b) Notwithstanding the foregoing Section 6.2(a), the Corporation shall not make or continue to make advancements of expenses to an indemnitee if a determination is reasonably made that the facts known at the time such determination is made demonstrate clearly and convincingly that the indemnitee acted in bad faith or in a manner that the indemnitee did not reasonably believe to be in or not opposed to the best interests of the Corporation, or, with respect to any criminal proceeding, that the indemnitee had reasonable cause to believe his or her conduct was unlawful. Such determination shall be made: (i) by the Board of Directors by a majority vote

of directors who are not parties to such proceeding, whether or not such majority constitutes a quorum; (ii) by a committee of such directors designated by a majority vote of such directors, whether or not such majority constitutes a quorum; or (iii) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion to the Board of Directors, a copy of which shall be delivered to the indemnitee.

Section 6.3 Right of Indemnitee to Bring Suit. If a request for indemnification under Section 6.1 is not paid in full by the Corporation within sixty (60) days, or if a request for an advancement of expenses under Section 6.2 is not paid in full by the Corporation within twenty (20) days, after a written request has been received by the Secretary of the Corporation, the indemnitee may at any time thereafter bring suit against the Corporation in a court of competent jurisdiction in the State of Delaware seeking an adjudication of entitlement to such indemnification or advancement of expenses. If successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit to the fullest extent permitted by law. In any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right to an advancement of expenses) it shall be a defense that the indemnitee has not met any applicable standard of conduct for indemnification set forth in the DGCL. Further, in any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that the indemnitee has not met any applicable standard of conduct for indemnification set forth in the DGCL. Neither the failure of the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel or its stockholders) that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a defense to such suit. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to be indemnified, or to such advancement of expenses, under applicable law, this Article VI or otherwise shall be on the Corporation.

Section 6.4 Non-Exclusivity of Rights. The rights to indemnification and to the advancement of expenses conferred in this Article VI shall not be exclusive of any other right which any person may have or hereafter acquire under any law, agreement, vote of stockholders or disinterested directors, provisions of a certificate of incorporation or bylaws, the Certificate of Incorporation or otherwise.

Section 6.5 Insurance. The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or

loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

Section 6.6 Indemnification of Employees and Agents of the Corporation. The Corporation may, to the extent and in the manner permitted by law, and to the extent authorized from time to time, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Corporation.

Section 6.7 Nature of Rights. The rights conferred upon indemnitees in this Article VI shall be contract rights and such rights shall continue as to an indemnitee who has ceased to be a director or officer and shall inure to the benefit of the indemnitee's heirs, executors and administrators. Any amendment, alteration or repeal of this Article VI that adversely affects any right of an indemnitee or its successors shall be prospective only and shall not limit or eliminate any such right with respect to any proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to such amendment, alteration or repeal.

Section 6.8 Settlement of Claims. Notwithstanding anything in this Article VI to the contrary, the Corporation shall not be liable to indemnify any indemnitee under this Article VI for any amounts paid in settlement of any proceeding effected without the Corporation's written consent, which consent shall not be unreasonably withheld.

Section 6.9 Subrogation. In the event of payment under this Article VI, the Corporation shall be subrogated to the extent of such payment to all of the rights of recovery of the indemnitee (excluding insurance obtained on the indemnitee's own behalf), and the indemnitee shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the Corporation effectively to bring suit to enforce such rights.

Section 6.10 Severability. If any provision or provisions of this Article VI shall be held to be invalid, illegal or unenforceable as applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law: (a) the validity, legality and enforceability of such provision in any other circumstance and of the remaining provisions of this Article VI (including, without limitation, all portions of any paragraph of this Article VI containing any such provision held to be invalid, illegal or unenforceable, that are not by themselves invalid, illegal or unenforceable) and the application of such provision to other persons or entities or circumstances shall not in any way be affected or impaired thereby; and (b) to the fullest extent possible, the provisions of this Article VI (including, without limitation, all portions of any paragraph of this Article VI containing any such provision held to be invalid, illegal or unenforceable, that are not themselves invalid, illegal or unenforceable) shall be construed so as to give effect to the intent of the parties that the Corporation provide protection to the indemnitee to the fullest extent set forth in this Article VI.

ARTICLE VII
CAPITAL STOCK

Section 7.1 Certificates of Stock. The shares of the Corporation shall be uncertificated; provided, however, that the Board of Directors may provide by resolution or resolutions that some

or all of any or all classes or series of stock shall be evidenced by certificates in such form as the appropriate officers of the Corporation may from time to time approve, signed by or in the name of the Corporation by any two authorized officers of the Corporation, including, without limitation, the Chief Executive Officer, the Chief Financial Officer, the Chief Operating Officer, the Secretary, or any President, Treasurer, Assistant Treasurer, Controller or Assistant Secretary, of the Corporation certifying the number of shares owned by such holder in the Corporation. Any or all such signatures may be facsimiles. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue.

Section 7.2 Special Designation on Certificates. If the Corporation is authorized to issue more than one class of stock or more than one series of any class, then the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate that the Corporation shall issue to represent such class or series of stock; provided, however, that, except as otherwise provided in Section 202 of the DGCL, in lieu of the foregoing requirements there may be set forth on the face or back of the certificate that the Corporation shall issue to represent such class or series of stock a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Within a reasonable time after the issuance or transfer of uncertificated stock, the Corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to this Section 7.2 or Sections 151, 156, 202(a) or 218(a) of the DGCL or with respect to this Section 7.2 and Section 151 of the DGCL a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated stock and the rights and obligations of the holders of certificates representing stock of the same class and series shall be identical.

Section 7.3 Transfers of Stock. Transfers of shares of stock of the Corporation shall be made only on the books of the Corporation upon authorization by the registered holder thereof or by such holder's attorney thereunto authorized by a power of attorney duly executed and filed with the Secretary of the Corporation or a transfer agent for such stock, and if such shares are represented by a certificate, upon surrender of the certificate or certificates for such shares properly endorsed or accompanied by a duly executed stock transfer power and the payment of any taxes thereon; provided, however, that the Corporation shall be entitled to recognize and enforce any lawful restriction on transfer.

Section 7.4 Lost Certificates. The Corporation may issue a new share certificate or uncertificated shares in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed

certificate or the owner's legal representative to give the Corporation a bond (or other adequate security) sufficient to indemnify it against any claim that may be made against it (including any expense or liability) on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares. The Board of Directors may adopt such other provisions and restrictions with reference to lost certificates, not inconsistent with applicable law, as it shall in its discretion deem appropriate.

Section 7.5 Registered Stockholders. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise required by law.

Section 7.6 Record Date for Determining Securityholders.

(a) In order that the Corporation may determine the Securityholders entitled to notice of any meeting of stockholders or any adjourned meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall, unless otherwise required by law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If the Board of Directors so fixes a date, such date shall also be the record date for determining the Securityholders entitled to vote at such meeting unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board of Directors, the record date for determining Securityholders entitled to notice of and to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of Securityholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjourned meeting; provided, however, that the Board of Directors may fix a new record date for the determination of Securityholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for Securityholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of Securityholders entitled to vote in accordance herewith at the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than sixty (60) days prior to such action. If no such record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 7.7 Regulations. To the extent permitted by applicable law, the Board of Directors may make such additional rules and regulations as it may deem expedient concerning the issue, transfer and registration of shares of stock of the Corporation.

Section 7.8 Waiver of Notice. Whenever notice is required to be given under any provision of the DGCL or the Certificate of Incorporation or these Bylaws, a written waiver, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, the Board of Directors or a committee of the Board of Directors need be specified in any written waiver of notice or any waiver by electronic transmission unless so required by the Certificate of Incorporation or these Bylaws.

ARTICLE VIII
GENERAL MATTERS

Section 8.1 Fiscal Year. The fiscal year of the Corporation shall begin on the first day of January of each year and end on the last day of December of the same year, or shall extend for such other 12 consecutive months as the Board of Directors may designate.

Section 8.2 Corporate Seal. The Board of Directors may provide a suitable seal, containing the name of the Corporation, which seal shall be in the charge of the Secretary of the Corporation. If and when so directed by the Board of Directors or a committee thereof, duplicates of the seal may be kept and used by the Chief Financial Officer or by any Treasurer, Assistant Secretary or Assistant Treasurer.

Section 8.3 Reliance Upon Books, Reports and Records. Each director and each member of any committee designated by the Board of Directors shall, in the performance of his or her duties, be fully protected in relying in good faith upon the books of account or other records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of its officers or employees, or committees of the Board of Directors so designated, or by any other person as to matters which such director or committee member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation.

Section 8.4 Subject to Law and Certificate of Incorporation. All powers, duties and responsibilities provided for in these Bylaws, whether or not explicitly so qualified, are qualified by the Certificate of Incorporation (including any Preferred Stock Designation) and applicable law.

ARTICLE IX
AMENDMENTS

Section 9.1 Amendments . In furtherance and not in limitation of the powers conferred by DGLC or other statutes or laws of the State of Delaware, the Board of Directors is expressly authorized to adopt, amend or repeal, in whole or in part, these Bylaws without any action on the

part of the stockholders of the Corporation in accordance with the Stockholders Agreement. Except as otherwise provided in the Certificate of Incorporation (including the terms of any Preferred Stock Designation that require an additional vote) or these Bylaws, and in addition to any requirements of law, the affirmative vote of the directors designated by one or more Major Stockholders collectively representing at least sixty percent (60%) of the issued and outstanding Common Stock (on an as-converted basis) cast affirmatively or negatively, present in person or by proxy and entitled to vote thereon, voting together as a single class, shall be required for the stockholders to adopt, amend or repeal, or adopt any provision inconsistent with, any provision of these Bylaws. For the avoidance of doubt, abstentions shall not count as "votes cast," except as otherwise required by law, the Certificate of Incorporation (including any Preferred Stock Designation), the Stockholders Agreement, these Bylaws or any law, rule or regulation applicable to the Corporation or its securities.

The foregoing Bylaws were adopted by the Board of Directors on [•], 2020.

Exhibit B

Exit Facility Credit Agreement

[TO COME]

PLEASE TAKE FURTHER NOTICE that certain documents, or portions thereof, contained in this Exhibit B and the Plan Supplement remain subject to continuing negotiations among the Debtors and interested parties with respect thereto. The Debtors reserve all rights, subject to the terms and conditions set forth in the Plan and the Restructuring Support Agreement, to amend, revise, or supplement the Plan Supplement, and any of the documents and designations contained herein, at any time before the Effective Date of the Plan, or any such other date as may be provided for by the Plan or by order of the Bankruptcy Court.

Exhibit C

New Board Disclosure

PLEASE TAKE FURTHER NOTICE that certain documents, or portions thereof, contained in this Exhibit C and the Plan Supplement remain subject to continuing negotiations among the Debtors and interested parties with respect thereto. The Debtors reserve all rights, subject to the terms and conditions set forth in the Plan and the Restructuring Support Agreement, to amend, revise, or supplement the Plan Supplement, and any of the documents and designations contained herein, at any time before the Effective Date of the Plan, or any such other date as may be provided for by the Plan or by order of the Bankruptcy Court.

Exhibit C

Section 1129(a)(5) Disclosures Regarding Directors and Officers

I. Disclosure Regarding Directors

On and as of the Effective Date, the existing boards of directors and other governing bodies of the Debtors will be deemed to have resigned in each case without further notice to or order of the Bankruptcy Court, act or action under applicable law, regulation, order, or rule or the vote, consent, authorization or approval of any Person or Entity. The initial New Board shall be selected in accordance with the terms of the New Stockholders Agreement.

In accordance with Article V.L of the Plan and consistent with the requirements of section 1129(a)(5) of the Bankruptcy Code, to the extent known, the Debtors will disclose at or before the Confirmation Hearing the identities and affiliations of the remaining proposed members of the New Board. To the extent any director is an "insider" under the Bankruptcy Code, the nature of any compensation to be paid to such director will also be disclosed. Each director and officer of the Reorganized Debtors shall serve from and after the Effective Date pursuant to applicable law and the terms of the applicable Amended/New Organizational Documents and other constituent documents.

II. Disclosure Regarding Officers

Subject to and in accordance with the terms and conditions of Article VI.G of the Plan, the Debtors' existing officers will continue with the Debtors through and after the Effective Date in their current roles and receive compensation consistent with the Debtors' current practices. After the Effective Date, the appointment of officers and executives of the Reorganized Debtors shall be governed by the applicable Amended/New Organizational Documents, subject to (a) the terms and conditions thereof and the Restructuring Support Agreement and (b) the approval of the New Board.

Exhibit D

New Secured Convertible Notes Indenture

PLEASE TAKE FURTHER NOTICE that certain documents, or portions thereof, contained in this Exhibit D and the Plan Supplement remain subject to continuing negotiations among the Debtors and interested parties with respect thereto. The Debtors reserve all rights, subject to the terms and conditions set forth in the Plan and the Restructuring Support Agreement, to amend, revise, or supplement the Plan Supplement, and any of the documents and designations contained herein, at any time before the Effective Date of the Plan, or any such other date as may be provided for by the Plan or by order of the Bankruptcy Court.

[Reorganized Holdco]
as Issuer,

and

Wilmington Savings Fund Society, FSB,
as Trustee and Collateral Agent

INDENTURE

Dated as of [●], 2020

8.0%/10.0% Senior Secured Convertible PIK Toggle Notes due 2026

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Note: This Table of Contents shall not, for any purpose, be deemed to be part of this Indenture.

INDENTURE dated as of [●], 2020 between [Reorganized Holdco], a Delaware corporation (the "Company"), and Wilmington Savings Fund Society, FSB, as trustee (the "Trustee"). The Company has duly authorized the creation of an issue of 8.0%/10.0% Senior Secured Convertible PIK Toggle Notes due 2026 and, to provide therefor, the Company has duly authorized the execution and delivery of this Indenture. All things necessary to make the Notes, when duly issued and executed by the Company and authenticated and delivered hereunder, the valid and binding obligations of the Company and to make this Indenture a valid and binding agreement of the Company have been done.

For and in consideration of the premises and the purchase of the Notes by the Holders thereof, the parties hereto covenant and agree, for the equal and proportionate benefit of all Holders, as follows:

ARTICLE ONE

DEFINITIONS AND INCORPORATION BY REFERENCE

SECTION 1.01. Definitions.

Set forth below are certain defined terms used in this Indenture.

"ABL Agent" has the meaning assigned to it in the Intercreditor Agreement.

"ABL Facility Agreement" means the Credit Agreement dated as of the Issue Date by and among, among others, the Company, the various lenders and agents party thereto and [ ], as Administrative Agent, together with the related documents, instruments and agreements executed in connection therewith (including, without limitation, any guarantees, notes and security documents), as such agreement, in whole or in part, in one or more instances, may be amended, renewed, extended, substituted, Refinanced, restructured, replaced, supplemented or otherwise modified from time to time (including increasing the amount available for borrowing thereunder and including Refinancing with the same or different lenders or agents or any agreement extending the maturity of, or increasing the commitments to extend, Indebtedness or any commitment to extend such Indebtedness, and any successor or replacement agreements and whether by the same or any other agent, lender or group of lenders).

"ABL Priority Collateral" has the meaning assigned to it in the Intercreditor Agreement.

"ABL Priority Liens" means all Liens on the Collateral and other property and assets of the Company and its Restricted Subsidiaries in favor of the ABL Agent securing the "ABL Debt" (as defined in the Intercreditor Agreement) and having the relative priorities specified in the Intercreditor Agreement with respect to such Liens on the Collateral.

"ABL Priority Lien Obligations" means all Obligations secured by ABL Priority Liens pursuant to clause (2) of the definition of "Permitted Liens".

"Acquired Indebtedness" means Indebtedness of a Person or any of its Subsidiaries existing at the time such Person becomes a Restricted Subsidiary of the Company or at the time it merges or consolidates with or into the Company or any of its Restricted Subsidiaries or

assumed in connection with the acquisition of assets from such Person and in each case whether or not incurred by such Person in connection with, or in anticipation or contemplation of, such Person becoming a Restricted Subsidiary of the Company or such acquisition, merger or consolidation.

"Affiliate" means, with respect to any specified Person, any other Person who directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, such specified Person. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies, or the dismissal or appointment of the management of a Person, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative of the foregoing.

"Agent" means any Registrar, Paying Agent or Conversion Agent.

"AI" means an "accredited investor" as described in Rule 501(a) under the Securities Act.

"amend" means to amend, supplement, restate, amend and restate or otherwise modify, including successively; and "amendment" shall have a correlative meaning.

"Asset Sale" means any direct or indirect sale, issuance, conveyance, transfer, lease (other than operating leases entered into in the ordinary course of business), assignment or other transfer for value by the Company or any of its Restricted Subsidiaries (including any Sale and Leaseback Transaction) to any Person other than the Company or a Restricted Subsidiary of the Company (*provided* that, in the case of any such sale, issuance, conveyance, transfer, lease, assignment or other transfer, to the extent such property or assets constitute Notes Priority Collateral, such sale, issuance, conveyance, transfer, lease, assignment or other transfer is to the Company or a Guarantor except to the extent such Notes Priority Collateral consists of Capital Stock or intercompany debt of a Foreign Subsidiary) of: (1) any Capital Stock of any Restricted Subsidiary of the Company; or (2) any other property or assets of the Company or any Restricted Subsidiary of the Company (other than director qualifying shares or shares required by applicable law to be held by a Person other than the Company or Restricted Subsidiary); *provided*, *however*, that the term "Asset Sale" shall not include:

(a) a transaction or series of related transactions with respect to property or assets with a fair market value of, and for which the Company or its Restricted Subsidiaries receive aggregate consideration of, less than $20.0 million;

(b) the sale, lease, conveyance, disposition or other transfer of all or substantially all of the assets of the Company as permitted under Section 5.01;

(c) any Restricted Payment permitted by Section 4.07 or any Investment that constitutes a Permitted Investment;

(d) the sale or discount, in each case without recourse, of accounts receivable arising in the ordinary course of business, whether pursuant to a factoring arrangement or otherwise, or in connection with the compromise, settlement or collection thereof;

(e) disposals or replacements of obsolete, damaged or worn out assets and property and the abandonment, lapse or other disposition of intellectual property that is, in the good faith judgment of the Company, no longer economically desirable to maintain or useful in the conduct of the business of the Company and its Restricted Subsidiaries, taken as a whole;

(f) the creation of or realization on any Lien permitted under this Indenture;

(g) the sale or lease of products, services or inventory in the ordinary course of business;

(h) sales or grants of licenses or sublicenses to use the patents, trade secrets, know-how and other intellectual property, and licenses, leases or subleases of other assets, of the Company or any Restricted Subsidiary to the extent not materially interfering with the business of Company and the Restricted Subsidiaries;

(i) foreclosures, condemnations, expropriations, seizures, requisitions for use, exercise of the power of eminent domain, or similar actions on assets or property;

(j) any sale of Capital Stock in, or Indebtedness or other securities of, an Unrestricted Subsidiary;

(k) the sale or other disposition of cash or Cash Equivalents;

(l) any release of intangible claims or rights in connection with the loss or settlement of a bona fide lawsuit, dispute or other controversy;

(m) any exchange of property pursuant to or intended to qualify under Section 1031 (or any successor section) of the Code;

(n) any trade-in of equipment in exchange for other equipment to be used in a Permitted Business but only to the extent of the value of the equipment received;

(o) the unwinding of any Hedging Obligations;

(p) (i) any exchange of assets (including a combination of assets and Cash Equivalents) for assets related to a Permitted Business of comparable or greater market value or usefulness to the business of the Company and its Restricted Subsidiaries as a whole, as determined in good faith by the Company and (ii) in the ordinary course of business, any swap of assets, or lease, assignment or sublease of any real or personal property, in exchange for services (including in connection with any outsourcing arrangements) of comparable or greater value or usefulness to the business of the Company and its Restricted Subsidiaries as a whole, as determined in good faith by the Company; *provided* that if the assets transferred pursuant to this clause (s) are Notes Priority Collateral the assets received in exchange therefor shall be pledged as Notes Priority Collateral;

(q) any sale, conveyance or other disposition of property or assets of the Company or any Restricted Subsidiary (whether in a single transaction or a series of related transactions and

including any settlement of claims) in connection with the Emergence Transactions or approved by the Bankruptcy Court;

(r) sales, transfers and other dispositions of Investments in joint ventures (i) to the extent required by, or made pursuant to, customary buy/sell arrangements between the joint venture parties set forth in joint venture arrangements or (ii) made in the ordinary course of business;

(s) issuance of Capital Stock by the Company or a Restricted Subsidiary to holders of its Capital Stock in accordance with its charter and other organizational documents;

(t) any disposition that constitutes a Change of Control;

(u) the expiration, in the ordinary course of business, or termination by the Company or any of its Subsidiaries of leases and licenses of real or personal property (including intellectual property) of the Company and its Subsidiaries where such Persons are the lessees or licensees with respect thereto, where such expiration or termination, individually or in the aggregate, could not reasonably be expected to cause a material adverse effect on the business or financial condition of the Company and its Restricted Subsidiaries, taken as a whole, and in the case of leases of the Company, rejection of any such leases under Section 365 of the Bankruptcy Code;

(v) the sale or disposition of subsurface mineral and oil and gas rights so long as such sale or disposition does not materially interfere with or impair the use or operation of the remaining real property attached thereto; or

(w) maintenance of or creation of escrow or trust arrangements to enable the Company to comply with environmental laws in the ordinary course of business including deposits to and payments from such escrows or trusts.

Notwithstanding the foregoing, the Company may voluntarily treat any transaction otherwise exempt from the definition of "Asset Sale" pursuant to clauses (a) through (z) above as an "Asset Sale" by designating such transaction as an Asset Sale for purposes of the Indenture in an officer's certificate delivered to the Trustee.

"Bankruptcy Code" means the Bankruptcy Reform Act of 1978, as amended and codified in title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as in effect on the date of the Plan of Reorganization but, with respect to amendments to the Bankruptcy Code subsequent to commencement of the Chapter 11 Case, only to the extent that such amendments were made expressly applicable to bankruptcy cases which were filed as of the enactment of such amendments.

"Bankruptcy Court" means the Bankruptcy Court for the Southern District of Texas or such other court as may have jurisdiction over the Chapter 11 Case.

"Bankruptcy Law" means the Bankruptcy Code or any insolvency or other similar federal, state or foreign law for the relief of debtors.

"Bankruptcy Rules" means the Federal Rules of Bankruptcy Procedure and the Official Bankruptcy Forms, as amended, the Federal Rules of Civil Procedure, as amended, as applicable to the Chapter 11 Case or proceedings therein, and the Local Rules of the Bankruptcy Court, as applicable to the Chapter 11 Case or proceedings therein, as the case may be.

"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*" will 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 after the passage of time. The terms "Beneficially Owns," "Beneficially Owned" and "Beneficial Ownership" have a corresponding meaning.

"Board of Directors" means, as to any Person, the board of directors (or functionally equivalent governing body) of such Person or any duly authorized committee thereof.

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

"Business Day" means each day that is not a Saturday, Sunday or other day on which banking institutions in New York, New York, or in the city in the United States of the corporate trust office of the Trustee (currently located in [City, State]), are authorized or required by law to close.

"Capital Stock" means:

(1) with respect to any Person that is a corporation, any and all shares, interests, participations or other equivalents (however designated and whether or not voting) of corporate stock, including each class of Common Stock and Preferred Stock of such Person, and all options, warrants or other rights to purchase or acquire any of the foregoing; and

(2) with respect to any Person that is not a corporation, any and all partnership, membership or other equity interests of such Person, and all options, warrants or other rights to purchase or acquire any of the foregoing.

"Capitalized Lease Obligation" means, as to any Person, the obligations of such Person under a lease that are required to be classified and accounted for as capital lease obligations under GAAP and, for purposes of this definition, the amount of such obligations at any date shall be the capitalized amount of such obligations at such date, determined in accordance with GAAP.

"Cash Equivalents" means:

(1) marketable direct obligations issued by, or unconditionally guaranteed by, the United States Government or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing within one year from the date of acquisition thereof;

(2) marketable direct obligations issued or fully guaranteed by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof, maturing within one year from the date of acquisition thereof and, at the time of acquisition, having one of the two highest ratings obtainable from either S&P or Moody's;

(3) commercial paper maturing no more than 270 days from the date of creation thereof and, at the time of acquisition, having a rating of at least A-2 from S&P or at least P-2 from Moody's;

(4) in the case of any Foreign Subsidiary, such local currencies held by it from time to time in the ordinary course of business and the foreign equivalent of Cash Equivalents described in clause (2) above;

(5) demand or time deposit accounts with commercial banks that satisfy the criteria described in clause (6) below or any other commercial bank organized under the laws of the United States of America, any state thereof, the District of Columbia, Canada or any province or territory thereof; *provided* that the full amount maintained with any such other bank is insured by the Federal Deposit Insurance Corporation or the Canadian Deposit Insurance Corporation, as applicable;

(6) obligations (including, but not limited to, overnight bank deposits, demand or time deposits, bankers' acceptances and certificates of deposit) issued or guaranteed by a depository institution or trust company organized under the laws of the United States of America, any state thereof, the District of Columbia, Canada or any province or territory thereof or any United States branch of a foreign bank or any member of the European Union; *provided* that (A) such instrument has a final maturity not more than one year from the date of purchase thereof by the Company or any Restricted Subsidiary of the Company and (B) such depository institution or trust company has at the date of acquisition thereof combined capital and surplus in excess of $500.0 million;

(7) debt securities with maturities of six months or less from the date of acquisition backed by standby letters of credit issued by any commercial bank satisfying the criteria described in clause (6) above;

(8) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clauses (1), (2) and (6) above entered into with any bank meeting the qualifications specified in clause (6) above; and

(9) investments in money market funds which invest substantially all their assets in securities of the types described in clauses (1) through (7) above.

"Change of Control" means the occurrence of one or more of the following events:

(1) any sale, lease, exchange or other transfer (in one transaction or a series of related transactions) of all or substantially all of the assets of the Company to any Person or group of related Persons for purposes of Section 13(d) of the Exchange Act (a "Group"), together with any Affiliates thereof (whether or not otherwise in compliance with the provisions of this Indenture), other than a Permitted Holder;

(2) the approval by the holders of Capital Stock of the Company of any plan or proposal for the liquidation or dissolution of the Company (whether or not otherwise in compliance with the provisions of this Indenture);

(3) any Person or Group, other than one or more Permitted Holders, shall become the Beneficial Owner, directly or indirectly, of shares representing more than 50% of the aggregate ordinary voting power represented by the issued and outstanding Capital Stock of the Company; or

(4) individuals who on the Issue Date constitute the Board of Directors of the Company (together with any new directors whose election to such Board of Directors or whose nomination to such Board of Directors for election by the stockholders was approved by a vote of at least a majority of the members of such Board of Directors then in office who either were members of such Board of Directors on the Issue Date or whose election or nomination for election was so approved) cease to constitute a majority of the members of such Board of Directors then in office; or

(5) a "Change of Control" occurs under the ABL Facility Agreement.

Notwithstanding the foregoing: (A) any holding company whose only significant asset is Capital Stock of the Company or any of its direct or indirect parent companies shall not itself be considered a "Person" or "Group" for purposes of clause (3) above; (B) the transfer of assets between or among the Restricted Subsidiaries and the Company shall not itself constitute a Change of Control; (C) the term "Change of Control" shall not include a merger or consolidation of the Company with or the sale, assignment, conveyance, transfer, lease or other disposition of all or substantially all of the Company's assets to, an Affiliate incorporated or organized solely for the purpose of reincorporating or reorganizing the Company in another jurisdiction and/or for the sole purpose of forming or collapsing a holding company structure; (D) a "person" or "group" shall not be deemed to have Beneficial Ownership of securities subject to a stock purchase agreement, merger agreement or similar agreement (or voting or option agreement related thereto) until the consummation of the transactions contemplated by such agreement; (E) a transaction in which the Company or any direct or indirect parent of the Company becomes a Subsidiary of another Person (other than a Person that is an individual, such Person that is not an individual, the "Other Transaction Party") shall not constitute a Change of Control if (a) the shareholders of the Company or such direct or indirect parent of the Company as of immediately prior to such transaction Beneficially Own, directly or indirectly through one or more intermediaries, at least a majority of the voting power of the outstanding Voting Stock of the Company or such direct or indirect parent of the Company, immediately following the consummation of such transaction or (b) immediately following the consummation of such transaction, no "person" (as such term is defined above), other than the Other Transaction Party (but including any of the Beneficial Owners of the Capital Stock of the Other Transaction Party), Beneficially Owns, directly or indirectly through one or more intermediaries, more than 50% of the voting power of the outstanding Voting Stock of the Company or the Other Transaction Party; and (F) the Emergence Transactions shall not constitute a Change of Control.

"Chapter 11 Case" means the chapter 11 case of the Company administered under Case No. 20-33495 in the Bankruptcy Court.

"Code" means the Internal Revenue Code of 1986, as amended from time to time, and the regulations promulgated thereunder.

"Collateral" means all the existing and future assets (whether real, personal or mixed) of the Company and its Subsidiaries that are from time to time made subject, or purported to be made subject, to the Lien of the Security Documents, including, without limitation any Mortgaged Property; *provided* that no Excluded Assets shall constitute Collateral under any Security Document, and the security interest granted to any Person pursuant to any Security Document shall not attach to any Excluded Assets.

"Collateral Account" means the collateral account established pursuant to this Indenture.

"Collateral Agent" means the Trustee, in its capacity as Collateral Agent for the Holders and holders of any other Notes Priority Lien Obligations, together with its successors in such capacity.

"Commission" means the U.S. Securities and Exchange Commission.

"Common Stock" of any Person means any and all shares, interests or other participations in, and other equivalents (however designated and whether voting or non-voting) of, such Person's common stock, whether outstanding on the Issue Date or issued after the Issue Date, and includes, without limitation, all series and classes of such common stock.

"Company" means [Reorganized Holdco] as set forth in the preamble and its successors, assigns and obligors.

"Company Common Stock" means the Common Stock, [par value $0.01 per share], of the Company or any Capital Stock into which such Common Stock may be exchanged, reclassified or reconstituted (from time to time).

"Competitor" means any Person engaged in any business that is at the time being engaged in by the Company or any of its subsidiaries or any business that is determined by the Board of Directors of the Company, in its sole discretion, to be competitive therewith.

"Consolidated EBITDA"[1] means, with respect to any specified Person for any period, the Consolidated Net Income of such Person for such period plus, without duplication:

(1) an amount equal to any extraordinary loss plus any net loss realized by such Person or any of its Restricted Subsidiaries in connection with an Asset Sale, to the extent such losses were deducted in computing such Consolidated Net Income; plus

(2) the Fixed Charges of such Person and its Restricted Subsidiaries for such period, to the extent that such Fixed Charges were deducted in computing such Consolidated Net Income; plus

[1] Subject to harmonization with ABL credit agreement.

(3) any foreign currency translation losses (including losses related to currency remeasurements of Indebtedness) of such Person and its Restricted Subsidiaries for such period, to the extent that such losses were taken into account in computing such Consolidated Net Income; plus

(4) any deferred or non-cash equity compensation or stock option or similar compensation expense, including all expense recorded for any equity appreciation rights plan in excess of cash payments for exercised rights, in each case during such period; plus

(5) an amount equal to dividends or distributions paid during such period in cash to such Person or any of its Restricted Subsidiaries by a Person that is not a Restricted Subsidiary or that is accounted for by the equity method of accounting, in each case, to the extent not already included in computing such Consolidated Net Income; plus

(6) depreciation, amortization (including amortization of intangibles but excluding amortization of prepaid cash expenses that were paid in a prior period) and other non-cash charges and expenses (excluding any such non-cash charge or expense to the extent that it represents an accrual of or reserve for cash charges or expenses in any future period or amortization of a prepaid cash charge or expense that was paid in a prior period) of such Person and its Restricted Subsidiaries for such period to the extent that such depreciation, amortization and other non-cash charges or expenses were deducted in computing such Consolidated Net Income; minus

(7) non-cash items increasing such Consolidated Net Income for such period, other than the accrual of revenue in the ordinary course of business,

in each case, on a consolidated basis and determined in accordance with GAAP.

"Consolidated Net Income" means, with respect to any specified Person for any period, the aggregate of the net income (loss) of such Person and its Restricted Subsidiaries for such period, on a consolidated basis (excluding the net income (loss) of any Unrestricted Subsidiary of such Person), determined in accordance with GAAP and without any reduction in respect of Preferred Stock dividends; provided that:

(1) all extraordinary gains or losses and all gains or losses realized in connection with any Asset Sale or the disposition of securities or the early extinguishment of Indebtedness, together with any related provision for taxes on any such gain, will be excluded;

(2) the net income (but not loss) of any Person that is not a Restricted Subsidiary or that is accounted for by the equity method of accounting will be included only to the extent of the amount of dividends or similar distributions paid in cash to the specified Person or a Restricted Subsidiary of the Person;

(3) the net income (but not loss) of any Restricted Subsidiary will be excluded to the extent that the declaration or payment of dividends or similar distributions by that Restricted Subsidiary of that net income is not at the date of determination permitted

without any prior governmental approval (that has not been obtained) or, directly or indirectly, by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Restricted Subsidiary or its stockholders;

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

(5) any impairment charge or asset write-off pursuant to the Financial Accounting Standards Board's Accounting Standards Codification No. 350 "Goodwill and Other Intangible Assets" will be excluded;

(6) effects of adjustments (including the effects of such adjustments pushed down to such Person and its Restricted Subsidiaries) related to the application of recapitalization accounting or purchase accounting (including in the inventory, property and equipment, software, goodwill, intangible assets, in process research and development, deferred revenue and debt line items), will be excluded;

(7) accruals and reserves that are established or adjusted in connection with an Investment or an acquisition that are required to be established or adjusted as a result of such Investment or such acquisition, in each case in accordance with GAAP, will be excluded;

(8) any expenses, charges or losses to the extent covered by insurance that are, directly or indirectly, reimbursed or reimbursable by a third party, and any expenses, charges or losses that are covered by indemnification or other reimbursement provisions in connection with any acquisition, Investment or any sale, conveyance, transfer or other disposition of assets permitted under the Indenture, will be excluded; and

(9) non-cash gains and losses attributable to movement in the mark-to-market valuation of Hedging Obligations pursuant to Financial Accounting Standards Board Statement No. 133 will be excluded.

"Conversion Date" means, with respect to a Note to be converted in accordance with Article Thirteen, the date on which the Holder of such Note satisfies all the requirements for such conversion set forth in Article Thirteen and in paragraph 8 of the Notes; *provided*, *however*, that if such date is not a Business Day, then the Conversion Date shall be deemed to be the next day that is a Business Day.

"Conversion Notice" means the notice wherein a Holder elects to cause the conversion of its outstanding Notes, substantially in the form set forth in Exhibit A.

"Conversion Rate" shall initially be [●] shares of Company Common Stock per $1.00 principal amount of Notes, subject to adjustment as provided in Article Thirteen.

"Conversion Right" means a Holder's right to convert its Notes pursuant to Article Thirteen.

"Corporate Trust Office" means the designated corporate trust office of the Trustee, currently located at [●] or such other office, designated by the Trustee by written notice to the Company, at which at any particular time its corporate trust business shall be administered.

"Credit Facility" means (a) the credit facility evidenced by the ABL Facility Agreement and (b) any other credit or debt facilities, commercial paper facilities or other debt instruments, indentures or agreements, in each case providing for revolving credit loans, term loans, receivables financings, letters of credit or other Indebtedness, in each case, including all agreements, instruments and documents executed and delivered pursuant to or in connection with any of the foregoing, including but not limited to any notes and letters of credit issued pursuant thereto and any guarantee and collateral agreement, patent and trademark security agreement, mortgages or letter of credit applications and other guarantees, pledge agreements, security agreements and collateral documents, in each case as the same may be amended, supplemented, waived or otherwise modified from time to time, or refunded, Refinanced, restructured, replaced, renewed, repaid, increased or extended from time to time (whether in whole or in part, whether with the original banks, lenders or institutions or other banks, lenders or institutions or otherwise, and whether provided under any original Credit Facility or one or more other credit agreements, indentures, financing agreements or other Credit Facilities or otherwise). Without limiting the generality of the foregoing, the term "Credit Facility" shall include any (i) agreement changing the maturity of any Indebtedness incurred thereunder or contemplated thereby, (ii) agreement adding Subsidiaries as additional borrowers or guarantors thereunder, (iii) agreement increasing the amount of Indebtedness incurred thereunder or available to be borrowed thereunder, (iv) Hedging Agreement or other similar agreement or arrangement with respect thereto or (v) agreement otherwise altering the terms and conditions thereof. Notwithstanding the foregoing, no agreement or other instrument shall be a "Credit Facility" for purposes of this Indenture unless so designated by the Company in writing to the Trustee (subject to rescission of such designation at any subsequent time, by the Company in writing to the Trustee).

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

"Default" means an event or condition the occurrence of which is, or with the lapse of time or the giving of notice or both would be, an Event of Default.

"Depository" means The Depository Trust Company, its nominees and its respective successors.

"Designated Non-cash Consideration" means the fair market value of non-cash consideration received by the Company or one of its Restricted Subsidiaries in connection with an Asset Sale that is so designated as Designated Non-cash Consideration pursuant to an Officer's Certificate setting forth the basis of such valuation, less the amount of cash or Cash Equivalents received in connection with a subsequent sale of such Designated Non-cash Consideration.

"Discharge of ABL Obligations" has the meaning assigned to it in the Intercreditor Agreement.

"Disinterested Directors" means, with respect to any Affiliate Transaction, one or more members of the Board of Directors of the Company or the relevant Restricted Subsidiary, as the case may be, having no material direct or indirect financial interest in or with respect to such Affiliate Transaction. A member of any such Board of Directors shall not be deemed to have such a financial interest solely by reason of such member's holding or having a beneficial interest in the Capital Stock of the Company.

"Disqualified Capital Stock" means that portion of any Capital Stock which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable at the option of the holder thereof) or upon the happening of any event (other than an event which would constitute an Asset Sale or Change of Control), matures or is mandatorily redeemable (other than solely for Capital Stock in such Person that does not constitute Disqualified Capital Stock and cash in lieu of fractional shares of such Capital Stock), pursuant to a sinking fund obligation or otherwise, or is redeemable (other than solely for Capital Stock in such Person that does not constitute Disqualified Capital Stock and cash in lieu of fractional shares of such Capital Stock) at the sole option of the holder thereof (except, in each case, upon the occurrence of an Asset Sale or Change of Control), on or prior to the final maturity date of the Notes; *provided* that if the Capital Stock in any Person is issued pursuant to any plan for the benefit of employees of the Company or any Subsidiary or by any such plan to such employees, such Capital Stock shall not constitute Disqualified Capital Stock solely because it may be required to be repurchased by the Company or any Subsidiary in order to satisfy applicable statutory or regulatory obligations of such Person.

"Domestic Restricted Subsidiary" means a Restricted Subsidiary incorporated or otherwise organized or existing under the laws of the United States, any state thereof or any territory of the United States, excluding any Foreign Subsidiary.

"Emergence Date" means the date on which Section IX.B of the Plan of Reorganization (Conditions Precedent to Consummation of the Plan) shall have been satisfied and the Plan of Reorganization shall have been substantially consummated, including the Exit Financing.

"Emergence Date Stockholder" means (i) any holder of more than 1.0% of the outstanding Voting Stock of the Company as of immediately following the Emergence Date or (ii) a "Stockholder," as defined in the Stockholders Agreement.

"Emergence Transactions" means all transactions and agreements arising out of the Plan of Reorganization and emergence from Chapter 11, including, but not limited to, the Exit Financing.

"Ex Date" means: (i) when used with respect to any issuance or distribution, means the first date on which the Company Common Stock trades the regular way on such national or regional exchange or market on which the Company Common Stock is then traded or quoted without the right to receive such issuance or distribution from the Company or, if applicable, from the seller of Company Common Stock on such exchange or market (in the form of due bills or otherwise) as determined by such exchange or market or, in the case of Company Common Stock that does not trade on an exchange, the record date for such issuance or distribution, (ii) when used with respect to any subdivision or combination of Company Common Stock, means

the first date on which the Company Common Stock trades the regular way on such exchange or in such market after the time at which such subdivision or combination becomes effective or, in the case of Company Common Stock that does not trade on an exchange, the effective date of such subdivision or combination, and (iii) when used with respect to any tender offer or exchange offer means the first date on which the Company Common Stock trades the regular way on such exchange or in such market after the expiration time of such tender offer or exchange offer (as it may be amended or extended or, with respect to Company Common Stock that does not trade on an exchange, the expiration date of such tender offer or exchange offer).

"Exchange Act" means the Securities Exchange Act of 1934 or any successor statute or statutes thereto.

"Excluded Assets" shall have the meaning ascribed to such term in the Notes Security Agreement.

"Excluded Contribution" means the net cash proceeds received by the Company from:

(1) contributions to its equity capital; and

(2) the sale (other than to a Subsidiary or to any management equity plan or stock option plan or any other management or employee benefit plan or agreement of the Company or any Subsidiary) of Qualified Capital Stock of the Company,

in each case designated within 60 days of receipt of such net cash proceeds as Excluded Contributions pursuant to an Officer's Certificate; *provided* that the cash proceeds thereof shall be excluded from clauses (iii)(v) and (w) of the first paragraph of Section 4.07.

"Exit Financing" means that certain financing to finance the Plan of Reorganization, expected to be composed of entrance into the ABL Facility Agreement and issuances of the Notes.

"fair market value" means, with respect to any asset or property, the price which could be negotiated in an arm's-length, free market transaction, for cash, between a willing seller and a willing and able buyer. Fair market value shall be determined by (i) the principal financial officer of the Company for transactions less than $25.0 million and shall be evidenced by an Officer's Certificate of the principal financial officer of the Company delivered to the Trustee and (ii) the Board of Directors of the Company acting reasonably and in good faith for transactions in excess of $50.0 million and shall be evidenced by a Board Resolution of the Board of Directors of the Company delivered to the Trustee.

"Fixed Charge Coverage Ratio" means with respect to any specified Person for any period, the ratio of the Consolidated EBITDA of such Person for such period to the Fixed Charges of such Person for such period. In the event that the specified Person or any of its Restricted Subsidiaries incurs, assumes, guarantees, repays, repurchases, redeems, defeases or otherwise discharges any Indebtedness (other than ordinary working capital borrowings) or issues, repurchases or redeems Preferred Stock subsequent to the commencement of the period for which the Fixed Charge Coverage Ratio is being calculated and on or prior to the date on which the event for which the calculation of the Fixed Charge Coverage Ratio is made (the

"Calculation Date"), then the Fixed Charge Coverage Ratio will be calculated giving pro forma effect to such incurrence, assumption, Guarantee, repayment, repurchase, redemption, defeasance or other discharge of Indebtedness, or such issuance, repurchase or redemption of Preferred Stock, and the use of the proceeds therefrom, as if the same had occurred at the beginning of the applicable four quarter reference period. For purposes of this definition, whenever pro forma effect is to be given to any calculation, the pro forma calculations will be determined in good faith by the chief financial or accounting officer of the specified Person; provided that such officer may in his or her discretion include any reasonably identifiable and factually supportable pro forma changes to Consolidated EBITDA, including any pro forma expenses and cost reductions, that have occurred or in the judgment of such officer are reasonably expected to occur within 12 months of the date of the applicable transaction (regardless of whether such expense or cost reduction or any other operating improvements could then be reflected properly in pro forma financial statements prepared in accordance with Regulation S-X under the Securities Act or any other regulation or policy of the SEC).

In addition, for purposes of calculating the Fixed Charge Coverage Ratio:

(1) acquisitions that have been made by a Person or any of its Subsidiaries, including through mergers, consolidations or otherwise, and including any related financing transactions during the four-quarter reference period or subsequent to such reference period and on or prior to the Calculation Date will be given pro forma effect as if they had occurred on the first day of the four-quarter reference period;

(2) the Consolidated EBITDA attributable to discontinued operations, as determined in accordance with GAAP, and operations or businesses (and ownership interests therein) disposed of prior to the Calculation Date, will be excluded;

(3) the Fixed Charges attributable to discontinued operations, as determined in accordance with GAAP, and operations or businesses (and ownership interests therein) disposed of prior to the Calculation Date, will be excluded, but only to the extent that the obligations giving rise to such Fixed Charges will not be obligations of the specified Person or any of its Restricted Subsidiaries following the Calculation Date;

(4) any Person that is a Restricted Subsidiary on the Calculation Date will be deemed to have been a Restricted Subsidiary at all times during such four-quarter period;

(5) any Person that is not a Restricted Subsidiary on the Calculation Date will be deemed not to have been a Restricted Subsidiary at any time during such four-quarter period; and

(6) if any Indebtedness bears a floating rate of interest, the interest expense on such Indebtedness will be calculated as if the rate in effect on the Calculation Date had been the applicable rate for the entire period (taking into account any Hedging Obligation applicable to such Indebtedness if such Hedging Obligation has a remaining term as at the Calculation Date in excess of 12 months).

"Fixed Charges" means, with respect to any specified Person for any period, the sum, without duplication, of:

(1) the consolidated interest expense of such Person and its Restricted Subsidiaries for such period, whether paid or accrued, including amortization of original issue discount, non-cash interest payments, the interest component of any deferred payment obligations, the interest component of all payments associated with Capitalized Lease Obligations, commissions, discounts and other fees and charges incurred in respect of letter of credit or bankers' acceptance financings, and net of the effect of all payments made or received pursuant to Hedging Obligations in respect of interest rates, but in each case excluding (x) amortization of deferred financing fees, debt issuance costs, commissions, fees and expenses and (y) any expensing of bridge, commitment or other financing fees; plus

(2) the consolidated interest expense of such Person and its Restricted Subsidiaries that was capitalized during such period; plus

(3) any interest on Indebtedness of another Person that is guaranteed by such Person or one of its Restricted Subsidiaries or secured by a Lien on assets of such Person or one of its Restricted Subsidiaries, whether or not such Guarantee or Lien is called upon; plus

(4) all dividends, whether paid or accrued and whether or not in cash, on any series of Disqualified Capital Stock of such Person or any series of Disqualified Capital Stock or Preferred Stock of any of its Restricted Subsidiaries, other than dividends on Capital Stock payable solely in Capital Stock of the Company (other than Disqualified Capital Stock) or to the Company or a Restricted Subsidiary of the Company.

"Foreign Subsidiary" means a Subsidiary of the Company which is not incorporated or otherwise organized or existing under the laws of the United States, any other Subsidiary of the Company that is a "controlled foreign corporation" within the meaning of Section 957 of the Code, any other Subsidiary of the Company that has no material assets or material operations other than the equity interests of a "controlled foreign corporation" within the meaning of Section 957 of the Code, any state thereof or any territory or possession of the United States and any Subsidiary of another Foreign Subsidiary.

"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 or in such other statements by such other entity as may be approved by a significant segment of the accounting profession of the United States, which are in effect as of the Issue Date.

"Global Note Legend" means the legend set forth on the Global Notes in the form set forth in Exhibit B.

"Guarantee" means a guarantee by a Guarantor of the Company's Indenture Obligations.

"Guarantor" means each Subsidiary of the Company that is a guarantor of the Notes, including any Person that is required after the Issue Date to execute a Guarantee of the Notes pursuant to Section 4.14; *provided* that any Person constituting a Guarantor as described above shall cease to constitute a Guarantor when its respective Guarantee is released in accordance with the terms of this Indenture.

"Hedging Agreement" means any rate swap agreement, forward rate agreement, commodity swap, commodity option, interest rate option, forward foreign exchange agreement, spot foreign exchange agreement, rate cap agreement, rate floor agreement, rate collar agreement, currency swap agreement, cross-currency rate swap agreement, currency option and any other similar agreement entered into for the purposes of hedging risks of currency, interest, or commodity price fluctuations or similar matters, or any indemnity agreements and arrangements entered into in connection therewith, in each case, as the same may be amended, restated, supplemented, or otherwise modified from time to time.

"Hedging Obligations" means with respect to any Person the obligations of such Person under a Hedging Agreement.

"Holder" means any registered holder, from time to time, of any Notes.

"Indebtedness" means with respect to any Person, without duplication,

(1) all Obligations of such Person for borrowed money;

(2) all Obligations of such Person evidenced by bonds, debentures, notes or other similar instruments;

(3) all Capitalized Lease Obligations of such Person;

(4) all Obligations of such Person issued or assumed as the deferred purchase price of property, all conditional sale obligations and all Obligations under any title retention agreement (but excluding trade accounts payable and other accrued liabilities arising in the ordinary course of business);

(5) all Obligations for the reimbursement of any obligor on any letter of credit, banker's acceptance or similar credit transaction;

(6) guarantees and other contingent obligations in respect of Indebtedness referred to in clauses (1) through (5) above and clause (7) below; and

(7) all Obligations of any other Person of the type referred to in clauses (1) through (6) which are secured by any lien on any property or asset of such Person, the amount of such Obligation being deemed to be the lesser of the fair market value of such property or asset or the amount of the Obligation so secured;

if and to the extent any of the preceding items (other than letters of credit and Hedging Obligations) would appear as a liability upon a balance sheet of the specified Person prepared in accordance with GAAP (excluding the footnotes).

Notwithstanding the foregoing, the term "Indebtedness" will not include: (a) in connection with the purchase by the Company or of its Restricted Subsidiaries of any business, post-closing payment adjustments to which the seller may become entitled to the extent such payment is determined by a final closing balance sheet or such payment depends on the performance of such business after the closing unless such payments are required under GAAP to appear as a liability on the balance sheet (excluding the footnotes); *provided*, *however*, that at the time of closing, the amount of any such payment is not determinable and, to the extent such payment thereafter becomes fixed and determined, the amount is paid within 30 days thereafter; (b) contingent obligations not in respect of borrowed money; (c) deferred or prepaid revenues; (d) purchase price holdbacks in respect of a portion of the purchase price of an asset to satisfy warranty or other unperformed obligations of the respective seller; (e) any Preferred Stock other than Disqualified Capital Stock; or (f) any obligations attributable to the exercise of appraisal rights and the settlement of any claims or actions (whether actual, contingent or potential) with respect thereto.

"Indenture" means this Indenture, as amended or supplemented from time to time in accordance with the terms hereof.

"Indenture Obligations" means the obligations of the Company and any other obligor under this Indenture, the Notes and the Security Documents, including any Guarantor, to pay principal of, premium, if any, and interest when due and payable, and all other amounts due or to become due under or in connection with this Indenture and the Notes and the performance of all other obligations to the Trustee, the Collateral Agent and the Holders under this Indenture, the Notes and the Security Documents, according to the respective terms thereof.

"Independent Financial Advisor" means a firm (1) which does not, and whose directors, officers and employees or Affiliates do not, have a direct or indirect financial interest in the Company, and (2) which, in the judgment of the Board of Directors of the Company, is otherwise independent and qualified to perform the task for which it is to be engaged.

"Intercreditor Agreement" means the Intercreditor Agreement, dated as of the Issue Date, by and among the Company, the Guarantors party thereto from time to time, the ABL Agent and the Collateral Agent, substantially in the form attached hereto as Exhibit E, as the same may be amended, modified, restated, supplemented or replaced from time to time in accordance with its terms.

"interest" means, with respect to the Notes, interest (including PIK Interest) on the Notes.

"Interest Payment Date" means the Stated Maturity of an installment of interest on the Notes.

"Investment" means, with respect to any Person, any direct or indirect loan or other extension of credit (including, without limitation, a guarantee) or capital contribution to (by means of any transfer of cash or other property to others or any payment for property or services for the account or use of others), or any purchase or acquisition by such Person of any Capital Stock, bonds, notes, debentures or other securities or evidences of Indebtedness issued by, any other Person. "Investment" shall exclude extensions of trade credit by the Company and its

Restricted Subsidiaries in accordance with normal trade practices of the Company or such Restricted Subsidiary, as the case may be.

Except as otherwise provided in the Indenture, the amount of an Investment shall be determined at the time the Investment is made and without giving effect to subsequent changes in value but giving effect (without duplication) to all subsequent reductions in the amount of such Investment as a result of (x) cash payments representing dividends, return of capital or similar distributions actually received by the applicable investor in respect to the Investment or the repayment or disposition thereof for cash or (y) the redesignation of an Unrestricted Subsidiary as a Restricted Subsidiary (valued proportionately to the equity interest in such Unrestricted Subsidiary of the Company or such Restricted Subsidiary owning such Unrestricted Subsidiary at the time of such redesignation) at the fair market value of the net assets of such Unrestricted Subsidiary at the time of such redesignation, in the case of clauses (x) and (y), not to exceed the original amount, or fair market value, of such Investment.

"Issue Date" means [●], 2020, the date of original issuance of the Notes.

"Legal Requirements" means, at any time, any and all judicial and administrative rulings and decisions, and any and all federal, state and local laws, ordinances, rules, regulations, permits and certificates of any governmental authority, in each case applicable, at such time to the Company or the Collateral (or the ownership or use thereof).

"Lien" means any lien, mortgage, deed of trust, pledge, security interest, charge or encumbrance of any kind (including any conditional sale or other title retention agreement, any lease in the nature thereof and any agreement to give any security interest).

"Market Disruption Event" means either (i) a failure by the primary U.S. national securities exchange or market on which the Common Stock is listed or admitted to trading to open for trading during its regular trading session; or (ii) the occurrence or existence prior to 1:00 p.m. on any Trading Day for the Common Stock for an aggregate of at least thirty (30) minutes of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the stock exchange or otherwise) in the Common Stock or in any options, contracts or future contracts relating to the Common Stock.

"Maturity Date" means [●], 2026.

"Moody's" means Moody's Investors Service, Inc., and its successors.

"Mortgage" has the meaning assigned to it in the Security Documents.

"Mortgaged Property" has the meaning assigned to it in the Security Documents.

"Net Cash Proceeds" means, with respect to any Asset Sale, the proceeds in the form of cash or Cash Equivalents including payments in respect of deferred payment obligations when received in the form of cash or Cash Equivalents (other than the portion of any such deferred payment constituting interest) received by the Company or any of its Restricted Subsidiaries from such Asset Sale net of:

(1) reasonable out-of-pocket expenses and fees relating to such Asset Sale (including, without limitation, legal, accounting and investment banking fees and sales commissions);

(2) taxes paid or payable after taking into account any reduction in consolidated tax liability due to available tax credits or deductions and any tax sharing arrangements;

(3) except in the case of Liens ranking *pari passu* with or junior to the Liens securing the Notes, payments made to retire Indebtedness where payment of such Indebtedness is secured by the assets or properties the subject of such Asset Sale; and

(4) appropriate amounts to be provided by the Company or any Restricted Subsidiary, as the case may be, as a reserve, in accordance with GAAP, against any liabilities associated with such Asset Sale and retained by the Company or any Restricted Subsidiary, as the case may be, after such Asset Sale, including, without limitation, pension and other post-employment benefit liabilities, liabilities related to environmental matters and liabilities under any indemnification obligations associated with such Asset Sale.

"Non-U.S. Person" has the meaning assigned to such term in Regulation S.

"Notes" means the Company's 8.0%/10.0% Senior Secured Convertible PIK Toggle Notes due 2026, issued in accordance with Section 2.02 (whether issued on the Issue Date, issued as Additional Notes, issued as PIK Notes, or otherwise issued after the Issue Date), as amended or supplemented from time to time in accordance with the terms of this Indenture.

"Notes Priority Liens" means all Liens on the Collateral and other property and assets of the Company and its Restricted Subsidiaries in favor of the "Notes Lien Agent" securing "Notes Lien Debt" (each as defined in the Intercreditor Agreement), having the relative priorities specified in the Intercreditor Agreement with respect to such Liens on the Collateral.

"Notes Security Agreement" means that certain Security Agreement, to be entered into on the Issue Date, by and among the Company, the Guarantors, if any, party thereto from time to time and the Collateral Agent, substantially in the form attached hereto as Exhibit F, as amended, modified, restated, supplemented or replaced from time to time as permitted by this Indenture.

"Notes Priority Collateral" has the meaning assigned to it in the Intercreditor Agreement.

"Obligations" means all obligations for principal, premium, interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities payable under the documentation governing any Indebtedness.

"Officer" means any of the following of the Company or a Guarantor, if any, the Chairman of the Board of Directors, the Chief Executive Officer, the Chief Financial Officer, the President, any Vice President, the Treasurer, any assistant Treasurer, the Secretary or any assistant Secretary.

"Officer's Certificate" means a certificate signed by one Officer.

"Opinion of Counsel" means a written opinion from legal counsel who is reasonably acceptable to the Trustee. The counsel may be an employee of, or counsel to, the Company, a Guarantor or the Trustee. Such opinion may refer to prior Opinions of Counsel, may contain customary assumptions, qualifications and exceptions and, with respect to factual matters, may reasonably rely on an Officer's Certificate of the Company or certificates of public officials.

"Pari Passu Indebtedness" means any Indebtedness of the Company or any Guarantor that ranks *pari passu* in contractual right of payment with the Notes or the Guarantee of such Guarantor, as applicable.

"Payment Date" means any Change of Control Payment Date or Net Proceeds Offer Payment Date.

"Per Share FMV" of the Company Common Stock or any other security on any date means:

(i) the volume weighted average price per share of the Company Common Stock or per unit of such other security (in each case, determined by the Company using customary methods) on the principal U.S. national securities exchange on which the Company Common Stock or such other security is traded for the 10 consecutive Trading Days immediately prior to such date; or

(ii) if the Company Common Stock or such other security is not listed for trading on a U.S. national securities exchange on the relevant date, the fair market value per share of the Company Common Stock or such other security, as determined in good faith by the Board of Directors of the Company, who may take into account various factors in its determination, including (1) the last quoted bid price for the Company Common Stock or such other security in the over-the-counter market as reported by OTC Link LLC or a similar organization over a period of Trading Days deemed advisable by the Board of Directors of the Company, (2) if the Company Common Stock or such other security is not so quoted, the bid and ask prices for the Company Common Stock or such other security on the relevant date from nationally recognized independent investment banking firms over a period of Trading Days deemed advisable by the Board of Directors of the Company, (3) the opinion or appraisal of a nationally recognized investment banking firm or valuation firm, (4) the circumstances of any proposed transaction, including the availability of willing third party buyers or the financial condition or liquidity requirements of the Company and (5) any other factors deemed relevant by the Board of Directors of the Company; it being understood that the Board of Directors of the Company shall have absolute discretion as to what factors to consider in making its determination of such fair market value.

The Per Share FMV of the Common Stock or such other security shall be determined without reference to extended or after-hours trading.

"Permitted Business" means the businesses engaged in by the Company and its Subsidiaries on the Issue Date and businesses that are the same, similar, ancillary, reasonably related thereto or reasonable extensions thereof.

"Permitted Holders" means, at any time, each of (i) the Emergence Date Stockholders and their respective partners, Affiliates and all investment funds managed by any of the foregoing (excluding, for the avoidance of doubt, their respective portfolio companies or other operating companies of investment funds managed by the Emergence Date Stockholders or their managed investment funds), (ii) any Person or any of the Persons who were a group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, or any successor provision) whose ownership of assets or Voting Stock has triggered a Change of Control in respect of which a Change of Control Offer has been made and all Notes that were tendered therein have been accepted and paid, (iii) any group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act or any successor provision) of which any of the foregoing are members and who Beneficially Own, without giving effect to the existence of such group or any other group, more than 50.0% of the total voting power of the aggregate Voting Stock of the Company held directly or indirectly by such group and (iv) any members of a group described in clause (iii) for so long as such Person is a member of such group.

"Permitted Investments" means:

(1) any Investment in the Company or in a Restricted Subsidiary of the Company;

(2) any Investment in Cash Equivalents;

(3) any Investment by the Company or any Restricted Subsidiary of the Company in a Person, if as a result of such Investment:

(a) such Person becomes a Restricted Subsidiary of the Company; or

(b) such Person is merged, consolidated or amalgamated with or into, or transfers or conveys substantially all of its assets to, or is liquidated into, the Company or a Restricted Subsidiary of the Company;

(4) any Investment made as a result of the receipt of non-cash consideration from an Asset Sale (or a disposition excluded from the definition thereof) that was made pursuant to and in compliance with Section 4.10 hereof;

(5) any acquisition of assets or Capital Stock solely in exchange for the issuance of Capital Stock (other than Disqualified Capital Stock) of the Company;

(6) any Investments received in compromise or resolution of (A) obligations of trade creditors or customers that were incurred in the ordinary course of business of the Company or any of its Restricted Subsidiaries, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer; or (B) litigation, arbitration or other disputes;

(7) Investments represented by Hedging Obligations;

(8) loans or advances to officers, directors or employees made in the ordinary course of business of the Company or any Restricted Subsidiary of the Company in an aggregate principal amount not to exceed $2.5 million at any one time outstanding;

(9) repurchases of or other investments in the Notes;

(10) Permitted Joint Venture Investments made by the Company or any of its Restricted Subsidiaries, in an aggregate amount (measured on the date each such Investment was made and without giving effect to subsequent changes in value), when taken together with all other Investments made pursuant to this clause (10) and then outstanding, that does not exceed $5.0 million; provided, however, that if any Investment pursuant to this clause (10) is made in any Person that is not a Restricted Subsidiary at the date of the making of such Investment and such Person becomes a Restricted Subsidiary after such date, such Investment shall thereafter be deemed to have been made pursuant to clause (1) above and shall cease to have been made pursuant to this clause (10) for so long as such Person continues to be a Restricted Subsidiary;

(11) any guarantee of Indebtedness permitted to be incurred by Section 4.09 hereof other than a guarantee of Indebtedness of an Affiliate of the Company that is not a Restricted Subsidiary of the Company;

(12) any Investment existing on, or made pursuant to binding commitments existing on, the date of this Indenture and any Investment consisting of an extension, modification or renewal of any Investment existing on, or made pursuant to a binding commitment existing on, the date of this Indenture; provided that the amount of any such Investment may be increased (a) as required by the terms of such Investment as in existence on the date of this Indenture or (b) as otherwise permitted under this Indenture;

(13) Investments acquired after the date of this Indenture as a result of the acquisition by the Company or any Restricted Subsidiary of the Company of another Person, including by way of a merger, amalgamation or consolidation with or into the Company or any of its Restricted Subsidiaries, or all or substantially all of the assets of another Person, in each case, in a transaction that is not prohibited by Section 5.01 hereof after the date of this Indenture to the extent that such Investments were not made in contemplation of such acquisition, merger, amalgamation or consolidation and were in existence on the date of such acquisition, merger, amalgamation or consolidation; and

(14) other Investments in any Person having an aggregate fair market value (measured on the date each such Investment was made and without giving effect to subsequent changes in value), when taken together with all other Investments made pursuant to this clause (14) that are at the time outstanding not to exceed $5.0 million; provided, however, that if any Investment pursuant to this clause (14) is made in any Person that is not a Restricted Subsidiary at the date of the making of such Investment and such Person becomes a Restricted Subsidiary after such date, such Investment shall thereafter be deemed to have been made pursuant to clause (1) above and shall cease to have been made pursuant to this clause (14) for so long as such Person continues to be a Restricted Subsidiary.

"Permitted Joint Venture Investment" means, with respect to an Investment by any specified Person, an Investment by such specified Person in any other Person engaged in a Permitted Business (1) in which the Person has significant involvement in the day to day operations and management or veto power over significant management decisions or board or

management committee representation and (2) of which at least 20.0% of the outstanding Capital Stock of such other Person is at the time owned directly or indirectly by the specified Person.

"Permitted Liens" means the following types of Liens:

(1) Liens existing and in effect as of the Issue Date excluding, for the avoidance of doubt, Liens incurred or deemed incurred pursuant to clause (2) below on the Issue Date);

(2) ABL Priority Liens securing Indebtedness incurred or deemed incurred pursuant to clause (1) of the definition of "Permitted Indebtedness" and all related Obligations, including any Hedging Obligations and cash management Obligations related thereto;

(3) Notes Priority Liens incurred to secure the Notes, including Additional Notes, and related Guarantees, if any, and all Obligations related to any of the foregoing, and Refinancing Indebtedness incurred to Refinance Indebtedness secured by Liens described in this clause (3), together with all related Obligations;

(4) Liens in favor of the Company or a Restricted Subsidiary of the Company on assets of any Restricted Subsidiary of the Company;

(5) Liens securing Refinancing Indebtedness which is incurred to Refinance any Indebtedness which has been secured by a Lien permitted under this Indenture (other than Permitted Liens under clause (2) or (3) above) and which has been incurred in accordance with the provisions of this Indenture; *provided*, *however*, that such Liens: (a) are not materially less favorable to the Holders on the whole than the Liens in respect of the Indebtedness being Refinanced; and (b) do not extend to or cover any property or assets of the Company or any of its Restricted Subsidiaries not securing the Indebtedness so Refinanced (and additions, accessions, improvements and replacements and customary deposits in connection therewith and proceeds and products therefrom);

(6) Liens for taxes, assessments or governmental charges or claims either (a) not delinquent or (b) contested in good faith by appropriate proceedings and as to which the Company or any of its Restricted Subsidiaries shall have set aside on its books such reserves as may be required pursuant to GAAP and such proceedings have the effect of preventing the forfeiture or sale of the assets subject to any such Lien;

(7) statutory Liens of landlords and Liens of carriers, warehousemen, mechanics, suppliers, materialmen, repairmen and other Liens imposed by law incurred in the ordinary course of business for sums not yet delinquent or being contested in good faith, if such reserve or other appropriate provision, if any, as shall be required by GAAP shall have been made in respect thereof and such proceedings have the effect of preventing the forfeiture or sale of the assets subject to any such Lien;

(8) Liens incurred or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, including any Lien securing letters of credit issued in the ordinary course of business consistent with past practice in connection therewith, or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, performance and return-

of-money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money);

(9) judgment Liens not giving rise to an Event of Default so long as such Lien is adequately bonded and any appropriate legal proceedings which may have been duly initiated for the review of such judgment shall not have been finally terminated or the period within which such proceedings may be initiated shall not have expired;

(10) any interest or title of a lessor under any Capitalized Lease Obligation; *provided* that such Liens do not extend to any property or assets which are not leased property subject to such Capitalized Lease Obligation (and additions, accessions, improvements and replacements and customary deposits in connection therewith and proceeds and products therefrom);

(11) Liens securing Purchase Money Indebtedness incurred in accordance with this Indenture; *provided*, *however*, that (a) such Purchase Money Indebtedness shall not exceed the purchase price or other cost of such property, equipment or improvement and shall not be secured by any property or equipment of the Company or any Restricted Subsidiary of the Company other than the property and equipment so acquired, constructed or improved (and additions, accessions, improvements and replacements and customary deposits in connection therewith and proceeds and products therefrom) and (b) the Lien securing such Purchase Money Indebtedness shall be created within 270 days of such acquisition, construction or improvement;

(12) Liens upon specific items of inventory or other goods and proceeds of any Person securing such Person's obligations in respect of bankers' acceptances issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;

(13) Liens encumbering deposits made to secure obligations arising from statutory, regulatory, contractual or warranty requirements of the Company or any of its Restricted Subsidiaries, including rights of offset and setoff;

(14) Liens securing Hedging Obligations entered into for bona fide hedging purposes and not for speculation;

(15) (a) Liens on property or assets (including Capital Stock) of a Person existing at the time such Person is merged with or into, consolidated with or acquired by the Company or any Restricted Subsidiary of the Company (and additions, accessions, improvements and replacements and customary deposits in connection therewith and proceeds and products therefrom), whether in existence prior to the merger, consolidation or acquisition or incurred in contemplation thereof; *provided* that such Liens do not extend to any property or assets other than those of the Person merged into, consolidated with or acquired by the Company or such Restricted Subsidiary (and such additions, accessions, improvements and replacements and customary deposits in connection therewith and proceeds and products therefrom); and

(b) Liens on property or assets (including Capital Stock) existing at the time of acquisition of such property or assets by the Company or any Restricted Subsidiary of the Company (and additions, accessions, improvements and replacements and customary deposits in connection therewith and proceeds and products therefrom), whether in existence prior to such

acquisition or incurred in contemplation thereof; *provided* that such Liens do not extend to any property or assets other than such acquired property or assets (and such additions, accessions, improvements and replacements and customary deposits in connection therewith and proceeds and products therefrom);

(16) leases, subleases, licenses and sublicenses granted to others that do not materially interfere with the ordinary course of business of the Company and its Restricted Subsidiaries;

(17) survey exceptions, ground leases, encumbrances, easements or reservations of, or rights of others for, licenses, environmental monitoring, rights-of-way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning or building codes or other restrictions as to the use of real property, including, without limitation, restrictions or encumbrances on subsurface mineral, oil and gas rights, in each case, that were not incurred in connection with Indebtedness and that do not in the aggregate materially adversely affect the value of the properties affected thereby or materially impair their use in the operation of the business of the Company and the Restricted Subsidiaries taken as a whole;

(18) Liens arising from Uniform Commercial Code financing statement filings regarding operating leases entered into by the Company and its Restricted Subsidiaries in the ordinary course of business;

(19) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(20) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into by the Company or any of its Restricted Subsidiaries in the ordinary course of business;

(21) Liens securing Indebtedness in an amount which, together with the aggregate outstanding amount of all other Indebtedness and all Obligations related to such Indebtedness secured by Liens incurred pursuant to this clause (21), does not exceed $5.0 million;

(22) the non-recourse pledge by the Company or any Restricted Subsidiary of Capital Stock, Indebtedness or other securities of an Unrestricted Subsidiary held by the Company or such Restricted Subsidiary to secure Indebtedness or other Obligations of such Unrestricted Subsidiary;

(23) Liens of a collection bank arising under Section 4-210 of the UCC on items in the ordinary course of collection;

(24) Liens on assets of a Restricted Subsidiary that is not a Guarantor securing Indebtedness of such Restricted Subsidiary permitted to be incurred pursuant to Section 4.08;

(25) Liens listed on Schedule B to each mortgagee title insurance policy delivered to the Collateral Agent in accordance with this Indenture or the Security Documents with respect to each Mortgaged Property;

(26) Liens arising pursuant to retention of title arrangements in favor of suppliers incurred in the ordinary course of business and not in connection with the borrowing of money; and

(27) Liens granted in the ordinary course of business on the unearned portion of insurance premiums securing the financing of insurance premiums to the extent the financing is permitted under the definition of "Permitted Indebtedness".

"Person" means an individual, partnership, corporation, unincorporated organization, trust or joint venture, or a governmental agency or political subdivision thereof.

"PIK Interest" means the portion of an installment of interest due on an Interest Payment Date after a PIK Election as applicable in respect of Notes that is payable in PIK Notes or by increasing the outstanding principal amount of the Notes, in each case as provided in the Notes.

"Plan of Reorganization" means the Joint Plan of Reorganize for Hi-Crush Inc. and Its Affiliated Debtors under Chapter 11 of the Bankruptcy Code for the resolution of outstanding claims and interests in the Chapter 11 Case, as may be modified in accordance with the Bankruptcy Code and Bankruptcy Rules, including all exhibits, supplements, appendices, and schedules.

"Preferred Stock" of any Person means any Capital Stock of such Person that has preferential rights to any other Capital Stock of such Person with respect to dividends or redemptions or upon liquidation.

"principal" means, with respect to the Notes, the principal of and premium, if any, on the Notes.

"Private Placement Legend" means the legend initially set forth on the Notes in the form set forth in Exhibit B.

"Purchase Money Indebtedness" means Indebtedness of the Company and its Restricted Subsidiaries incurred in the ordinary course of business for the purpose of financing all or any part of the purchase price, or the cost of design, installation, construction or improvement, of property or equipment (whether through the direct acquisition of assets or the acquisition of Capital Stock of any Person).

"Qualified Capital Stock" means any Capital Stock that is not Disqualified Capital Stock.

"Qualified Institutional Buyer" or "QIB" shall have the meaning specified in Rule 144A under the Securities Act.

"Record Date" means the applicable Record Date specified in the Notes; *provided*, *however*, that if any such date is not a Business Day, the Record Date shall be the first day immediately succeeding such specified day that is a Business Day.

"redeem" means to redeem, repurchase, purchase, defease, retire, discharge or otherwise acquire or retire for value; and "redemption" shall have a correlative meaning.

"Refinance" means, in respect of any security or Indebtedness, to refinance, extend, renew, refund, repay, prepay, redeem, defease or retire, or to issue a security or Indebtedness in exchange or replacement for, such security or Indebtedness in whole or in part. "Refinanced" and "Refinancing" shall have correlative meanings.

"Refinancing Indebtedness" means any Indebtedness incurred by the Company or any Restricted Subsidiary of the Company to Refinance Indebtedness incurred in accordance with Section 4.08, in each case that does not:

(1) result in an increase in the aggregate principal amount of Indebtedness of such Person as of the date of such proposed Refinancing (plus the amount of any premium required to be paid under the terms of the instrument governing such Indebtedness and plus the amount of reasonable expenses incurred by the Company in connection with such Refinancing); or

(2) create Indebtedness with: (a) a Weighted Average Life to Maturity that is less than the Weighted Average Life to Maturity of the Indebtedness being Refinanced; or (b) if the Indebtedness being Refinanced has a Stated Maturity earlier than the Maturity Date, a final maturity earlier than the final maturity of the Indebtedness being Refinanced; *provided* that (x) if such Indebtedness being Refinanced is Indebtedness solely of the Company (and is not otherwise guaranteed by a Restricted Subsidiary of the Company), then such Refinancing Indebtedness shall be Indebtedness solely of the Company and (y) if such Indebtedness being Refinanced is subordinate or junior in contractual right of payment to the Notes or any Guarantee, if any, then such Refinancing Indebtedness shall be subordinate in contractual right of payment to the Notes or any such Guarantee, as the case may be, at least to the same extent and in the same manner as the Indebtedness being Refinanced.

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

"Responsible Officer" means, when used with respect to the Trustee, any officer in the Corporate Trust Office of the Trustee (or any successor group of the Trustee) to whom any corporate trust matter is referred because of such officer's knowledge of and familiarity with the particular subject and shall also mean any officer who shall have direct responsibility for the administration of this Indenture.

"Resale Restriction Termination Date" means, in the case of 144A Global Notes, AI Global Notes or Physical Notes, one year and, in the case of the Regulation S Global Notes or Physical Notes, 40 days, after the later of (i) the Issue Date and (ii) the last date on which the Company or any Affiliate of the Company was the owner of such Note.

"Restricted Investment" means any Investment other than a Permitted Investment.

"Restricted Security" means a Note that constitutes a "Restricted Security" within the meaning of Rule 144(a)(3) under the Securities Act; *provided*, *however*, that the Trustee shall be entitled to request and conclusively rely on an Opinion of Counsel with respect to whether any Note constitutes a Restricted Security.

"Restricted Subsidiary" of any Person means any Subsidiary of such Person which at the time of determination is not an Unrestricted Subsidiary. Unless otherwise specified "Restricted Subsidiary" refers to a Restricted Subsidiary of the Company.

"S&P" means Standard & Poor's Rating Services, a division of The McGraw-Hill Companies, Inc., and its successors.

"Sale and Leaseback Transaction" means any direct or indirect arrangement with any Person or to which any such Person is a party, providing for the leasing to the Company or a Restricted Subsidiary of any property, whether owned by the Company or any Restricted Subsidiary at the Issue Date or later acquired, which has been or is to be sold or transferred by the Company or such Restricted Subsidiary to such Person or to any other Person from whom funds have been or are to be advanced by such Person on the security of such property.

"Securities Act" means the Securities Act of 1933, as amended, or any successor statute or statutes thereto, and the rules and regulations of the Commission.

"Security Documents" means the Notes Security Agreement, the Mortgages, the Intercreditor Agreement, any other intercreditor agreement authorized or required hereunder or any joinder to any such agreement and all of the security agreements (including any copyright security agreements, trademark security agreements or patent security agreements), pledges, collateral assignments, mortgages, deeds of trust, collateral trust agreements, trust deeds or other instruments, including any joinder to any of the foregoing, evidencing or creating or purporting to create any security interests in favor of the Collateral Agent for its benefit and for the benefit of the Trustee and the Holders and the holders of any other Notes Priority Lien Obligations, in all or any portion of the Collateral, as amended, modified, restated, supplemented or replaced from time to time.

"Significant Subsidiary," with respect to any Person, means any Restricted Subsidiary of such Person that satisfies the criteria for a "significant subsidiary" set forth in Rule 1-02(w) of Regulation S-X under the Exchange Act.

"Stated Maturity" means

(1) with respect to any debt security, the date specified in such debt security as the fixed date on which the final installment of principal of such debt security is due and payable; and

(2) with respect to any scheduled installment of principal of or interest on any debt security, the date specified in such debt security as the fixed date on which such installment is due and payable.

"Stockholders Agreement" means the stockholders agreement dated as of [●], 2020, by and among the Company and the stockholders listed on Schedule 1 thereto.

"Subordinated Indebtedness" means Indebtedness of the Company or any Guarantor that is subordinated or junior in contractual right of payment to the Notes or the Guarantee of such Guarantor, as the case may be. For purposes of the foregoing, no Indebtedness will be deemed to

be subordinated in contractual right of payment to any other Indebtedness of the Company or any Guarantor solely by virtue of such Indebtedness being unsecured or by virtue of the fact that the holders of such Indebtedness have entered into one or more intercreditor agreements giving one or more of such holders priority over the other holders in the collateral held by them.

"Subsidiary" means, with respect to any Person, any corporation, association, partnership or other business entity of which more than 50% of the total voting power of shares of Capital Stock is at the time owned or controlled, directly or indirectly, by:

(1) such Person;

(2) such Person and one or more Subsidiaries of such Person; or

(3) one or more Subsidiaries of such Person.

"Trading Day" means any day during which all of the following conditions are satisfied: (i) trading in the Company Common Stock generally occurs; (ii) there is no Market Disruption Event; and (iii) a closing sale price for the Company Common Stock is provided on the principal other U.S. national or regional securities exchange on which the shares of Company Common Stock are then listed or, if the shares of Company Common Stock are not listed on a U.S. national or regional securities exchange, on the principal other market on which the shares of Company Common Stock are then traded; *provided* that if the Company Common Stock is not publicly listed or traded on any exchange or market, "Trading Day" shall mean Business Day.

"Transfer" means any direct, indirect or synthetic sale, assignment, pledge, lease, hypothecation, mortgage, gift or creation of security interest, lien or trust (voting or otherwise) or other encumbrance or other disposition or transfer (by operation of law or otherwise, including by means of reference under a derivative, participation or similar contract or by the direct, indirect or synthetic transfer or issuance of equity securities of any entity) of any Note or the underlying Company Common Stock.

"Trust Indenture Act" means the Trust Indenture Act of 1939, as amended.

"Trust Monies" means all cash and Cash Equivalents received by the Trustee or Collateral Agent:

(1) upon the release of Collateral from the Lien of this Indenture or the Security Documents, including all Net Cash Proceeds;

(2) as proceeds of any sale or other disposition of all or any part of the Collateral by or on behalf of the Trustee or any collection, recovery, receipt, appropriation or other realization of or from all or any part of the Collateral pursuant to this Indenture or any of the Security Documents or otherwise; or

(3) for application as provided in the relevant provisions of this Indenture or any Security Document or for which disposition is not otherwise specifically provided in this Indenture or in any Security Document;

provided, *however*, that Trust Monies shall in no event include (a) any property deposited with the Trustee for any redemption, defeasance or covenant defeasance of Notes, for the satisfaction and discharge of this Indenture or to pay the purchase price of Notes and other Notes Priority Lien Obligations pursuant to a Net Proceeds Offer or in accordance with the terms of this Indenture, (b) any cash received or applicable by the Trustee or Collateral Agent in payment of its fees, indemnities and expenses or (c) prior to the Discharge of ABL Obligations, any amounts attributable to ABL Priority Collateral.

"Trustee" means the party named as such in this Indenture until a successor replaces it in accordance with the provisions of this Indenture and thereafter means such successor.

"UCC" means the Uniform Commercial Code as in effect from time to time in the State of New York; *provided*, *however*, that, at any time, if by reason of mandatory provisions of law, any or all of the perfection or priority of the Collateral Agent's security interest in any item or portion of the Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other that the State of New York, the term "UCC" shall mean the Uniform Commercial Code as in effect, at such time, in such other jurisdiction for purposes of the provisions hereof relating to such perfection or priority and for purposes of definitions relating to such provisions.

"Unrestricted Subsidiary" of any Person means:

(1) any Subsidiary of such Person that at the time of determination shall be or continue to be designated an Unrestricted Subsidiary by the Board of Directors of such Person in the manner provided below; and

(2) any Subsidiary of an Unrestricted Subsidiary.

The Board of Directors of the Company may designate any Subsidiary (including any newly acquired or newly formed Subsidiary) to be an Unrestricted Subsidiary unless such Subsidiary owns any Capital Stock of, or owns or holds any Lien on any property of, the Company or any other Subsidiary of the Company that is not a Subsidiary of the Subsidiary to be so designated; *provided* that:

(1) the Company certifies to the Trustee that such designation complies with Section 4.07; and

(2) each Subsidiary to be so designated and each of its Subsidiaries has not at the time of designation, and does not thereafter, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable with respect to any Indebtedness pursuant to which the lender has recourse to any of the assets of the Company or any of its Restricted Subsidiaries.

For purposes of making the determination of whether any such designation of a Subsidiary as an Unrestricted Subsidiary complies with Section 4.07, the portion of the fair market value of the net assets of such Subsidiary of the Company at the time that such Subsidiary is designated as an Unrestricted Subsidiary that is represented by the interest of the Company and its Restricted Subsidiaries in such Subsidiary, in each case as determined in good faith by the Board of Directors of the Company, shall be deemed to be an Investment. Such

designation will be permitted only if such Investment would be permitted at such time under Section 4.07.

The Board of Directors of the Company may designate any Unrestricted Subsidiary to be a Restricted Subsidiary only if:

(a) immediately after giving effect to such designation, the Company is able to incur at least $1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in Section 4.09(a); and

(b) immediately before and immediately after giving effect to such designation, no Default or Event of Default shall have occurred and be continuing. Any such designation by the Board of Directors of the Company shall be evidenced to the Trustee by promptly filing with the Trustee a copy of the Board Resolution giving effect to such designation and an Officer's Certificate certifying that such designation complied with the foregoing provisions.

"U.S. Government Obligations" means direct obligations of, obligations guaranteed by, or participations in pools consisting solely of obligations of or obligations guaranteed by, the United States of America in respect of the payment of which the full faith and credit of the United States of America is pledged and that are not callable or redeemable at the option of the Company thereof.

"U.S. Government Securities" shall mean securities which are (1) direct obligations of the United States of America for the payment of which its full faith and credit is pledged or (2) obligations of a person controlled or supervised by and acting as an agency or instrumentality of the United States of America, the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America, which, in either case, are not callable or redeemable at the option of the issuer thereof, and shall also include a depository receipt issued by a bank or trust company as custodian with respect to any such U.S. Government Securities or a specific payment of interest on or principal of any such U.S. Government Securities held by such custodian for the account of the holder of a depository receipt.

"U.S. Legal Tender" means such coin or currency of the United States of America that at the time of payment shall be legal tender for the payment of public and private debts.

"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.

"Weighted Average Life to Maturity" means, when applied to any Indebtedness at any date, the number of years obtained by dividing (1) the then outstanding aggregate principal amount of such Indebtedness into (2) the sum of the total of the products obtained by multiplying (a) the amount of each then remaining installment, sinking fund, serial maturity or other required payment of principal, including payment at final maturity, in respect thereof, by (b) the number of years (calculated to the nearest one-twelfth) which will elapse between such date and the making of such payment.

"Wholly Owned Restricted Subsidiary" of any Person means any Wholly Owned Subsidiary of such Person which at the time of determination is a Restricted Subsidiary of such Person.

"Wholly Owned Subsidiary" of any Person means any Subsidiary of such Person of which all the outstanding voting securities (other than in the case of a Foreign Subsidiary, directors' qualifying shares or an immaterial amount of shares required to be owned by other Persons pursuant to applicable law) are owned by such Person or any Wholly Owned Subsidiary of such Person.

SECTION 1.02. Other Definitions.

Term	Section
144A Global Notes	2.01
Additional Issuance Time	13.05(b)
Additional Notes	2.02
Affiliate Transaction	4.11(a)
AI Global Notes	2.01
Authentication Order	2.02
Cash Interest	4.01
Change of Control Offer	4.13(a)
Change of Control Payment	4.13(a)
Change of Control Payment Date	4.13(b)(2)
clearing agency	2.15(b)
Collective Election	13.11
Conversion Agent	2.03
Covenant Defeasance	8.02(b)
Distributed Property	13.05(c)
Event of Default	6.01
Global Notes	2.01
Group	1.01
Increased Amount	4.12(c)
Initial Global Notes	2.01
Initial Notes	2.02
Merger Event	13.11
Net Proceeds Offer	4.10(a)(5)(e)
Net Proceeds Offer Amount	4.10(a)(5)(e)
Net Proceeds Offer Payment Date	4.10(a)(5)(e)
Net Proceeds Offer Trigger Date	4.10(a)(5)(e)
OID Legend	2.16(d)
Other Transaction Party	1.01
Participants	2.15(a)
Paying Agent	2.03
Physical Notes	2.01
PIK Election	4.01
PIK Notes	2.01
PIK Payment	2.01

Term	Section
Reference Date	4.07(a)(4)(iii)(v)
Reference Property	13.11
Registrar	2.03
Regulation S Global Notes	2.01
Released Trust Monies	12.03
Replacement Assets	12.03
Restricted Payment	4.07(a)(4)
Rights Distribution	13.05(b)
Spin-Off	13.05(c)
Substitute Reports	4.18(f)
Surviving Entity	5.01(1)(b)
Tender Determination Date	13.05(e)
Trigger Event	13.05(c)
Triggering Lien	4.12

SECTION 1.03. Inapplicability of Trust Indenture Act.

No provisions of the Trust Indenture Act are incorporated by reference in or made a part of this Indenture unless explicitly incorporated by reference. Unless specifically provided in this Indenture, no terms that are defined under the Trust Indenture Act have such meanings for purposes of this Indenture.

SECTION 1.04. 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) words in the singular include the plural, and words in the plural include the singular;

(5) provisions apply to successive events and transactions;

(6) "herein," "hereof" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision;

(7) the words "including," "includes" and similar words shall be deemed to be followed by "without limitation;"

(8) references to entities shall include any successors thereto and assigns thereof; and

(9) references to statutes, rules, regulations, guidance and forms shall be deemed to be references to any successors thereto.

ARTICLE TWO

THE NOTES

SECTION 2.01. Form and Dating.

The Notes and the Trustee's certificate of authentication shall 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. The Company shall approve the form of the Notes and any notation, legend or endorsement on them. Each Note shall be dated the date of its issuance and show the date of its authentication. If applicable, each Note shall have an executed Guarantee from each of the Guarantors, if any, existing on or after the Issue Date endorsed thereon substantially in the form of Exhibit D.

In connection with the payment of PIK Interest pursuant to a PIK Election in respect of the Notes, the Company is entitled to, without the consent of the Holders and without regard to Section 4.09 hereof, increase the outstanding principal amount of the Notes or issue additional Notes ("PIK Notes") under this Indenture on the same terms and conditions as the Notes (in each case, a "PIK Payment").

The terms and provisions contained in the Notes and the Guarantees, if any, shall constitute, and are hereby expressly made, a part of this Indenture and, to the extent applicable, the Company and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby. Notwithstanding the foregoing, in the event of a conflict between the terms and provisions of the Notes or the Guarantees and the terms and provisions of this Indenture, the provisions of this Indenture shall govern and be controlling.

Notes offered and sold in reliance on Rule 144A shall be issued initially in the form of one or more permanent global Notes in registered form, substantially in the form set forth in Exhibit A (the "144A Global Notes"), deposited with the Trustee, as custodian for the Depository, duly executed by the Company (and having, if applicable, an executed Guarantee from each of the Guarantors, if any, endorsed thereon) and authenticated by the Trustee as hereinafter provided and shall bear the legends set forth in Exhibit B.

Notes offered and sold in offshore transactions in reliance on Regulation S shall be issued initially in the form of one or more permanent global Notes in registered form, substantially in the form of Exhibit A (the "Regulation S Global Notes"), deposited with the Trustee, as custodian for the Depository, duly executed by the Company (and having, if applicable, an executed Guarantee from each of the Guarantors, if any, endorsed thereon) and authenticated by the Trustee as hereinafter provided and shall bear the legends set forth in Exhibit B.

Notes offered and sold to AIs in the United States shall be issued initially in the form of one or more permanent global Notes in registered form, substantially in the form set forth in Exhibit A (the "AI Global Notes" and, together with the 144A Global Notes and the Regulation

S Global Notes, the "Initial Global Notes"), deposited with the Trustee, as custodian for the Depository, duly executed by the Company (and having, if applicable, an executed Guarantee from each of the Guarantors, if any, endorsed thereon) and authenticated by the Trustee as hereinafter provided and shall bear the legends set forth in Exhibit B.

Notes issued after the Issue Date shall be issued initially in the form of one or more global Notes in registered form, substantially in the form set forth in Exhibit A, deposited with the Trustee, as custodian for the Depository, duly executed by the Company (and having, if applicable, an executed Guarantee from each of the Guarantors, if any, endorsed thereon) and authenticated by the Trustee as hereinafter provided and shall bear any legends required by applicable law (together with the Initial Global Notes, the "Global Notes") or as Physical Notes.

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. Notes issued in exchange for interests in a Global Note pursuant to Section 2.16 may be issued in the form of permanent certificated Notes in registered form in substantially the form set forth in Exhibit A and bearing the applicable legends, if any (the "Physical Notes").

On any Interest Payment Date on which the Company pays PIK Interest pursuant to a PIK Election with respect to a Global Note, the Trustee shall increase the principal amount of such Note by an amount equal to the interest payable, rounded up to the nearest $1.00 for the relevant interest period on the principal amount of such Note as of the relevant record date for such Interest Payment Date, to the credit of the Holders on such record date, pro rata in accordance with their interests, and an adjustment shall be made on the books and records of the Trustee with respect to such Global Note, by the Trustee to reflect such increase. On any Interest Payment Date on which the Company pays PIK Interest pursuant to a PIK Election by issuing definitive PIK Notes, the principal amount of any such PIK Notes issued to any Holder, for the relevant interest period as of the relevant record date for such Interest Payment Date, shall be rounded up to the nearest $1.00.

SECTION 2.02. Execution, Authentication and Denomination; Additional Notes.

One Officer of the Company (who shall have been duly authorized by all requisite corporate actions) shall sign the Notes for such Company by manual or facsimile signature. One Officer of a Guarantor, if any, (who shall have been duly authorized by all requisite corporate actions) shall sign the Guarantee, if any, for such Guarantor by manual or facsimile signature.

If an Officer whose signature is on a Note or Guarantee, as the case may be, was an Officer at the time of such execution but no longer holds that office at the time the Trustee authenticates the Note, the Note shall nevertheless be valid. Each Guarantor, if any, shall execute a Guarantee in the manner set forth in Section 10.03.

A Note (and the Guarantees, if any, in respect thereof) shall not be valid until an authorized signatory of the Trustee manually signs the certificate of authentication on the Note. The signature shall be conclusive evidence that the Note has been authenticated under this Indenture.

The Trustee shall authenticate (i) on the Issue Date, Notes for original issue in the aggregate principal amount not to exceed $[●] (the "Initial Notes"), (ii) additional Notes (the "Additional Notes") (so long as not otherwise prohibited by the terms of this Indenture, including Sections 4.09 and 4.12), and (iii) PIK Notes issued in payment of PIK Interest pursuant to a PIK Election, in each case upon a written order of the Company in the form of a certificate of an Officer of the Company (an "Authentication Order"). Any such written order relating to the issuance of Additional Notes shall state that such Officers have reviewed this Indenture and the outstanding Security Documents and that any limitations on Indebtedness and/or Liens provided in this Indenture and such Security Documents shall not be exceeded by the issuance of such Additional Notes. Each such Authentication Order shall specify the amount of Notes to be authenticated and the date on which the Notes are to be authenticated, whether the Notes are to be Initial Notes, PIK Notes or Additional Notes and whether the Notes are to be issued as certificated Notes or Global Notes or such other information as the Trustee may reasonably request. In addition, with respect to authentication pursuant to clause (i), (ii) or (iii) of the first sentence of this paragraph, such Authentication Order from the Company shall be accompanied by an Opinion of Counsel of the Company in a form reasonably satisfactory to the Trustee.

All Notes, including PIK Notes, issued under this Indenture shall be treated as a single class for all purposes under this Indenture. The Additional Notes and the PIK Notes shall bear any legend required by applicable law.

The Trustee may appoint an authenticating agent reasonably acceptable to the Company to authenticate Notes. Unless otherwise provided in the appointment, 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 the Company and Affiliates of the Company. The Trustee shall have the right to decline to authenticate and deliver any Notes under this Indenture if the Trustee, being advised by counsel, determines that such action may not lawfully be taken or if the Trustee in good faith shall determine that such action would expose the Trustee to personal liability. The Trustee shall not accept any request for registration of transfer or exchange after a Holder has exercised its Conversion Right.

The Notes shall be issuable only in registered form without coupons in denominations of $1.00 and integral multiples of $1.00 in excess thereof.

SECTION 2.03. Registrar; Paying Agent; Conversion Agent.

The Company shall maintain or cause to be maintained an office or agency where (a) Notes may be presented or surrendered for registration of transfer or for exchange ("Registrar"), (b) Notes may, subject to Section 2 of the Notes, be presented or surrendered for payment or repurchase ("Paying Agent"), (c) Notes may be surrendered for conversion ("Conversion Agent") and (d) notices and demands to or upon the Company in respect of the Notes and this Indenture may be served. 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 shall in any manner relieve the Company of its obligation to maintain or cause to be maintained an office or agency for such purposes. The Company may

act as Registrar or Paying Agent, except that for the purposes of Articles Three and Eight and Sections 4.10 and 4.13, neither the Company nor any Affiliate of the Company shall act as Paying Agent. The Registrar shall keep a register of the Notes and of their transfer and exchange. The Company, upon notice to the Trustee, may have 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 initially appoints the Trustee as Registrar, Paying Agent and Conversion Agent until such time as the Trustee has resigned or a successor has been appointed.

The Company shall enter into an appropriate agency agreement with any Agent not a party to this Indenture, which agreement shall implement the provisions of this Indenture that relate to such Agent. The Company shall notify the Trustee, in advance, of the name and address of any such Agent. If the Company fails to maintain a Registrar or Paying Agent, the Trustee shall act as such at its Corporate Trust Office.

SECTION 2.04. Paying Agent To Hold Assets in Trust.

The Company shall require each Paying Agent other than the Trustee or the Company or any Subsidiary to agree in writing that each Paying Agent shall hold in trust for the benefit of Holders or the Trustee all assets held by the Paying Agent for the payment of principal of, or interest on, the Notes (whether such assets have been distributed to it by the Company or any other obligor on the Notes), and shall notify the Trustee of any Default by the Company (or any other obligor on the Notes) in making any such payment. The Company at any time may require a Paying Agent to distribute all assets held by it to the Trustee and account for any assets disbursed and the Trustee may at any time during the continuance of any payment Default, upon written request to a Paying Agent, require such Paying Agent to distribute all assets held by it to the Trustee and to account for any assets distributed. Upon distribution to the Trustee of all assets that shall have been delivered by the Company to the Paying Agent, the Paying Agent shall have no further liability for such assets.

SECTION 2.05. Holder Lists.

The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Holders. If the Trustee is not the Registrar, the Company shall furnish to the Trustee at least two (2) Business Days prior to each Interest Payment Date and at such other times as the Trustee may request in writing a list, in such form and as of such date as the Trustee may reasonably require, of the names and addresses of Holders, which list may be conclusively relied upon by the Trustee.

SECTION 2.06. Transfer and Exchange.

Subject to Sections 2.15 and 2.16, when Notes are presented to the Registrar with a request to register the transfer of such Notes or to exchange such Notes for an equal principal amount of Notes of other authorized denominations, the Registrar shall register the transfer or make the exchange as requested if its requirements for such transaction are met; *provided*, *however*, that the Notes surrendered for transfer or exchange shall be duly endorsed or accompanied by a written instrument of transfer in form satisfactory to the Company and the

Registrar, duly executed by the Holder thereof or his or her attorney duly authorized in writing. To permit registrations of transfers and exchanges, the Company shall execute and the Trustee, upon receipt of an Authentication Order, shall authenticate Notes at the Registrar's request. No service charge shall be made 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.

Without the prior written consent of the Company, the Registrar shall not be required to register the transfer of or exchange of any Note beginning at the opening of business on any Record Date and ending on the close of business on the related Interest Payment Date.

Any holder of a beneficial interest in a Global Note shall, by acceptance of such beneficial interest, agree that transfers of beneficial interests in such Global Notes may be effected only through a book-entry system maintained by the Holder of such Global Note (or its agent) in accordance with the applicable legends thereon, and that ownership of a beneficial interest in the Note shall be required to be reflected in a book-entry system.

SECTION 2.07. Replacement Notes.

If a mutilated Note is surrendered to the Trustee or if the Holder of a Note claims that the Note has been lost, destroyed or wrongfully taken, the Company shall issue and the Trustee shall authenticate a replacement Note if the Trustee's requirements are met. Such Holder must provide an indemnity bond or other indemnity, sufficient in the judgment of both the Company and the Trustee, to protect the Company, the Trustee or any Agent from any loss which any of them may suffer if a Note is replaced. The Company may charge such Holder for its reasonable out-of-pocket expenses in replacing a Note pursuant to this Section 2.07, including reasonable fees and expenses of counsel and of the Trustee.

Every replacement Note is an additional obligation of the Company and every replacement Guarantee, if any, shall constitute an additional obligation of the Guarantor thereof.

The provisions of this Section 2.07 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of lost, destroyed or wrongfully taken Notes.

SECTION 2.08. Outstanding Notes.

Notes outstanding at any time are all the Notes that have been authenticated by the Trustee except those cancelled by it, those delivered to it for cancellation and those described in this Section 2.08 as not outstanding. A Note does not cease to be outstanding because the Company, any Guarantor or any of their respective Affiliates hold the Note (subject to the provisions of Section 2.09).

If a Note is replaced pursuant to Section 2.07 (other than a mutilated Note surrendered for replacement), it ceases to be outstanding unless a Responsible Officer of the Trustee receives proof satisfactory to it that the replaced Note is held by a *bona fide* purchaser. A mutilated Note ceases to be outstanding upon surrender of such Note and replacement thereof pursuant to Section 2.07.

If the principal amount of any Note is considered paid under Section 4.01, it ceases to be outstanding and interest ceases to accrue. If on the Stated Maturity the Trustee or Paying Agent (other than the Company or an Affiliate thereof) holds U.S. Legal Tender or U.S. Government Obligations sufficient to pay all of the principal and interest due on the Notes payable on that date, then on and after that date such Notes cease to be outstanding and interest on them ceases to accrue.

SECTION 2.09. Treasury Notes.

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 any of its Subsidiaries shall be disregarded, except that, for the purposes of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Notes that a Responsible Officer of the Trustee actually knows are so owned shall be disregarded.

SECTION 2.10. Temporary Notes.

Until definitive Notes are ready for delivery, the Company may prepare and the Trustee, upon receipt of an Authentication Order, shall authenticate temporary Notes. Temporary Notes shall be substantially in the form of definitive Notes but may have variations that the Company considers appropriate for temporary Notes. Without unreasonable delay, the Company shall prepare and the Trustee, upon receipt of an Authentication Order, shall authenticate definitive Notes in exchange for temporary Notes. Until such exchange, temporary Notes shall be entitled to the same rights, benefits and privileges as definitive Notes. Notwithstanding the foregoing, so long as the Notes are represented by a Global Note, such Global Note may be in typewritten form.

SECTION 2.11. Cancellation.

The Company at any time may deliver Notes to the Trustee for cancellation. The Registrar and the Paying Agent shall forward to the Trustee any Notes surrendered to them for transfer, exchange, payment or conversion. The Trustee, or at the direction of the Trustee, the Registrar or the Paying Agent (other than the Company or a Subsidiary), and no one else, shall cancel and, at the written direction of the Company, shall dispose of all Notes surrendered for transfer, exchange, payment, conversion or cancellation in accordance with its customary procedures. Subject to Section 2.07, the Company may not issue new Notes to replace Notes that it has paid or delivered to the Trustee for cancellation. 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 surrendered to the Trustee for cancellation pursuant to this Section 2.11.

SECTION 2.12. Default Interest.

If the Company defaults in a payment of interest on the Notes, it shall pay the default interest in cash, plus (to the extent lawful) any interest payable on the defaulted interest in cash, in any lawful manner. The Company may pay the default interest to the persons who are Holders on a subsequent special record date, which date shall be the fifteenth day next preceding the date

fixed by the Company for the payment of default interest or the next succeeding Business Day if such date is not a Business Day. At least 15 days before any such subsequent special record date, the Company shall provide to each Holder, in accordance with Section 14.01, with a copy to the Trustee, a notice that states the subsequent special record date, the payment date and the amount of default interest, and interest payable on such default interest, if any, to be paid.

SECTION 2.13. CUSIP and ISIN Numbers.

The Company in issuing the Notes may use "CUSIP" or "ISIN" numbers, and if so, the Trustee shall use the "CUSIP" or "ISIN" numbers in notices of exchange as a convenience to Holders; *provided*, *however*, that any such notice may state that no representation is made as to the correctness or accuracy of the "CUSIP" or "ISIN" numbers printed in the notice or on the Notes, and that reliance may be placed only on the other identification numbers printed on the Notes. The Company will promptly notify the Trustee of any change in the "CUSIP" or "ISIN" numbers.

SECTION 2.14. Deposit of Moneys.

Subject to Section 2 of the Notes, prior to 11:00 a.m., New York City time, on each Stated Maturity and Payment Date, the Company shall have deposited with the Paying Agent in immediately available funds money sufficient to make cash payments, if any, due on such Stated Maturity and Payment Date, as the case may be, in a timely manner which permits the Paying Agent to remit payment to the Holders on such Stated Maturity and Payment Date, as the case may be.

SECTION 2.15. Book-Entry Provisions for Global Notes.

(a) The Global Notes initially shall (i) be registered in the name of the Depository or the nominee of such Depository, (ii) be delivered to the Trustee as custodian for such Depository and (iii) bear legends as set forth in Exhibit B, as applicable.

Members of, or participants in, the Depository ("Participants") shall have no rights under this Indenture with respect to any Global Note held on their behalf by the Depository, or the Trustee as its custodian, or under the Global Note, and the Depository may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner of the Global Note for all purposes whatsoever. 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 Depository or impair, as between the Depository and Participants, the operation of customary practices governing the exercise of the rights of a Holder of any Note.

(b) Transfers of Global Notes shall be limited to transfers in whole, but not in part, to the Depository, its successors or their respective nominees. Interests of beneficial owners in the Global Notes may be transferred or exchanged for Physical Notes in accordance with the rules and procedures of the Depository and the provisions of Section 2.16. In addition, Physical Notes shall be transferred to all beneficial owners in exchange for their beneficial interests in Global Notes if (i) (A) the Depository notifies the Company that it is unwilling or unable to act as

Depository for any Global Note, the Company so notifies the Trustee in writing or (B) the Depository ceases to be a "clearing agency" registered under the Exchange Act and, in either case, a successor Depository is not appointed by the Company within 120 days of such notice or (ii) a Default or Event of Default has occurred and is continuing and the Registrar has received a written request from any owner of a beneficial interest in a Global Note to issue Physical Notes. Upon any issuance of a Physical Note in accordance with this Section 2.15(b) the Trustee is required to register such Physical Note in the name of, and cause the same to be delivered to, such person or persons (or the nominee of any thereof). All such Physical Notes shall bear the applicable legends, if any.

(c) In connection with any transfer or exchange of a portion of the beneficial interest in a Global Note to beneficial owners pursuant to paragraph (b) of this Section 2.15, the Registrar shall (if one or more Physical Notes are to be issued) reflect on its books and records the date and a decrease in the principal amount of such Global Note in an amount equal to the principal amount of the beneficial interest in the Global Note to be transferred, and the Company shall execute, and, upon receipt of an Authentication Order, the Trustee shall authenticate and deliver, one or more Physical Notes of authorized denominations in an aggregate principal amount equal to the principal amount of the beneficial interest in the Global Note so transferred.

(d) In connection with the transfer of a Global Note as an entirety to beneficial owners pursuant to paragraph (b) of this Section 2.15, such Global Note shall be deemed to be surrendered to the Trustee for cancellation, and (i) the Company shall execute, (ii) the Guarantors, if any, shall execute notations of Guarantees on and (iii) the Trustee shall upon written instructions from the Company authenticate and deliver, to each beneficial owner identified by the Depository in exchange for its beneficial interest in such Global Note, an equal aggregate principal amount of Physical Notes of authorized denominations.

(e) Any Physical Note constituting a Restricted Security delivered in exchange for an interest in a Global Note pursuant to paragraph (b) or (c) of this Section 2.15 shall, except as otherwise provided by Section 2.16, bear the Private Placement Legend.

(f) The Holder of any Global Note may grant proxies and otherwise authorize any Person, including Participants and Persons that may hold interests through Participants, to take any action which a Holder is entitled to take under this Indenture or the Notes.

SECTION 2.16. Special Transfer and Exchange Provisions.

(a) Transfers to QIBs. The following provisions shall apply with respect to the registration of any proposed transfer of a Restricted Security to a QIB:

(i) the Registrar shall register the transfer of any Restricted Security, whether or not such Note bears the Private Placement Legend, if (x) the requested transfer is after the first anniversary of the Issue Date; *provided*, *however*, that neither the Company nor any Affiliate of the Company has held any beneficial interest in such Note, or portion thereof, at any time on or prior to the first anniversary of the Issue Date or (y) such transfer is being made by a proposed transferor who has checked the box provided for on the applicable Global Note stating, or has otherwise advised the Company and the

Registrar in writing, that the sale has been made in compliance with the provisions of Rule 144A to a transferee who has signed the certification provided for on the applicable Global Note stating, or has otherwise advised the Company and the Registrar in writing, that it is purchasing the 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 QIB within the meaning of Rule 144A, 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 it 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 its foregoing representations in order to claim the exemption from registration provided by Rule 144A;

(ii) if the proposed transferee is a Participant and the Notes to be transferred consist of Physical Notes which after transfer are to be evidenced by an interest in a 144A Global Note, upon receipt by the Registrar of the Physical Note and written instructions given in accordance with the Depository's and the Registrar's procedures, the Registrar shall register the transfer and reflect on its book and records the date and an increase in the principal amount of the applicable 144A Global Note in an amount equal to the principal amount of Physical Notes to be transferred, and the Registrar shall cancel the Physical Notes so transferred;

(iii) if the proposed transferor is a Participant seeking to transfer an interest in a Regulation S Global Note, upon receipt by the Registrar of written instructions given in accordance with the Depository's and the Registrar's procedures, the Registrar shall register the transfer and reflect on its books and records the date and (A) a decrease in the principal amount of a Regulation S Global Note in an amount equal to the principal amount of the Notes to be transferred and (B) an increase in the principal amount of the applicable 144A Global Note in an amount equal to the principal amount of the Notes to be transferred; and

(iv) if the proposed transferor is a Participant seeking to transfer an interest in an AI Global Note, upon receipt by the Registrar of written instructions given in accordance with the Depository's and the Registrar's procedures, the Registrar shall register the transfer and reflect on its books and records the date and (A) a decrease in the principal amount of an AI Global Note in an amount equal to the principal amount of the Notes to be transferred and (B) an increase in the principal amount of the applicable 144A Global Note in an amount equal to the principal amount of the Notes to be transferred.

(b) Transfers to Non-U.S. Persons. The following provisions shall apply with respect to any transfer of a Restricted Security to a Non-U.S. Person under Regulation S:

(i) the Registrar shall register any proposed transfer of a Restricted Security to a Non-U.S. Person upon receipt of a certificate substantially in the form of Exhibit C from the proposed transferor and such certifications, legal opinions and other information as the Trustee or the Company may reasonably request; and

(ii) (a) if the proposed transferor is a Participant holding a beneficial interest in a Rule 144A Global Note, an AI Global Note or the Note to be transferred consists of Physical Notes, upon receipt by the Registrar of (x) the documents required by paragraph (i) and (y) instructions in accordance with the Depository's and the Registrar's procedures, the Registrar shall reflect on its books and records the date and a decrease in the principal amount of the applicable Rule 144A Global Note or AI Global Note in an amount equal to the principal amount of the beneficial interest in the applicable Rule 144A Global Note or AI Global Note to be transferred or cancel the Physical Notes to be transferred, and (b) if the proposed transferee is a Participant, upon receipt by the Registrar of instructions given in accordance with the Depository's and the Registrar's procedures, the Registrar shall reflect on its books and records the date and an increase in the principal amount of the applicable Regulation S Global Note in an amount equal to the principal amount of the applicable Rule 144A Global Note, AI Global Note or the Physical Notes, as the case may be, to be transferred.

(c) Transfers to Other Persons. The following provisions shall apply with respect to the registration of any proposed transfer of a Restricted Security not otherwise permitted by this Section 2.16:

(i) the Registrar shall register, upon receipt of a written direction from the Company, the transfer of any Restricted Security, whether or not such Note bears the Private Placement Legend, if (x) the requested transfer is after the first anniversary of the Issue Date; *provided*, *however*, that neither the Company nor any Affiliate of the Company has held any beneficial interest in such Note, or portion thereof, at any time on or prior to the first anniversary of the Issue Date or (y) such transfer is being made by a proposed transferor who has checked the applicable box provided for on the applicable Global Note and has delivered to the Registrar legal opinions satisfactory to the Company and the Trustee and such other certifications or information as the Company or the Trustee may reasonably request to confirm that the proposed transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act; and

(ii) if the proposed transferee is a Participant and the Notes to be transferred consist of Physical Notes which after transfer are to be evidenced by an interest in a Global Note, upon receipt by the Registrar of the Physical Note and (x) written instructions given in accordance with the Depository's and the Registrar's procedures and (y) the legal opinions, certificates and information, as applicable, referred to in clause (y) of paragraph (i) above, the Registrar shall register the transfer and reflect on its books and records the date and an increase in the principal amount of the applicable Global Note in an amount equal to the principal amount of Physical Notes to be transferred, and the Registrar shall cancel the Physical Notes so transferred; and

(iii) if the proposed transferor is a Participant seeking to transfer an interest in a Global Note, upon receipt by the Registrar of (x) written instructions given in accordance with the Depository's and the Registrar's procedures and (y) the legal opinions, certificates and information, as applicable, referred to in clause (y) of paragraph (i) above, the Registrar shall register the transfer and reflect on its books and records the

date and (A) a decrease in the principal amount of the Global Note from which such interests are to be transferred in an amount equal to the principal amount of the Notes to be transferred and (B) an increase in the principal amount of the applicable Global Note in an amount equal to the principal amount of the Notes to be transferred.

(d) OID Legend. To the extent required by Section 1275(c)(1)(A) of the Internal Revenue Code of 1986, as amended, and Treasury Regulation Section 1.1275-3(b)(1), each Note issued at a discount to its stated redemption price at maturity shall bear a legend (the "OID Legend") in substantially the following form (with any necessary amendments thereto to reflect any amendments occurring after the Issue Date to the applicable sections):

> "**For the purposes of Sections 1272, 1273 and 1275 of the Internal Revenue Code of 1986, as amended, this note is being issued with original issue discount. You may contact the Company at [●], attention: [●], and the Company will provide you with the issue price, the amount of original issue discount, the issue date and the yield to maturity of this Note.**"

(e) Restrictions on Transfer and Exchange of Global Notes. Notwithstanding any other provisions of this Indenture, a Global Note may not be transferred as a whole except by the Depository to a nominee of the Depository or by a nominee of the Depository to the Depository or another nominee of the Depository or by the Depository or any such nominee to a successor Depository or a nominee of such successor Depository.

(f) Private Placement Legend. Upon the transfer, exchange or replacement of Notes not bearing the Private Placement Legend unless otherwise required by applicable law, the Registrar shall deliver Notes that do not bear the Private Placement Legend. Upon the transfer, exchange or replacement of Notes bearing the Private Placement Legend, the Registrar shall deliver only Notes that bear the Private Placement Legend unless (i) there is delivered to the Trustee an Opinion of Counsel reasonably satisfactory to the Company and the Trustee to the effect that neither such legend nor the related restrictions on transfer are required in order to maintain compliance with the provisions of the Securities Act or (ii) such Note has been offered and sold pursuant to an effective registration statement under the Securities Act.

(g) General. By its acceptance of any Note bearing the Private Placement Legend, each Holder of such a Note acknowledges the restrictions on transfer of such Note set forth in this Indenture and in the Private Placement Legend and agrees that it will transfer such Note only as provided in this Indenture.

The Registrar shall retain copies of all letters, notices and other written communications received pursuant to Section 2.15 or this Section 2.16. 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.

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 (including any transfers between or

among Depository 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.

The Trustee shall have no responsibility for the actions or omissions of the Depository, or the accuracy of the books and records of the Depository.

(h) Cancellation and/or Adjustment of Global Note. At such time as all beneficial interests in a particular Global Note have been exchanged for Physical Notes or a particular Global Note has been redeemed, repurchased or canceled in whole and not in part, each such Global Note shall 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 Physical Notes, the principal amount of Notes represented by such Global Note shall be reduced accordingly and an endorsement shall be made on such Global Note by 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 shall be increased accordingly and an endorsement shall be made on such Global Note by the Trustee to reflect such increase.

SECTION 2.17. Tax Treatment.

The parties hereto intend that the Notes constitute indebtedness and will treat the Notes as indebtedness for all tax purposes, unless otherwise required by applicable law.

ARTICLE THREE

REDEMPTION

SECTION 3.01. No Redemption.

The Notes may not be redeemed by the Company in whole or in part at any time. No sinking fund, mandatory redemption or other similar provision shall apply to the Notes.

ARTICLE FOUR
COVENANTS

SECTION 4.01. Payment of Notes.

The Company shall pay the principal of, premium, if any, and interest on the Notes in the manner provided in the Notes and this Indenture.

In the event that the Company determines to pay PIK Interest for any interest period, then Company will deliver a notice (a "PIK Election") to the Trustee no later than thirty days prior to the beginning of the relevant interest period, which notice will state the total amount of interest

to be paid on the Interest Payment Date in respect of such interest period and the amount of such interest to be paid as PIK Interest. The Trustee, on behalf of the Company, will promptly deliver a corresponding notice provided by the Company to the Holders. For the avoidance of doubt, interest on the Notes in respect of any interest period for which a PIK Election is not timely delivered must be paid entirely in cash ("Cash Interest").

Cash Interest shall be considered paid on the date due if the Paying Agent, if other than the Company or a Subsidiary, holds as of 10:00 a.m. (New York City 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 Cash Interest then due. PIK Interest shall be considered paid on the date due if on such date the Trustee has received (i) an Authentication Order to increase the balance of any Global Note to reflect such PIK Interest or (ii) PIK Notes duly executed by the Company together with Authentication Order requesting the authentication of such PIK Notes by the Trustee.

Interest on the Notes will be computed on the basis of a 360-day year comprised of twelve 30-day months.

The Company shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on (i) overdue principal, from time to time on demand to the extent lawful, at the interest rate applicable to the Notes and (ii) overdue installments of interest (without regard to any applicable grace periods), from time to time on demand to the extent lawful, at the interest rate applicable to the Notes plus 2.0%.

SECTION 4.02. Maintenance of Office or Agency.

The Company shall maintain the office or agency required under Section 2.03 (which may be an office of the Trustee or an affiliate of the Trustee or Registrar). The Company shall 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 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 address of the Trustee set forth in Section 14.01.

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. 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 initially designates the Trustee at its Corporate Trust Office as such office of the Company in accordance with Section 2.03.

SECTION 4.03. Corporate Existence.

Except as otherwise permitted by the terms of this Indenture, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence and the corporate, partnership or other existence of each of its Restricted Subsidiaries

in accordance with the respective organizational documents of each such Restricted Subsidiary and the material rights (charter and statutory) and material franchises of the Company and each of its Restricted Subsidiaries; *provided*, *however*, that the Company shall not be required to preserve any such right, franchise or corporate existence with respect to itself or any Restricted Subsidiary 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 Restricted Subsidiaries, taken as a whole, and that the loss thereof is not adverse in any material respect to the Holders of the Notes.

SECTION 4.04. Payment of Taxes.

The Company and the Guarantors, if any, shall and shall cause each of the Restricted Subsidiaries to, pay or discharge or cause to be paid or discharged, before the same shall become delinquent, (a) all material taxes, assessments and governmental charges levied or imposed upon it or any of the Restricted Subsidiaries or upon the income, profits or property of it or any of the Restricted Subsidiaries and (b) all lawful claims for labor, materials and supplies which, in each case, if unpaid, might by law become a material liability or Lien upon the property of it or any of the Restricted Subsidiaries; *provided*, *however*, that the Company and the Guarantors, if any, shall not be required to pay or discharge or cause to be paid or discharged any such tax, assessment, charge or claim (i) that is not delinquent or (ii) whose amount the applicability or validity is being contested in good faith by appropriate actions and for which appropriate provision has been made.

SECTION 4.05. Compliance Certificate; Notice of Default.

(a) The Company shall deliver to the Trustee, within 120 days after the close of each fiscal year, an Officer's Certificate stating (i) that a review of the activities of the Company and its Subsidiaries has been made under the supervision of the signing Officers with a view to determining whether the Company and the Guarantors, if any, have kept, observed, performed and fulfilled their obligations under this Indenture and the Security Documents and further stating, as to each such Officer signing such certificate, that to the best of such Officer's knowledge, the Company and the Guarantors, if any, during such preceding fiscal year has kept, observed, performed and fulfilled each and every such covenant and no Default occurred during such year and at the date of such certificate there is no Default that has occurred and is continuing or, if such signers do know of such Default, the certificate shall specify such Default and what action, if any, the Company is taking or proposes to take with respect thereto and (ii) that there has been no adjustment to the Conversion Rate during the relevant period save as notified in writing to the Trustee and Holders. The Officer's Certificate shall also notify the Trustee should the Company elect to change the manner in which it fixes the fiscal year end.

(b) The Company shall deliver to the Trustee promptly and in any event within five Business Days after the Company becomes aware of the occurrence of any Default an Officer's Certificate specifying the Default and what action, if any, the Company is taking or proposes to take with respect thereto.

SECTION 4.06. Waiver of Stay, Extension or Usury Laws.

The Company and each Guarantor, if any, covenants (to the extent permitted by applicable law) 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 or extension law or any usury law, wherever enacted, now or at any time hereafter in force, or which may affect the covenants or the performance of this Indenture, and (to the extent permitted by applicable law) each hereby expressly waives all benefit or advantage of any such law, and covenants that it will not 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 4.07. Limitations on Restricted Payments.

(a) The Company will not, and will not cause or permit any of its Restricted Subsidiaries to, directly or indirectly:

(1) declare or pay any dividend or make any distribution on or in respect of shares of the Company's or any of its Restricted Subsidiaries' Capital Stock to holders of such Capital Stock (other than (i) dividends or distributions by the Company payable in Qualified Capital Stock of the Company or (ii) dividends or distributions by a Restricted Subsidiary; *provided* that, in the case of any dividend or distribution payable by a Restricted Subsidiary other than a Wholly-Owned Restricted Subsidiary, the Company or a Restricted Subsidiary receives at least its *pro rata* share of such dividend or distribution in accordance with its ownership interest in such class or series of Capital Stock);

(2) purchase, redeem or otherwise acquire or retire for value any Capital Stock of the Company;

(3) make any principal payment on, purchase, defease, redeem, decrease or otherwise acquire or retire for value, prior to any scheduled maturity, scheduled repayment or scheduled sinking fund payment, any Subordinated Indebtedness (other than the purchase, defeasance, redemption, other acquisition or retirement of such Subordinated Indebtedness in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within one year of the date of purchase, defeasance, redemption, other acquisition or retirement); or

(4) make any Investment (other than Permitted Investments)

(each of the foregoing actions set forth in clauses (1), (2), (3) and (4) being referred to as a "Restricted Payment"); if at the time of such Restricted Payment or immediately after giving effect thereto:

(i) a Default or an Event of Default shall have occurred and be continuing;

(ii) the Company is not able to incur at least $1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in Section 4.09(a); or

(iii) the aggregate amount of Restricted Payments (including such proposed Restricted Payment) made subsequent to the Issue Date (the amount expended for such purposes, if other than in cash, being the fair market value of such property as determined in good faith by the Board of Directors of the Company or Restricted Subsidiary, as applicable) shall exceed the sum of:

(u) 50% of Consolidated Net Income of the Company for the period (taken as one accounting period) commencing on the first day of the fiscal quarter beginning following the quarter in which the Issue Date occurs to and including the last day of the fiscal quarter ended immediately prior to the date of such calculation for which internal financial statements are available (or, if such Consolidated Net Income shall be a deficit, minus 100% of such aggregate deficit), *plus*

(v) 100% of the aggregate net cash proceeds and the fair market value, as determined in good faith by the Board of Directors of the Company, of property and marketable securities received by the Company from any Person (other than a Subsidiary of the Company) from the issuance and sale subsequent to the Issue Date and on or prior to the date the Restricted Payment occurs (the "Reference Date") of Qualified Capital Stock of the Company (but excluding any debt security that is convertible into, or exchangeable for, Qualified Capital Stock), *plus*

(w) without duplication of any amounts included in clause (iii)(v) above, 100% of the aggregate net cash proceeds and the fair market value, as determined in good faith by the Board of Directors of the Company, of property and marketable securities of any equity contribution received by the Company from a holder of the Company's Qualified Capital Stock subsequent to the Issue Date and on or prior to the Reference Date, *plus*

(x) 100% of the aggregate amount by which Indebtedness incurred by the Company or any Restricted Subsidiary subsequent to the Issue Date is reduced on the Company's balance sheet upon the conversion or exchange (other than by a Subsidiary of the Company) into Qualified Capital Stock of the Company (less the amount of any cash, or the fair value of assets, distributed by the Company or any Restricted Subsidiary upon such conversion or exchange), *plus*

(y) 100% of the aggregate amount received in cash and the fair market value, as determined in good faith by the Board of Directors of the Company, of property and marketable securities received by means of (A) the sale or other disposition (other than to the Company or a Restricted Subsidiary) of all or any portion of any Restricted Investments made by the Company or its Restricted Subsidiaries and repurchases and redemptions of such Restricted Investments from the Company or its Restricted Subsidiaries and repayments of or interest payments made in respect of any loans or advances which constitute Restricted Investments by the Company or its Restricted Subsidiaries or any dividends or other distributions made or payments made with respect to any Restricted

Investment by the Company or any Restricted Subsidiary or (B) the sale (other than to the Company or a Restricted Subsidiary) of the Capital Stock of an Unrestricted Subsidiary or a distribution from an Unrestricted Subsidiary or a dividend from an Unrestricted Subsidiary, *plus*

(z) in the case of the redesignation of an Unrestricted Subsidiary as a Restricted Subsidiary or the merger or consolidation of an Unrestricted Subsidiary into the Company or a Restricted Subsidiary or the transfer of assets of an Unrestricted Subsidiary to the Company or a Restricted Subsidiary, the fair market value of the Investment in such Unrestricted Subsidiary, as determined in good faith by the Board of Directors of the Company at the time of the redesignation of such Unrestricted Subsidiary as a Restricted Subsidiary or at the time of such merger, consolidation or transfer of assets.

(b) Notwithstanding the foregoing, the provisions set forth in the immediately preceding paragraph do not prohibit:

(1) the payment of any dividend or distribution or redemption within 60 days after its date of declaration or notice, if at the date of declaration or notice, the payment would have complied with the provisions of this Indenture;

(2) the making of any Restricted Payment in exchange for, or out of or with the net cash proceeds of the substantially concurrent sale (other than to a Subsidiary of the Company) of, Capital Stock of the Company (other than Disqualified Capital Stock) or from the substantially concurrent contribution of common equity capital to the Company; provided that the amount of any such net cash proceeds that are utilized for any such Restricted Payment will be excluded or deducted from the calculation of Section 4.07(a)(iii) hereof;

(3) the purchase, redemption, defeasance or other acquisition or retirement for value of subordinated Indebtedness of the Company or any Guarantor or of any Capital Stock of in exchange for, or out of the net cash proceeds of, a substantially concurrent (a) capital contribution to the Company from any Person (other than a Restricted Subsidiary of the Company) or (b) sale (other than to a Restricted Subsidiary of the Company) of Capital Stock of the Company, with a sale being deemed substantially concurrent if such redemption, repurchase, retirement, defeasance or other acquisition occurs not more than 120 days after such sale; provided that the amount of any such net cash proceeds that are utilized for any such purchase, redemption, defeasance or other acquisition or retirement for value will be excluded or deducted from the calculation of Section 4.07(a)(iii) hereof;

(4) the payment of any dividend (or, in the case of any partnership or limited liability company, any similar distribution) by a Restricted Subsidiary of the Company to the holders of its Capital Stock on a pro rata basis or a basis more favorable to the Company and its Restricted Subsidiaries;

(5) the repurchase, redemption, defeasance or other acquisition or retirement for value of Indebtedness of the Company or any Guarantor that is contractually

subordinated to the Notes or to any Note Guarantee (including the payment of any required premium and any fees and expenses incurred in connection with such repurchase, redemption, defeasance or other acquisition or retirement) with the net cash proceeds from a substantially concurrent incurrence of Refinancing Indebtedness;

(6) so long as no Default or Event of Default has occurred and is continuing, the purchase, redemption or other acquisition or retirement for value of any Capital Stock of the Company or any Restricted Subsidiary of the Company held by any current or former officer, director or employee of the Company or any of the Company's Restricted Subsidiaries pursuant to any equity subscription agreement or plan, stock or unit option agreement, shareholders' agreement or similar agreement or other employee benefit plan, or to satisfy obligations under any Capital Stock appreciation rights or option plan or similar arrangement; provided that the aggregate price paid for all such purchased, redeemed, acquired or retired Capital Stock may not exceed $5.0 million in any calendar year (with unused amounts in any calendar year being carried over to the next succeeding calendar year); provided further, that such amount in any calendar year may be increased by an amount not to exceed:

(A) the cash proceeds received by the Company from the sale of Capital Stock of the Company to members of management, directors, managers or consultants of the Company or any of its Restricted Subsidiaries that occurs after the date of this Indenture to the extent the cash proceeds from the sale of such Capital Stock have not otherwise been applied to the making of Restricted Payments; plus

(B) the cash proceeds of key man life insurance policies received by the Company or its Restricted Subsidiaries after the date of this Indenture; and

and provided, further, cancellation of Indebtedness owing to the Company from any current or former officer, director or employee (or any permitted transferees thereof) of the Company or any of its Restricted Subsidiaries (or any direct or indirect parent company thereof), in connection with a repurchase, redemption or other acquisition or retirement for value of Capital Stock of the Company from such Persons will not be deemed to constitute a Restricted Payment for purposes of this covenant or any other provisions of this Indenture;

(7) the purchase, redemption or other acquisition or retirement for value of Capital Stock deemed to occur upon the exercise of unit options, warrants, incentives, rights to acquire Capital Stock or other convertible securities if such Capital Stock represent a portion of the exercise or exchange price thereof, and any purchase, redemption or other acquisition or retirement for value of Capital Stock made in lieu of withholding taxes in connection with any exercise or exchange of unit options, warrants, incentives or rights to acquire Capital Stock;

(8) so long as no Default or Event of Default has occurred and is continuing, the declaration and payment of regularly scheduled or accrued dividends to holders of any class or series of Disqualified Capital Stock of the Company or any Preferred Stock

of any Restricted Subsidiary of the Company issued on or after the date of this Indenture in accordance with Section 4.09;

(9) payments of cash, dividends, distributions, advances or other Restricted Payments by the Company or any of its Restricted Subsidiaries to allow the payment of cash in lieu of the issuance of fractional shares upon (i) the exercise of options or warrants or (ii) the conversion or exchange of Capital Stock of any such Person;

(10) any purchases, redemptions or other acquisitions or retirements for value of Capital Stock made in lieu of withholding taxes in connection with any exercise or exchange of warrants, options or rights to acquire Capital Stock;

(11) the purchase, redemption, defeasance or other acquisition or retirement for value of any subordinated Indebtedness pursuant to Sections 4.10 and 4.13; provided that prior to such purchase, redemption, defeasance or other acquisition or retirement for value the Company (or a third party to the extent permitted by this Indenture) shall have made a Change of Control Offer or Net Proceeds Offer as the case may be, with respect to the Notes and shall have repurchased all Notes properly tendered and not withdrawn in connection with such Change of Control or Net Proceeds Offer;

(12) in connection with an acquisition by the Company or any of its Restricted Subsidiaries, the return to the Company or any of its Restricted Subsidiaries of Capital Stock of the Company or its Restricted Subsidiaries constituting a portion of the purchase consideration in settlement of indemnification claims;

(13) so long as no Default or Event of Default has occurred and is continuing, other Restricted Payments in an aggregate amount not to exceed $25.0 million since the Issue Date.

(c) The amount of all Restricted Payments (other than cash) will be the fair market value on the date of the Restricted Payment of the asset(s) or securities proposed to be transferred or issued by the Company or such Restricted Subsidiary, as the case may be, pursuant to the Restricted Payment, except that the fair market value of any non-cash dividend or distribution shall be determined on the date of declaration. The fair market value of any assets or securities that are required to be valued by this covenant will be determined in the manner prescribed in the definition of that term. For the purposes of determining compliance with this covenant, in the event that a Restricted Payment meets the criteria of more than one of the categories of Restricted Payments described in Section 4.07(b)(1) through 4.07(b)(13) hereof, the Company will be permitted to classify (or reclassify in whole or in part in its sole discretion) such Restricted Payment in any manner that complies with this covenant.

SECTION 4.08. Limitations on Dividend and Other Payment Restrictions Affecting Restricted Subsidiaries.

The Company will not, and will not cause or permit any of its Restricted Subsidiaries to, directly or indirectly, create or otherwise cause or permit to exist or become effective any

consensual encumbrance or restriction on the ability of any Restricted Subsidiary of the Company to:

(1) pay dividends or make any other distributions on or in respect of its Capital Stock (it being understood that the priority of any Preferred Stock issued by a Restricted Subsidiary in receiving dividends or liquidating distributions prior to dividends or liquidating distributions being paid by such Restricted Subsidiary on its common stock will not be deemed an encumbrance or restriction on its ability to make distributions on its Capital Stock);

(2) make loans or advances to the Company or any other Restricted Subsidiary or pay any Indebtedness or other obligation owed to the Company or any other Restricted Subsidiary of the Company (it being understood that the subordination in right of payment of any obligation owed by a Restricted Subsidiary to any other obligation owed by such Restricted Subsidiary will not be deemed an encumbrance or restriction on its ability to pay such obligation); or

(3) transfer any of its property or assets to the Company or any other Restricted Subsidiary of the Company, except in each case for such encumbrances or restrictions existing under or by reason of:

(a) agreements as in effect on the date of this Indenture and any amendments, restatements, modifications, renewals, supplements, refundings, replacements or refinancings of those agreements; provided that the amendments, restatements, modifications, renewals, supplements, refundings, replacements or refinancings are not materially more restrictive, taken as a whole, with respect to such dividend, distribution and other payment restrictions than those contained in those agreements on the date of this Indenture;

(b) this Indenture, the Notes and the Note Guarantees;

(c) agreements governing other Indebtedness or Disqualified Capital Stock or Preferred Stock permitted to be incurred under Section 4.09 hereof and any amendments, restatements, modifications, renewals, supplements, refundings, replacements or refinancings of those agreements; provided that the restrictions therein are either (a) not materially more restrictive, taken as a whole, than those contained in this Indenture, the Notes and the Note Guarantees or (b) not reasonably likely to have a material adverse effect on the ability of the Company to make required payments on the Notes;

(d) applicable law, rule, regulation or order;

(e) any instrument governing Indebtedness or Capital Stock of a Person acquired by the Company or any of its Restricted Subsidiaries as in effect at the time of such acquisition (except to the extent such Indebtedness or Capital Stock was incurred in connection with or in contemplation of such acquisition), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person, or the property or assets of the

Person, so acquired; provided that, in the case of Indebtedness, such Indebtedness was permitted by the terms of this Indenture to be incurred;

(f) customary non-assignment provisions in contracts and licenses entered into in the ordinary course of business;

(g) Purchase Money Obligations for property acquired in the ordinary course of business and Capital Lease Obligations that impose restrictions on the property purchased or leased;

(h) any agreement for the sale or other disposition of a Restricted Subsidiary that restricts distributions by that Restricted Subsidiary pending its sale or other disposition;

(i) Refinancing Indebtedness; provided that the restrictions contained in the agreements governing such Refinancing Indebtedness are not materially more restrictive, taken as a whole, than those contained in the agreements governing the Indebtedness being refinanced;

(j) Liens permitted to be incurred under the provisions of Section 4.12 that limit the right of the debtor to dispose of the assets subject to such Liens;

(k) any agreement or instrument relating to any property or assets acquired after the date of this Indenture, so long as such encumbrance or restriction relates only to the property or assets so acquired and is not and was not created in anticipation of such acquisition;

(l) encumbrances or restrictions applicable only to a Restricted Subsidiary that is not a Domestic Restricted Subsidiary;

(m) provisions limiting the disposition or distribution of assets or property in joint venture agreements, asset sale agreements, sale-leaseback agreements, stock sale agreements and other similar agreements (including agreements entered into in connection with a Restricted Investment), which limitation is applicable only to the assets that are the subject of such agreements; and

(n) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business.

SECTION 4.09. Limitations on Incurrence of Additional Indebtedness.

(a) The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, assume, guarantee, acquire, become liable, contingently or otherwise, with respect to or otherwise become responsible for payment of (collectively, "incur") any Indebtedness (including Acquired Indebtedness) and the Company will not permit any of its Restricted Subsidiaries to issue any Preferred Stock; *provided*, *however*, that the Company or any Restricted Subsidiary may incur Indebtedness and any Restricted Subsidiary may issue

Preferred Stock if on the date of the incurrence of such Indebtedness or issuance of Preferred Stock, after giving effect to the incurrence or issuance thereof, the Fixed Charge Coverage Ratio of the Company would have been greater than 2.0 to 1.0.

(b) Notwithstanding clause (a) of this Section 4.09, the Company and its Restricted Subsidiaries may incur, without duplication, any of the following items of Indebtedness ("Permitted Indebtedness"):

(1) Indebtedness of the Company or any Restricted Subsidiary under any Credit Facility in an aggregate principal amount at any one time outstanding not to exceed $100.0 million less, without duplication, any permanent repayment of any term loan thereunder, if any, and any permanent reduction in revolving loan commitments thereunder, in each case, from the proceeds of one or more Asset Sales which are used after the Issue Date to repay a Credit Facility;

(2) other Indebtedness of the Company or any Restricted Subsidiary arising from the Plan of Reorganization and other Indebtedness of the Company and its Restricted Subsidiaries outstanding on the Issue Date (other than Indebtedness under the ABL Facility Agreement);

(3) Indebtedness under the Notes issued on the Issue Date, Indebtedness under PIK Notes, any accrual of additional principal amount of any Notes or PIK Notes in lieu of paying interest in the form of PIK Notes thereon, and, in each case, the Guarantees, if any, with respect thereto;

(4) the incurrence by the Company or any of its Restricted Subsidiaries of Indebtedness represented by Capitalized Lease Obligations and Purchase Money Indebtedness, in each case, (A) subject to the approval by the Company's Board of Directors, (B) incurred for the purpose of financing all or any part of the purchase price or cost of design, construction, installation or improvement of property, plant or equipment used in the business of the Company or any of its Restricted Subsidiaries, and (C) in an aggregate principal amount, including all Refinancing Indebtedness incurred to renew, refund, refinance, replace, defease or discharge any Indebtedness incurred pursuant to this Section 4.09(b)(4), not to exceed $35.0 million;

(5) the incurrence by the Company or any of its Restricted Subsidiaries of Refinancing Indebtedness in exchange for, or the net proceeds of which are used to renew, refund, refinance, replace, defease or discharge any Indebtedness (other than intercompany Indebtedness) that was permitted by this Indenture to be incurred under Section 4.09(a), 4.09(b)(3), 4.09(b)(4), 4.09(b)(5) or 4.09(b)(12);

(6) the incurrence by the Company or any of its Restricted Subsidiaries of intercompany Indebtedness between or among the Company and any of its Restricted Subsidiaries; provided, however, that:

(A) if the Company or any Guarantor is the obligor on such Indebtedness and the payee is not the Company or a Guarantor, such Indebtedness 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 Guarantor; and

(B) (i) any subsequent issuance or transfer of Capital Stock that results in any such Indebtedness 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 Indebtedness 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 Indebtedness by the Company or such Restricted Subsidiary, as the case may be, that was not permitted by this Section 4.09(b)(6);

(7) the issuance by any of the Company's Restricted Subsidiaries to the Company or to any of its Restricted Subsidiaries of shares of Preferred Stock; provided, however, that:

(A) any subsequent issuance or transfer of Capital Stock that results in any such Preferred Stock being held by a Person other than the Company or a Restricted Subsidiary of the Company; and

(B) any sale or other transfer of any such Preferred Stock 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 issuance of such Preferred Stock by such Restricted Subsidiary that was not permitted by this Section 4.09(b)(7);

(8) the incurrence by the Company or any of its Restricted Subsidiaries of Hedging Obligations in the ordinary course of business;

(9) the guarantee by the Company or any of the Guarantors of Indebtedness of the Company or a Restricted Subsidiary of the Company to the extent that the guaranteed Indebtedness was permitted to be incurred by another provision of this covenant; provided that if the Indebtedness 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 Indebtedness guaranteed;

(10) the incurrence by the Company or any of its Restricted Subsidiaries of Acquired Indebtedness in connection with a merger or consolidation satisfying either one of the financial tests set forth in Section 5.01(2);

(11) the incurrence by the Company or any of its Restricted Subsidiaries of Indebtedness in respect of workers' compensation claims, self-insurance obligations, bankers' acceptances, performance and surety bonds in the ordinary course of business;

(12) any obligation arising from agreements of the Company providing for indemnification, adjustment of purchase price, earn outs or similar obligations, in each case, incurred or assumed in connection with the disposition or acquisition of any business, assets or Capital Stock of a Restricted Subsidiary in a transaction permitted by

this Indenture; provided that such obligation is not reflected as a liability on the face of the balance sheet of the Company or any Restricted Subsidiary;

(13) the incurrence by the Company or any of its Restricted Subsidiaries of Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently drawn against insufficient funds, so long as such Indebtedness is covered within five Business Days; and

(14) the incurrence by the Company or any of its Restricted Subsidiaries of additional Indebtedness in an aggregate principal amount (or accreted value, as applicable) at any time outstanding, including all Refinancing Indebtedness incurred to renew, refund, refinance, replace, defease or discharge any Indebtedness incurred pursuant to this Section 4.09(b)(14), not to exceed $10.0 million.

For purposes of determining compliance with Section 4.09, in the event that an item of Indebtedness meets the criteria of more than one of the categories of Permitted Indebtedness described in clauses (1) through (14) above or is entitled to be incurred pursuant to the Fixed Charge Coverage Ratio test set forth in Section 4.09(a), the Company shall, in its sole discretion, classify (or later reclassify) such item of Indebtedness in any manner that complies with Section 4.09; *provided* that Indebtedness under the ABL Facility Agreement which is in existence on or prior to the Issue Date, and any renewals, extensions, refundings, refinancing or replacements thereof, will be deemed to have been incurred on such date under clause (1), and the Company will not be permitted to reclassify any portion of such Indebtedness thereafter. Accrual of interest, accretion or amortization of original issue discount, the payment of interest on any Indebtedness in the form of additional Indebtedness with the same terms, and the payment of dividends on Disqualified Capital Stock in the form of additional shares of the same class of Disqualified Capital Stock will not be deemed to be an incurrence of Indebtedness or an issuance of Disqualified Capital Stock for purposes of Section 4.09. In addition, for purposes of determining any particular amount of Indebtedness under Section 4.09, guarantees, Liens or letter of credit obligations supporting Indebtedness otherwise included in the determination of such particular amount shall not be included so long as incurred by a Person that could have incurred such Indebtedness.

Subject to the preceding paragraph, any Indebtedness incurred under any Credit Facility pursuant to clause (1) shall be deemed for purposes of Section 4.09 to have been incurred on the date such Indebtedness was first incurred until such Indebtedness is actually repaid, other than pursuant to "cash sweep" provisions or any similar provisions under any Credit Facility that provide that such Indebtedness is deemed to be repaid daily (or other periodically).

SECTION 4.10. Limitations on Asset Sales.

(a) The Company will not, and will not permit any of its Restricted Subsidiaries to, consummate an Asset Sale unless:

(1) the Company or the applicable Restricted Subsidiary, as the case may be, receives consideration at the time of such Asset Sale at least equal to the fair market

value of the assets sold or otherwise disposed of (as determined in good faith by the Company's Board of Directors);

(2) at least 75% of the consideration received by the Company or such Restricted Subsidiary, as the case may be, from such Asset Sale shall be in the form of cash or Cash Equivalents; *provided* that the following shall be deemed to be cash for purposes of this provision:

(a) the fair market value of (i) any assets (other than securities) received by the Company or any Restricted Subsidiary to be used by it in a Permitted Business and (ii) Capital Stock in a Person that is a Restricted Subsidiary or in a Person engaged in a Permitted Business that shall become a Restricted Subsidiary immediately upon the acquisition of such Person;

(b) any Designated Non-cash Consideration received by the Company or any of its Restricted Subsidiaries in such Asset Sale having an aggregate fair market value, taken together with all other Designated Non-cash Consideration received since the date of this Indenture pursuant to this clause (b) that is at that time outstanding, not to exceed $20.0 million at the time of the receipt of such Designated Non-cash Consideration (with the fair market value of each item of Designated Non-cash Consideration being measured at the time received and without giving effect to subsequent changes in value);

(c) the amount of any securities, notes or other obligations received from such transferee that are within 180 days converted by the Company or such Restricted Subsidiary to cash, to the extent of the cash received in that conversion; and

(d) the amount of any liabilities or Indebtedness of the Company or a Restricted Subsidiary that are either assumed by the transferee of the relevant assets or otherwise discharged or retired in connection with such Asset Sale, excluding (i) with respect to an Asset Sale of any item of Collateral, any liabilities or Indebtedness that are subordinated in contractual right of payment to the Notes or any Guarantee, that are unsecured or that are secured by Liens on such Collateral that are junior in priority to the Liens securing the Notes or the Guarantees and (ii) with respect to an Asset Sale of assets other than Collateral, any liabilities or Indebtedness that are subordinated in contractual right of payment to the Notes or any Guarantee; and

(e) any stock or assets of the kind referred to in subclause (a) or (c) of clause (4) below (in the case of a sale of Notes Priority Collateral) or subclause (b) or (d) of clause (5) below (in any other case);

(3) if such Asset Sale involves (a) a disposition of Notes Priority Collateral or (b) after the Discharge of ABL Obligations, the disposition of ABL Priority Collateral, the Net Cash Proceeds thereof shall be paid directly by the purchaser to the Collateral

Agent for deposit into the Collateral Account pending application in accordance with the provisions described below, and shall be made part of Notes Priority Collateral; and

(4) Within 365 days after the receipt of any Net Cash Proceeds from any sale of Notes Priority Collateral, the Company or any Restricted Subsidiary may apply those Net Cash Proceeds at its option:

(a) to acquire all or substantially all of the assets of, or any Capital Stock of, a Permitted Business (or enter into a binding agreement to do so), if, after giving effect to any such acquisition, such Permitted Business is owned by the Company or any Guarantor and such Permitted Business includes Notes Priority Collateral with a fair market value at least equal to the fair market value of the Notes Priority Collateral disposed of in the applicable sale of Notes Priority Collateral;

(b) to make capital expenditures on assets that constitute Notes Priority Collateral (or enter into a binding agreement to do so);

(c) to acquire other capital assets that are not current assets that are pledged as Notes Priority Collateral, and that are used or useful in a Permitted Business (or enter into a binding agreement to do so);

(d) to permanently repay, prepay, repurchase or otherwise retire for value any Indebtedness that is secured by a Lien on the Notes Priority Collateral that ranks senior to the Liens on the Notes Priority Collateral securing the Notes and the Guarantees; and/or

(e) a combination of investment and repayment permitted by the foregoing clauses (a) to (d).

(5) Within 365 days after the receipt of any Net Cash Proceeds from an Asset Sale (other than from a sale of Notes Priority Collateral), the Company or any Restricted Subsidiary may apply such Net Cash Proceeds at its option:

(a) (x) to repay permanently any Indebtedness under the ABL Facility Agreement or any other Indebtedness secured by a Lien under clause (1) of the definition of "Permitted Liens" then outstanding (and to effect a permanent reduction in the availability under the ABL Facility Agreement or such other Indebtedness), (y) to the extent such Net Cash Proceeds are from assets of a Restricted Subsidiary that is not a Guarantor, to permanently repay Indebtedness of a Restricted Subsidiary that is not a Guarantor and (z) to the extent such Net Cash Proceeds are from assets that are subject to a Lien under clause (11) of the definition of "Permitted Liens," to permanently repay any indebtedness secured by such Lien on such assets;

(b) to acquire all or substantially all of the assets of, or any Capital Stock of, a Permitted Business (or enter into a binding agreement to do so), if, after giving effect to any such acquisition of assets or Capital Stock, the Permitted

Business is or becomes a Guarantor and the assets and Capital Stock of such Permitted Business are pledged as Collateral;

(c) to make a capital expenditure and, to the extent such Net Cash Proceeds are from Collateral, such capital expenditures are for assets that are pledged as Collateral (or enter into a binding agreement to do so);

(d) to acquire other assets that are used or useful in a Permitted Business and, to the extent such Net Cash Proceeds are from Collateral, such assets are pledged as Collateral; and/or

(e) a combination of investment and repayment permitted by the foregoing clauses (a) to (d).

Pending the final application of such Net Cash Proceeds described in this clause (5) (other than Net Cash Proceeds that constitute Trust Monies), the Company may temporarily reduce borrowings under the ABL Facility Agreement or any other revolving credit facility that is secured by Liens on Collateral.

On the 365th day after an Asset Sale or such earlier date, if any, on which the Board of Directors of the Company or of such Restricted Subsidiary determines not to apply the Net Cash Proceeds relating to such Asset Sale as set forth in clauses (4) or (5) of the preceding paragraph, as applicable (each, a "Net Proceeds Offer Trigger Date"), such aggregate amount of Net Cash Proceeds which have not been applied on or before such Net Proceeds Offer Trigger Date as permitted in clauses (4) or (5) of the preceding paragraph, as applicable (each, a "Net Proceeds Offer Amount") shall be applied by the Company or such Restricted Subsidiary to make an offer to purchase (the "Net Proceeds Offer") to all Holders and

(x) in the case of Net Cash Proceeds from an Asset Sale of Notes Priority Collateral, to the holders of any other Notes Priority Lien Obligations to the extent required by the terms thereof or

(y) in the case of any other Net Cash Proceeds, to all holders of other Pari Passu Indebtedness to the extent required by the terms thereof, in each case, to purchase or redeem the Notes and such other Notes Priority Lien Obligations or other Pari Passu Indebtedness, as the case may be, on a date (the "Net Proceeds Offer Payment Date") not less than 30 nor more than 45 days following the applicable Net Proceeds Offer Trigger Date, from all Holders (and holders of any such other Notes Priority Lien Obligations or Pari Passu Indebtedness, as the case may be) on a *pro rata* basis, that amount of Notes (and other Notes Priority Lien Obligations or Pari Passu Indebtedness, as the case may be) equal to the Net Proceeds Offer Amount at a price equal to 100% of the principal amount of the Notes (and other Notes Priority Lien Obligations or Pari Passu Indebtedness, as the case may be) to be purchased, plus accrued and unpaid interest thereon, if any, to but not including the date of purchase; *provided*, *however*, that if at any time any non-cash consideration received by the Company

or any Restricted Subsidiary of the Company, as the case may be, in connection with any Asset Sale is converted into or sold or otherwise disposed of for cash (other than interest received with respect to any such non-cash consideration), then such conversion or disposition shall be deemed to constitute an Asset Sale hereunder and the Net Cash Proceeds thereof shall be applied in accordance with this Section 4.10.

The Company shall have no obligation to make a Net Proceeds Offer under this Section 4.10 until the date which is 10 Business Days after the date on which there is an aggregate unutilized Net Proceeds Offer Amount equal to or in excess of $50 million resulting from one or more Asset Sales (at which time, the entire unutilized Net Proceeds Offer Amount, and not just the amount in excess of $50 million, shall be applied as required pursuant to the preceding paragraph).

(b) Notice of each Net Proceeds Offer will be provided by the Company to the record Holders as shown on the register of Holders within 30 days following the Net Proceeds Offer Trigger Date, with a copy to the Trustee, and shall comply with the procedures set forth in this Indenture. The notice to the Holders shall contain all instructions and materials necessary to enable such Holders to tender Notes pursuant to the Net Proceeds Offer. Such notice shall state:

(1) that the Net Proceeds Offer is being made pursuant to this Section 4.10 and that (subject to the provisions hereof) all Notes tendered will be accepted for payment;

(2) the purchase price (including the amount of accrued and unpaid interest, if any) and the purchase date (which shall be the Net Proceeds Offer Payment Date);

(3) that any Note not tendered will continue to accrue interest;

(4) that, unless the Company defaults in making payment therefor, any Note accepted for payment pursuant to the Net Proceeds Offer shall cease to accrue interest after the Net Proceeds Offer Payment Date;

(5) that Holders electing to have a Note purchased pursuant to a Net Proceeds Offer will be required to surrender the Note, with the form entitled "Option of Holder To Elect Purchase" on the reverse of the Note completed, to the Paying Agent at the address specified in the notice prior to the close of business on the third Business Day prior to the Net Proceeds Offer Payment Date;

(6) that Holders will be entitled to withdraw their election if the Paying Agent receives, not later than 5:00 p.m., New York City time, on the second Business Day preceding the Net Proceeds Offer Payment Date, a facsimile transmission or letter setting forth the name of the Holder, the principal amount of the Notes the Holder delivered for purchase and a statement that such Holder is withdrawing his election to have such Note purchased;

(7) that Holders whose Notes are purchased only in part shall be issued new Notes in a principal amount equal to the unpurchased portion of the Notes surrendered;

provided, *however*, that each new Note issued shall be in an original principal amount of $1.00 or an integral multiple of $1.00 in excess thereof;

(8) any conditions precedent to such Net Proceeds Offer; and

(9) the circumstances and relevant facts regarding such Net Proceeds Offer.

Upon receiving notice of the Net Proceeds Offer, Holders may elect to tender their Notes in whole or in part in minimum denominations of $1.00 and integral multiples of $1.00 in excess thereof in exchange for cash. To the extent Holders properly tender Notes and holders of other Notes Priority Lien Obligations or Pari Passu Indebtedness, as the case may be, properly tender such other Notes Priority Lien Obligations or Pari Passu Indebtedness, as the case may be in an amount exceeding the Net Proceeds Offer Amount, the tendered Notes and Notes Priority Lien Obligations or Pari Passu Indebtedness, as the case may be, will be purchased on a *pro rata* basis based on the aggregate principal amounts of Notes and other Notes Priority Lien Obligations or Pari Passu Indebtedness tendered, as the case may be (and the Trustee shall select the tendered Notes of tendering Holders on a *pro rata* basis based on the amount of Notes tendered). A Net Proceeds Offer shall remain open for a period of 20 Business Days or such longer period as may be required by law. If any Net Cash Proceeds remain after the consummation of any Net Proceeds Offer, the Company may use those Net Cash Proceeds for any purpose not otherwise prohibited by this Indenture; *provided* that any such remaining Net Cash Proceeds shall to the extent received in respect of Notes Priority Collateral remain subject to the Lien of the Security Documents and shall continue to constitute Trust Monies. Upon completion of each Net Proceeds Offer, the amount of Net Cash Proceeds will be reset at zero.

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 Notes pursuant to a Net Proceeds Offer. To the extent that the provisions of any securities laws or regulations conflict with this Section 4.10, the Company shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations under this Section 4.10 by virtue thereof.

(c) For purposes of determining compliance with this Section 4.10, the calculations and determinations required by paragraph (a)(1) and (a)(2) of this Section 4.10 may be made, at the Company's option, either (1) at the time a binding agreement for the relevant Asset Sale is entered into or (2) at the relevant Asset Sale is consummated.

SECTION 4.11. Limitations on Transactions with Affiliates.

(a) The Company will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, enter into any transaction or series of related transactions (including, without limitation, the purchase, sale, lease or exchange of any property or the rendering of any service) with, or for the benefit of, any of its Affiliates (each, an "Affiliate Transaction"), unless (i) such Affiliate Transaction is on terms that are no less favorable than those that might reasonably have been obtained in a comparable transaction at such time on an arm's-length basis from a Person that is not an Affiliate of the Company or such Restricted Subsidiary and (ii) (A) if such Affiliate Transaction (or series of related Affiliate Transactions) involves aggregate

consideration in excess of $5.0 million, the terms of such Affiliate Transaction (or series of related Affiliate Transactions) have been approved by the Board of Directors of the Company, including a majority of the Disinterested Directors, of the Company or such Restricted Subsidiary pursuant to a Board Resolution stating that such Affiliate Transaction (or series of related Affiliate Transactions) complies with clause (i) above and (B) if there are no Disinterested Directors with respect to such Affiliate Transaction (or series of related Affiliate Transactions), the Company or such Restricted Subsidiary, as the case may be, prior to the consummation thereof, obtains a favorable opinion as to the fairness of such transaction or series of related transactions to the Company or the relevant Restricted Subsidiary, as the case may be, from a financial point of view, from an Independent Financial Advisor and files the same with the Trustee.

(b) The restrictions set forth in clause (a) of this Section 4.11 shall not apply to:

(1) any employment agreement, employee benefit plan, officer or director indemnification agreement, compensation or severance agreement or any similar arrangement entered into by the Company or any of its Restricted Subsidiaries or any direct or indirect parent of the Company in the ordinary course of business and payments pursuant thereto;

(2) transactions between or among the Company and any of its Restricted Subsidiaries;

(3) transactions with a Person (other than an Unrestricted Subsidiary of the Company) that is an Affiliate of the Company solely because the Company owns, directly or through a Restricted Subsidiary, the Capital Stock of, or controls, such Person;

(4) payment of reasonable and customary fees and reimbursements of expenses (pursuant to indemnity arrangements or otherwise) of officers, directors, employees or consultants of the Company or any of its Restricted Subsidiaries or any direct or indirect parent of the Company;

(5) any issuance of Capital Stock (other than Disqualified Capital Stock) of the Company to Affiliates of the Company;

(6) Restricted Payments (or any transactions specifically excluded from the definition of the term "Restricted Payments") that do not violate the provisions Section 4.07 hereof and Permitted Investments;

(7) transactions between the Company or any of its Restricted Subsidiaries and any Person that would not otherwise constitute an Affiliate Transaction except for the fact that one director of such other Person is also a director of the Company or such Restricted Subsidiary, as applicable; provided that such director abstains from voting as a director of the Company or such Restricted Subsidiary, as applicable, on any matter involving such other Person;

(8) transactions with customers, clients, suppliers, joint venture partners or purchasers or sellers of goods or services (including pursuant to joint venture agreements)

or lessors or lessees of property in the ordinary course of business on terms, taken as a whole, that are no less favorable in any material respect than would have been obtained at such time from a Person that is not an Affiliate of the Company, as reasonably determined by the Company;

(9) payments or transactions arising under or contemplated by any contract, agreement, instrument or arrangement in effect on the date of this Indenture, as amended, modified or replaced from time to time so long as the amended, modified or new agreements, taken as a whole at the time such amendments, modifications or replacements are executed, are not materially less favorable to the Company and its Restricted Subsidiaries, taken as a whole, than those in effect on the date of this Indenture, as reasonably determined by the Company;

(10) any transaction with respect to which the Company has obtained an opinion from an independent accounting, appraisal or investment banking firm of national standing to the effect that such transaction is fair from a financial point of view to the Company and its Restricted Subsidiaries, as applicable;

(11) any Affiliate Transaction with a Person in its capacity as a holder of Indebtedness or Capital Stock of the Company or any Restricted Subsidiary of the Company; provided that such Person is treated no more favorably than the other holders of Indebtedness or Capital Stock of the Company or such Restricted Subsidiary, as reasonably determined by the Board of Directors of the Company;

(12) any transaction related to the implementation of the Plan of Reorganization; and

(13) loans or advances to employees in the ordinary course of business not to exceed $2.5 million in the aggregate at any one time outstanding.

SECTION 4.12. Limitation on Liens.

(a) The Company will not, and will not permit any of its Restricted Subsidiaries, directly or indirectly, to, enter into, create, incur, assume or suffer to exist any Liens (each, a "Triggering Lien") of any kind securing Indebtedness, other than Permitted Liens, on or with respect to any property or assets of the Company or any Restricted Subsidiary now owned or hereafter acquired or any interest therein or any income or profits therefrom, unless the Notes, the Guarantees and related Obligations are secured on an equal and ratable basis with such Indebtedness (and related Obligations) until such Indebtedness and related Obligations are no longer secured by the Triggering Lien.

(b) For purposes of determining compliance with this Section 4.12, (i) a Lien securing an item of Indebtedness need not be permitted solely by reference to paragraph (a) above or one category of Permitted Liens (or any portion thereof) described in the definition of "Permitted Liens" but may be permitted in part under any combination thereof and (ii) in the event that a Lien securing an item of Indebtedness, Disqualified Capital Stock or Preferred Stock (or any portion thereof) meets the criteria of paragraph (a) above or one or more of the categories

of Permitted Liens (or any portion thereof) described in the definition of "Permitted Liens," the Company shall, in its sole discretion, classify or reclassify, or later divide, classify or reclassify, such Lien securing such item of Indebtedness (or any portion thereof) in any manner that complies with this covenant and will be entitled to only include the amount and type of such Lien or such item of Indebtedness secured by such Lien (or any portion thereof) in paragraph (a) above or one or more of the clauses of the definition of "Permitted Liens" and in such event, such Lien securing such item of Indebtedness (or any portion thereof) will be treated as being incurred or existing pursuant to only one of such clauses.

(c) With respect to any Lien securing Indebtedness that was permitted to secure such Indebtedness at the time of the incurrence of such Indebtedness, such Lien shall also be permitted to secure any Increased Amount of such Indebtedness. The "Increased Amount" of any Indebtedness shall mean any increase in the amount of such Indebtedness in connection with any accrual of interest, the accretion of accreted value, the amortization of original issue discount, the payment of interest in the form of additional Indebtedness with the same terms or in the form of common stock of the Company, the payment of dividends on Preferred Stock in the form of additional shares of Preferred Stock of the same class, accretion of original issue discount or liquidation preference and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies or increases in the value of property securing Indebtedness described in clause (8) of the definition of "Indebtedness."

SECTION 4.13. Change of Control.

(a) Upon the occurrence of a Change of Control, each Holder shall have the right to require that the Company purchase all or a portion of such Holder's Notes pursuant to the offer described below (the "Change of Control Offer"), at a purchase price (the "Change of Control Payment") equal to 101% of the principal amount thereof plus accrued interest, if any, to but not including the date of purchase.

(b) Within 30 days following the date upon which a Change of Control occurred, the Company shall provide a notice to each Holder in accordance with Section 14.01, with a copy to the Trustee, which notice shall govern the terms of the Change of Control Offer. The notice to the Holders shall contain all instructions and materials necessary to enable such Holders to tender Notes pursuant to the Change of Control Offer. Such notice shall state:

(1) that the Change of Control Offer is being made pursuant to this Section 4.13 and that all Notes tendered and not withdrawn shall be accepted for payment;

(2) the purchase price (including the amount of accrued and unpaid interest, if any) and the purchase date (which shall be no earlier than 30 days nor later than 60 days from the date such notice is provided, other than as may be required by law) (the "Change of Control Payment Date");

(3) that any Note not tendered shall continue to accrue interest;

(4) that, unless the Company defaults in making payment therefor, any Note accepted for payment pursuant to the Change of Control Offer shall cease to accrue interest after the Change of Control Payment Date;

(5) that Holders electing to have Notes purchased pursuant to a Change of Control Offer shall be required to surrender such Notes, with the form entitled "Option of Holder to Elect Purchase" on the reverse of the Note completed, to the Paying Agent at the address specified in the notice prior to the close of business on the third Business Day prior to the Change of Control Payment Date;

(6) that Holders shall be entitled to withdraw their election if the Paying Agent receives, not later than 5:00 p.m., New York City time, on the second Business Day prior to the Change of Control Payment Date, a facsimile transmission or letter setting forth the name of the Holder, the principal amount of the Notes the Holder delivered for purchase and a statement that such Holder is withdrawing his election to have such Notes purchased;

(7) that Holders whose Notes are purchased only in part shall be issued new Notes in a principal amount equal to the unpurchased portion of the Notes surrendered; *provided*, *however*, that each new Note issued shall be in an original principal amount of $1.00 or an integral multiple of $1.00 in excess thereof;

(8) the circumstances and relevant facts regarding such Change of Control;

(9) the Conversion Right of the Holders and the then current Conversion Rate; and

(10) if such notice is delivered prior to the occurrence of a Change of Control or any other event, stating that the Change of Control Offer is conditional on the occurrence of such Change of Control or such other event.

On the Change of Control Payment Date, the Company shall, to the extent permitted by law, (i) accept for payment all Notes or portions thereof (equal to $1.00 or an integral multiple of $1.00 in excess thereof) properly tendered pursuant to the Change of Control Offer, (ii) deposit with the Paying Agent an amount equal to the aggregate Change of Control Payment in respect of all Notes or portions thereof so tendered and (iii) deliver, or cause to be delivered, to the Trustee for cancellation the Notes so accepted together with an Officer's Certificate stating that such Notes or portions thereof have been tendered to and purchased by the Company. The Paying Agent shall promptly either (x) pay to the Holder against presentation and surrender (or, in the case of partial payment, endorsement) of the Global Notes or (y) in the case of Physical Notes, mail to each Holder of Notes the Change of Control Payment for such Notes, and the Trustee will promptly, upon receipt of an Authentication Order, authenticate and deliver to the Holder of the Global Notes a new Global Note or Notes or, in the case of definitive notes, mail to each Holder new Physical Notes, as applicable, equal in principal amount to any unpurchased portion of the Notes surrendered, if any; *provided* that each new Physical Note will be in a principal amount of $1.00 or an integral multiple of $1.00 in excess thereof. The Company shall

notify the Trustee and the Holders of the results of the Change of Control Offer on or as soon as practicable after the Change of Control Payment Date.

The Company shall not be required to make a Change of Control Offer upon a Change of Control if a third party makes the Change of Control Offer at a price equal to 101% of the principal amount thereof plus accrued interest, if any, to but not including the date of purchase, at the same times and otherwise in compliance with the requirements 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. A Change of Control Offer may be made in advance of a Change of Control and conditioned upon the Change of Control if a definitive agreement relating to such Change of Control has been entered into at or prior to the time of making the Change of Control Offer.

Neither the Board of Directors of the Company nor the Trustee may waive the provisions of this Section 4.13 relating to a Holder's right to require the Company to repurchase the Notes upon a Change of Control.

The Company shall comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws and regulations are applicable in connection with the repurchase of Notes pursuant to a Change of Control Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Section 4.13, the Company shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations under the provisions of this Section 4.13 by virtue thereof.

SECTION 4.14. Subsidiary Guarantees.

The Company will not permit any of its Domestic Restricted Subsidiaries, directly or indirectly, by way of pledge, intercompany note or otherwise, to assume, guarantee or in any other manner become liable with respect to any Indebtedness (other than the Notes) of the Company or any Guarantor, unless, in any such case, such Domestic Restricted Subsidiary executes and delivers a supplemental indenture to this Indenture (and such additional Security Documents and/or supplements to the applicable existing Security Documents in order to grant a Lien on the properties and assets of such Domestic Restricted Subsidiary which would constitute "Collateral" and take all actions required by the Security Documents to create, perfect, protect and confirm such Lien) providing a Guarantee as provided in Article Ten by such Domestic Restricted Subsidiary; *provided* that no Domestic Restricted Subsidiary shall be required to guarantee the Notes if it is prohibited by law from Guaranteeing the Notes.

SECTION 4.15. Further Assurances.

Subject to Article Eleven, the Company and the Guarantors, if any, will, and will cause each of their existing and future Restricted Subsidiaries to, execute and deliver such additional instruments, certificates or documents, and take all such actions as may be reasonably required from time to time, in order to:

(1) carry out more effectively the purposes of the Security Documents;

(2) create, grant, perfect and maintain the validity, effectiveness and priority of any of the Security Documents and the Liens created, or intended to be created, by the Security Documents; and

(3) ensure the protection and enforcement of any of the rights granted or intended to be granted to the Trustee or the Collateral Agent under any other instrument executed in connection therewith.

Upon the exercise by the Trustee, the Collateral Agent 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 and the Guarantors, if any, will, and will cause each of their Restricted Subsidiaries to, execute and deliver all applications, certifications, instruments and other documents and papers that may be reasonably required from the Company, any Guarantor or any of their Restricted Subsidiaries for such governmental consent, approval, recording, qualification or authorization.

SECTION 4.16. Impairment of Security Interest.

The Company and the Guarantors, if any, will not, and will not permit any of their Restricted Subsidiaries to, take or omit to take any action with respect to the Collateral that could reasonably be expected to have the result of affecting or impairing the security interest in the Collateral in favor of the Collateral Agent for its benefit, for the benefit of the Trustee and for the benefit of the Holders and any holders of other Notes Priority Lien Obligations, it being understood that actions with respect to the Collateral that are not prohibited by this Indenture and the Security Documents shall not be deemed to be actions prohibited by this Section 4.16.

SECTION 4.17. Conduct of Business.

The Company and its Restricted Subsidiaries will not engage in any businesses other than a Permitted Business, it being understood that the Company and its Restricted Subsidiaries may acquire a Person or assets engaged primarily in a Permitted Business and also in a business other than a Permitted Business and continue to engage in the business of such acquired Person or assets following such acquisition.

SECTION 4.18. Reports to Holders.

(a) Whether or not required by the rules and regulations of the Commission, so long as any Notes are outstanding, the Company will furnish to the Trustee:

(1) within 90 days after the end of each fiscal year, annual financial statements prepared in accordance with GAAP that would be required to be contained in a filing with the Commission on Form 10-K if the Company were required to file such form, together with (i) a "Management's Discussion and Analysis of Financial Condition and Results of Operations" in customary form, (ii) a report on the annual financial statements by the Company's certified independent accountants, (iii) customary business and risk factor disclosure, and (iv) disclosure with respect to the names, ages and biographical information of the members of the Company's Board of Directors and

executive officers and an aggregate value of compensation paid to such persons in the preceding fiscal year;

(2) within 45 days after the end of each of the other first three fiscal quarters of each fiscal year, all quarterly financial statements prepared in accordance with GAAP that would be required to be contained in a filing with the Commission on Form 10-Q if the Company were required to file such form, together with a "Management's Discussion and Analysis of Financial Condition and Results of Operations" in customary form; and

(3) within five business days after the occurrence of each event that would have been required to be reported in a Current Report on Form 8-K if the Company were required to file this Form, reports containing substantially all of the information with respect to Company and its Subsidiaries that would be required to be filed in a Current Report on Form 8-K pursuant to Sections 1 (other than Item 1.04), 2 (other than Item 2.02) and 4 and Items 5.01 and 5.02 (other than 5.02(c),(d) and (e) and other compensation information) of Form 8-K if the Company had been a reporting company under the Exchange Act; *provided*, *however*, that no such current report will be required to be furnished if the Company determines in good faith that such event is not material to Holders of the Notes or the business, assets, operations or financial positions of the Company and its Restricted Subsidiaries, taken as a whole.

Notwithstanding the foregoing, (a) such reports shall not be required to comply with Section 302, Section 404 or Section 906 of the Sarbanes-Oxley Act of 2002, as amended, or related Items 307, 308 and 308T of Regulation S-K promulgated by the Commission, or Item 10(e) of Regulation S-K (with respect to any non-GAAP financial measures contained therein), (b) such reports shall not be required to comply with Rule 3-10 or Rule 3-16 of Regulation S-X, except that summary guarantor/non-guarantor information will be required to be provided, (c) such reports shall not be required to comply with any conflict minerals rules of the Commission or similar rules and regulations of any other government agency, (d) such reports shall not be required to include any exhibits that would have been required to be filed pursuant to Item 601 of Regulation S-K and (e) such reports shall not be required to include financial statements in interactive data format using the eXtensible Business Reporting Language.

The first fiscal quarter for which a quarterly report or annual report shall be furnished will be the first fiscal quarter that begins after six months after the Emergence Date.

(b) References in this Section 4.18 to the laws, rules, forms, items, articles and sections shall be to such laws, rules, forms, items, articles and sections as they exist on the Issue Date, without giving effect to amendments thereto that may take effect after the Issue Date.

(c) 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.

(d) The Company shall, in satisfaction of the requirement to furnish information pursuant to Section 4.18(a), (i) post such financial statements and other information on the Company's website (or a password protected online data system) within the time periods

specified in paragraph (a) above and (ii) arrange and participate in quarterly conference calls to discuss its results of operations with Holders, prospective purchasers of the Notes and securities analysts no later than ten business days following the date on which each of the quarterly and annual reports are made available as provided above. The Company shall provide to the Trustee and Holders dial-in conference call information substantially concurrently with the posting of such reports on the Company's website (or a password protected online data system). Access to any such reports on the Company's website (or a password protected online data system) and to such quarterly conference calls may be password protected; *provided* that the Company makes reasonable efforts to notify the Trustee and Holders of, and, upon request, provides to securities analysts and prospective investors, the password and other information required to access such reports on its website (or a password protected online data system) and such quarterly conference calls.

(e) If at any time the Notes are guaranteed by a direct or indirect parent of the Company:

(i) If such parent has furnished the reports required by paragraph (a) above as if such parent were the Company (including any financial information required thereby), the Company shall be deemed to be in compliance with the provisions of paragraph (a) above; provided, (1) such reports 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 and its Restricted Subsidiaries, or (2) such direct or indirect parent does not conduct, transact or otherwise engage in any material business or operations other than the business and operations conducted through the Company or its ownership of intermediate holding companies and activities incidental thereto; and

(ii) If such parent is a public company and holds regular and customary quarterly earnings calls (and gives customary notice to the public in respect thereof), the Company shall be deemed to have complied with the obligations of clause (ii) and the last two sentences of paragraph (d) above.

(f) Any information filed with, or furnished to, the Commission within the time periods specified in this covenant shall be deemed to have been made available as required by this covenant, and to the extent such filings comply with the rules and regulations of the Commission regarding such filings, they will be deemed to comply with the requirements of this Section 4.18. If the Company or a direct or indirect parent of the Company files with or furnishes to the Commission (i) 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 Commission regarding such filing, then such filing shall be deemed to satisfy the requirements of paragraph (a)(1) of this Section 4.18 with respect to the relevant fiscal year; (ii) 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 Commission regarding such filing, then such filing shall be deemed to satisfy the requirements of paragraph (a)(2) of this Section 4.18 with respect to the relevant fiscal quarter; and (iii) a current report on Form 8-K with respect to any of the events described in paragraph (a)(3) of this Section 4.18 that complies in all material respects with the rules and regulations of the Commission regarding such filing, then such filing shall be deemed to satisfy the requirements of paragraph

(a)(3) of this Section 4.18 with respect to such event (each of (i), (ii) and (iii), "Substitute Reports"); *provided*, in each case of clause (i) through (iii), that (x) 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 or (y) such direct or indirect parent does not conduct, transact or otherwise engage in any material business or operations other than the business and operations conducted through the Company or its ownership of intermediate holding companies and activities incidental thereto.

(g) The subsequent filing or making available of any materials or conference call required by this Section 4.18 shall be deemed automatically to cure any Default or Event of Default resulting from the failure to file or make available such materials or conference call within the required time frame.

(h) Delivery of the reports required by this Section 4.18 to the Trustee is for informational purposes only, and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officer's Certificates).

(i) For so long as any Notes remain outstanding, if at any time the Company is not required to file with the Commission the reports required by the preceding paragraphs, the Company shall furnish to the Holders and to securities analysts and prospective investors in the Notes, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act.

SECTION 4.19. Maintenance of Properties.

Subject to, and in compliance with, the provisions of Article Eleven and the provisions of the applicable Security Documents, the Company shall cause all material properties used or useful in the conduct of its business or the business of any of the Guarantors to be maintained and kept in good condition, repair and working order (ordinary wear and tear and casualty loss excepted) and supplied with all reasonably necessary equipment and shall cause to be made all necessary repairs, renewals, replacements, betterments and improvements thereto, all as in the judgment of management of the Company may be reasonably necessary, so that the business carried on in connection therewith may be properly conducted; *provided*, that the Company shall not be obligated to make such repairs, renewals, replacements, betterments and improvements if the failure to do so would not result in a material adverse effect on the ability of the Company and the Guarantors to satisfy their obligations under the Notes, the Guarantees, if any, this Indenture and the Security Documents; *provided*, *further*, that nothing in this Section 4.19 shall prevent the Company or any Guarantor from discontinuing the use, operation or maintenance of any of such properties or disposing of any of them, if such discontinuation or disposal is, in the judgment of management of the Company or any Guarantor necessary or desirable in the conduct of the business of the Company or any such Guarantor.

ARTICLE FIVE

SUCCESSOR CORPORATION

SECTION 5.01. Merger, Consolidation and Sale of Assets.

The Company will not, in a single transaction or series of related transactions, consolidate or merge with or into any Person, or sell, assign, transfer, lease, convey or otherwise dispose of (or cause or permit any Restricted Subsidiary of the Company to sell, assign, transfer, lease, convey or otherwise dispose of) all or substantially all of the Company's assets (determined on a consolidated basis for the Company and the Company's Restricted Subsidiaries), whether as an entirety or substantially as an entirety to any Person, unless:

(1) either:

(a) the Company shall be the surviving or continuing entity; or

(b) the Person (if other than the Company) formed by such consolidation or into which the Company is merged or the Person which acquires by sale, assignment, transfer, lease, conveyance or other disposition the properties and assets of the Company and of the Company's Restricted Subsidiaries substantially as an entirety (the "Surviving Entity"):

(x) shall be an entity organized and validly existing under the laws of the United States or any State thereof or the District of Columbia; and

(y) shall expressly assume, by supplemental indenture (in form and substance satisfactory to the Trustee) executed and delivered to the Trustee, the due and punctual payment of the principal of and premium, if any, and interest on all of the Notes and the performance of every covenant of the Notes, this Indenture and the Security Documents on the part of the Company to be performed or observed (*provided* that if such entity is not a corporation, the Company shall simultaneously cause a corporation organized under the laws of the United States or any State thereof or the District of Columbia to become a co-issuer of the Notes, the Indenture and the Security Documents);

(2) immediately after giving effect to such transaction and the assumption contemplated by clause (1)(b)(y) above (including giving effect to any Indebtedness and Acquired Indebtedness incurred or anticipated to be incurred in connection with or in respect of such transaction), the Company or such Surviving Entity, as the case may be, (i) shall be able to incur at least $1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in Section 4.09(a) or (ii) the Consolidated Fixed Charge Coverage Ratio of the Company or the Surviving Entity, as the case may be, would be greater than the Consolidated Fixed Charge Coverage Ratio of the Company immediately prior to such transaction; and

(3) immediately before and immediately after giving effect to such transaction and the assumption contemplated by clause (1)(b)(y) above (including, without limitation, giving effect to any Indebtedness and Acquired Indebtedness incurred or anticipated to be incurred and any Lien granted in connection with or in respect of the transaction), no Default or Event of Default shall have occurred or be continuing.

For purposes of the foregoing, the transfer (by lease, assignment, sale or otherwise, in a single transaction or series of transactions) of all or substantially all of the properties or assets of one or more Restricted Subsidiaries of the Company, the Capital Stock of which constitutes all or substantially all of the properties and assets of the Company, shall be deemed to be the transfer of all or substantially all of the properties and assets of the Company.

Notwithstanding the foregoing clauses (1), (2) and (3), (A) the Company may (i) consolidate with, merge with or into or transfer all or part of its properties and assets to any Restricted Subsidiary so long as the Company is the survivor of such merger or consolidation or all assets of the Company immediately prior to such transaction are owned by the Company and/or such Restricted Subsidiary immediately after the consummation thereof and (ii) merge with an Affiliate that is a Person that has no material assets or liabilities prior to such merger and which was organized solely for the purpose of (x) reorganizing the Company in another jurisdiction or (y) the creation of a holding company of the Company; (B) any Restricted Subsidiary that is not a Guarantor may (x) dissolve, liquidate or wind-up; *provided* that all of such Restricted Subsidiary's assets are distributed to the Company or a Restricted Subsidiary in connection with such liquidation, dissolution or winding-up or (y) consolidate with, merge with or into, the Company or any other Restricted Subsidiary or transfer all or part of its properties and assets to the Company or any Restricted Subsidiary so long as the Company or a Restricted Subsidiary is the survivor of such merger or consolidation or all assets of such Restricted Subsidiary immediately prior to such transaction are owned by the Company or a Restricted Subsidiary immediately after the consummation thereof; and (C) this Section 5.01 shall not apply to any sale, assignment, transfer, conveyance, lease or other disposition of assets by and among the Company and any Guarantors or by and among Restricted Subsidiaries that are not Guarantors.

Each Guarantor, if any (other than any Guarantor whose Guarantee is to be released in accordance with the terms of the Guarantee and this Indenture), will not, and the Company will not cause or permit any Guarantor to, consolidate with or merge with or into any Person other than the Company or any other Guarantor unless:

(1) the entity formed by or surviving any such consolidation or merger (if other than the Guarantor) or to which such sale, lease, conveyance or other disposition shall have been made is (A) an entity organized and existing under the laws of the United States or any State thereof or the District of Columbia or (B) an entity organized and existing under the jurisdiction of organization of such Guarantor;

(2) such entity assumes by supplemental indenture all of the obligations of the Guarantor on the Guarantee and the performance of every covenant of this Indenture and the Security Documents on the part of such Guarantor to be performed or observed;

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

(4) immediately after giving effect to such transaction and the use of any net proceeds therefrom on a *pro forma* basis, the Company could satisfy the provisions of clause (2) of the first paragraph of this Section 5.01.

Any merger or consolidation of a Guarantor with and into the Company (with the Company being the surviving entity) or another Guarantor that is a Wholly Owned Restricted Subsidiary of the Company need not comply with this Section 5.01, other than as set forth below.

The following additional conditions shall apply to each transaction described above:

(1) the Company, such Guarantor or the relevant Surviving Entity, as applicable, will cause to be filed such amendments or other instruments, if any, and cause to be recorded in such jurisdictions as may be required by applicable law to preserve and protect the Lien of the Security Documents on the Collateral owned by or transferred to such Person, together with such financing statements as may be required to perfect any security interests in such Collateral that may be perfected by the filing of a financing statement under the Uniform Commercial Code of the relevant states;

(2) the Collateral owned by or transferred to the Company, such Guarantor or the relevant Surviving Entity, as applicable, shall: (a) continue to constitute Collateral under this Indenture and the Security Documents with the same relative priorities as existed immediately prior to such transaction; and (b) not be subject to any Lien other than Liens permitted by this Indenture and the Security Documents;

(3) the assets of the Person which is merged or consolidated with or into the relevant Surviving Entity, to the extent that they are assets of the types which would constitute Collateral under the Security Documents and which would be required to be pledged thereunder, shall be treated as after acquired property and such Surviving Entity shall take such action as may be reasonably necessary to cause such assets to be made subject to the Lien of the Security Documents in the manner and to the extent required in this Indenture; and

(4) the Company shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such transaction and, if a supplemental indenture or supplemental Security Documents, are required in connection with such transaction, such supplemental indenture and Security Documents comply with the applicable provisions of this Indenture, that all conditions precedent in this Indenture relating to such transaction have been satisfied and that such supplemental indenture and Security Documents are enforceable.

SECTION 5.02. Successor Corporation Substituted.

Upon any consolidation, combination or merger or any transfer of all or substantially all of the assets of the Company or any Guarantor, as the case may be, in accordance with Section 5.01, in which the Company or any Guarantor, as the case may be, is not the continuing

corporation, the successor Person formed by such consolidation or into which the Company or any Guarantor, as the case may be, is merged or to which such conveyance, lease or transfer is made shall succeed to, and be substituted for, and may exercise every right and power of the Company or any Guarantor, as the case may be, under this Indenture and either the Notes or the Guarantee of such Guarantor, as the case may be, with the same effect as if such Surviving Entity had been named as such. When a successor Person assumes all of the obligations of the predecessor hereunder and under the Notes and the Security Documents and agrees in writing to be bound hereby and thereby, the predecessor shall be released from such obligations.

ARTICLE SIX

DEFAULT AND REMEDIES

SECTION 6.01. Events of Default.

Each of the following is an "Event of Default":

(1) the failure to pay interest on any Notes when the same becomes due and payable and the default continues for a period of 30 days;

(2) the failure to pay the principal on any Notes, when such principal becomes due and payable, at maturity or otherwise;

(3) the failure by the Company to comply with any of its agreements or covenants set forth in Section 5.01;

(4) the failure by the Company in respect of its obligations to make a Change of Control Offer or a Net Proceeds Offer, which default continues for a period of 30 days after the Company receives written notice specifying the default (and demanding that such default be remedied) from the Trustee or the Holders of at least 25% of the outstanding principal amount of the Notes;

(5) failure by the Company to deliver the shares of Company Common Stock as and when such shares of Company Common Stock are required to be delivered following conversion of a Note, and continuance of such default for two Business Days;

(6) a default in the observance or performance of any other covenant or agreement contained in this Indenture, any Guarantee or any Security Document, which default continues for a period of 60 days after the Company receives written notice specifying the default (and demanding that such default be remedied) from the Trustee or the Holders of at least 25% of the outstanding principal amount of the Notes;

(7) the failure to pay at final Stated Maturity (giving effect to any applicable grace periods and any extensions thereof) the stated principal amount of any Indebtedness of the Company or any Restricted Subsidiary of the Company (other than Indebtedness owed to the Company or any of its Restricted Subsidiaries), or the acceleration of the final Stated Maturity of any such Indebtedness (which acceleration is not rescinded, annulled or otherwise cured within 20 Business Days of receipt by the Company or such

Restricted Subsidiary of notice of any such acceleration), if the aggregate principal amount of such Indebtedness, together with the principal amount of any other such Indebtedness in default for failure to pay principal at final Stated Maturity or which has been accelerated (in each case with respect to which the 20-Business Day period described above has elapsed), aggregates $50.0 million or more at any time;

(8) one or more judgments in an aggregate amount in excess of $50.0 million (net of any insurance or indemnity proceeds actually received in respect thereof and excluding any judgment considered to be a "General Unsecured Claim" pursuant to the Plan of Reorganization) shall have been rendered against the Company or any of its Restricted Subsidiaries and such judgments remain undischarged, unsatisfied, unpaid or unstayed for, or the Company or any of its Restricted Subsidiaries has not otherwise bonded, waived or established an agreed upon schedule of payment for, or such judgment is not subject to a dispute before the Bankruptcy Court as to whether such judgment is a "General Unsecured Claim" pursuant to the Plan of Reorganization, such judgment or judgments within, a period of 60 days after such judgment or judgments become final and non-appealable and, in the event such judgment is covered by insurance, an enforcement proceeding has been commenced by any creditor upon such judgment or decree which is not promptly stayed;

(9) the Company or any of its Significant Subsidiaries pursuant to or under or within the meaning of any Bankruptcy Law:

(i) commences a voluntary case or proceeding;

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

(iii) consents to the appointment of a Custodian of it or for all or substantially all of its property; or

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

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

(i) is for relief against the Company or any of its Significant Subsidiaries in an involuntary case or proceeding,

(ii) appoints a Custodian of the Company or any of its Significant Subsidiaries for all or substantially all of its properties taken as a whole, or

(iii) orders the liquidation of the Company or any of its Significant Subsidiaries;

(11) any Guarantee of a Significant Subsidiary ceases to be in full force and effect or any Guarantee of a Significant Subsidiary is declared to be null and void and unenforceable or any Guarantee of a Significant Subsidiary is found to be invalid or any

Guarantor that is a Significant Subsidiary denies its liability under its Guarantee (other than by reason of release of a Guarantor in accordance with the terms of this Indenture) if such default continues for 10 Business Days;

(12) a default by the Company or any Guarantor in the performance of any of their respective obligations under the Security Documents that materially and adversely affects the enforceability, validity, perfection or priority of the Lien on a material portion of the Collateral, which default continues for a period of 30 days after the Company receives written notice specifying the default (and demanding that such default be remedied); or

(13) except as permitted by the Security Documents and the provisions of this Indenture, any of the Security Documents is repudiated or disaffirmed by the Company or any Guarantor or ceases to be in full force and effect or ceases to be effective, in all material respects, to create the Lien purported to be created on the Collateral (excluding immaterial portions thereof) in favor of the Holders.

SECTION 6.02. Acceleration.

If an Event of Default (other than an Event of Default specified in Section 6.01(9) or (10) above with respect to the Company) shall occur and be continuing, the Trustee or the Holders of at least 25% in principal amount of outstanding Notes may declare the principal of and accrued interest on all the Notes to be due and payable by notice in writing to the Company and the Trustee specifying the respective Event of Default and that it is a "notice of acceleration," and the same shall become immediately due and payable.

If an Event of Default specified in Section 6.01(9) or (10) with respect to the Company occurs and is continuing, then all unpaid principal of, and premium, if any, and accrued and unpaid interest on all of the outstanding Notes shall *ipso facto* become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holder.

The Holders of at least 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 cancel a declaration of acceleration and its consequences:

(1) if the rescission would not conflict with any judgment or decree;

(2) if all existing Events of Default have been cured or waived except nonpayment of principal or interest that has become due solely because of the acceleration;

(3) to the extent the payment of such interest is lawful, interest on overdue installments of interest and overdue principal, which has become due otherwise than by such declaration of acceleration, has been paid;

(4) if the Company has paid the Trustee its reasonable compensation and reimbursed the Trustee for its expenses, disbursements and advances; and

(5) in the event of the cure or waiver of an Event of Default of the type described in Section 6.01(9) or (10), the Trustee shall have received an Officer's Certificate and an Opinion of Counsel that such Event of Default has been cured or waived.

No such rescission shall affect any subsequent Default or impair any right consequent thereto.

SECTION 6.03. Other Remedies.

If a Default occurs and is continuing, the Trustee may, subject to the provisions of the Intercreditor Agreement, pursue any available contractual remedy under this Indenture by proceeding at law or in equity to collect the payment of principal of, or 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 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 in exercising any right or remedy accruing upon a Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Default. No remedy is exclusive of any other remedy. All available remedies are cumulative to the extent permitted by law.

SECTION 6.04. Waiver of Past Defaults.

Subject to Sections 2.09, 6.07 and 9.02, the Holders of a majority in principal amount of the outstanding Notes (which may include consents obtained in connection with a tender offer or exchange offer of Notes) by notice to the Trustee may waive an existing Default or Event of Default under this Indenture, and its consequences, except a Default (i) in the payment of the principal of or interest on any Note as specified in Section 6.01(1) or (2), (ii) any Default with respect to the Conversion Rights of Holders as specified in Section 6.01(5) or (iii) in respect of a covenant or provision which under this Indenture cannot be modified or amended without the consent of the Holder of each Note affected by such modification or amendment. The Company shall deliver to the Trustee an Officer's Certificate stating that the requisite percentage of Holders have consented to such waiver and attaching copies of such consents. Upon 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 and the Security Documents, but no such waiver shall extend to any subsequent or other Default.

SECTION 6.05. Control by Majority.

The Holders of at least 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 pursuant to this Indenture or exercising any trust or power conferred on it pursuant to this Indenture. Subject to Section 7.01, however, the Trustee may refuse to follow any direction that conflicts with any 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 another Holder; *provided*, *however*, that the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction. In the event the Trustee takes any action

or follows any direction pursuant to this Indenture, the Trustee shall be entitled to seek indemnification satisfactory to it against any loss or expense caused by taking such action or following such direction.

SECTION 6.06. Limitation on Suits.

No Holder will have any right to institute any proceeding with respect to this Indenture or for any remedy thereunder, unless:

(1) the Holder gives the Trustee written notice of a continuing Event of Default;

(2) the Holders of at least 25% in aggregate principal amount of outstanding Notes make a written request to the Trustee to pursue the remedy;

(3) such Holder or Holders offer the Trustee indemnity satisfactory to the Trustee against any costs, liability or expense;

(4) the Trustee does not comply with the request within 60 days after receipt of the request and the offer of indemnity; and

(5) during such 60-day period, the Holders of a majority in aggregate principal amount of the outstanding Notes do not give the Trustee a direction that is inconsistent with the request.

(6) However, such limitations do not apply to a suit instituted by a Holder of any Note for enforcement of payment of the principal of or interest on such Note on or after the due date therefor.

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

SECTION 6.07. Rights of Holders To Receive Payment.

Notwithstanding any other provision of this Indenture, the contractual right expressly set forth in this Indenture of any Holder to receive payment of principal of and premium, if any, and interest on, a Note, on or after the respective due dates therefor, or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be amended without the consent of the Holder.

SECTION 6.08. Collection Suit by Trustee.

If a Default in payment of principal or interest specified in Section 6.01(1) or (2) occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Company or any other obligor on the Notes for the whole amount of principal and accrued interest and fees remaining unpaid, together with interest on overdue principal and, to the extent that payment of such interest is lawful, interest on overdue installments of interest, in each case at the rate *per annum* borne by the Notes 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 under Section 7.06), its agents and counsel.

SECTION 6.09. Trustee May File Proofs of Claim.

The Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and the Holders allowed in any judicial proceedings relating to the Company, their creditors or their property and shall be entitled to participate as a member, voting or otherwise, of any official committee of creditors appointed in such judicial proceedings (subject to the provisions of the Intercreditor Agreement) and shall be empowered to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same, and any Custodian in any such judicial proceedings 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 agent and counsel, and any other amounts due the Trustee under Section 7.06. 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 thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding. The Trustee shall be entitled to participate as a member of any official committee of creditors in the matters as it deems necessary or advisable.

SECTION 6.10. Priorities.

Subject to the requirements of the Intercreditor Agreement or any successor agreement and the Security Documents thereto to which the Trustee is party and by which it is bound, if the Trustee collects any money or property pursuant to this Article Six or any Security Document, it shall pay out the money or property in the following order:

First: to the Trustee for amounts due under this Indenture (including Section 7.06) and under any Security Document;

Second: to Holders for interest accrued on the Notes, ratably, without preference or priority of any kind, according to the amounts due and payable on the Notes for interest;

Third: to Holders for principal amounts due and unpaid on the Notes, ratably, without preference or priority of any kind, according to the amounts due and payable on the Notes for principal; and

Fourth: to the Company or, if applicable, the Guarantors, as their respective interests may appear.

The Trustee, upon prior notice to the Company, may fix a record date and payment date for any payment to Holders 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 Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.11 does not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 6.07, or a suit by a Holder or Holders of more than 10% in principal amount of the outstanding Notes.

ARTICLE SEVEN

TRUSTEE

SECTION 7.01. Duties of Trustee.

(a) If a Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture and the Security Documents 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 or her own affairs.

(b) Except during the continuance of a Default:

(1) The Trustee need perform only those duties as are specifically set forth herein or in any Security Document and no duties, covenants, responsibilities or obligations shall be implied in this Indenture or in any Security Document against the Trustee.

(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 (including Officer's Certificates) or opinions (including Opinions of Counsel) furnished to the Trustee and conforming to the requirements of this Indenture or any Security Document. However, in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall examine the certificates and opinions to determine whether or not they conform on their face to the requirements of this Indenture or any Security Document.

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

(1) This paragraph does not limit the effect of Section 7.01(b).

(2) The Trustee shall 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.

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

(d) No provision of this Indenture or any Security Document shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or under any Security Document or to take or omit to take any action under this Indenture or under any Security Document or take any action at the request or direction of Holders if it shall have reasonable grounds for believing that repayment of such funds is not assured to it.

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

(f) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Company. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

(g) In the absence of bad faith, gross negligence or willful misconduct on the part of the Trustee, the Trustee shall not be responsible for the application of any money by any Paying Agent other than the Trustee.

(h) The Trustee shall not be liable for any action or failure to act on the part of a co-trustee, separate trustee or separate Collateral Agent.

(i) As provided more fully in Article Eleven, the Trustee (in such capacity or in its capacity as Collateral Agent, as applicable) is hereby authorized and directed to execute and enter into each of the Security Documents and all other instruments relating to the Security Documents. Each Holder, by accepting a Note, agrees to all of the terms and provisions of each of the Security Documents, as the same may be amended from time to time pursuant to the terms thereof and this Indenture.

(j) The Trustee shall not be obliged to monitor whether any event has occurred that may require any adjustment of the Conversion Rate and shall assume, in good faith, that none has occurred until it has actual knowledge to the contrary and will not be responsible to Holders or any other person for any loss arising from any failure by it to do so or any adjustment or lack of adjustment of the Conversion Rate.

SECTION 7.02. Rights of Trustee Under this Indenture and the Security Documents.

Subject to Section 7.01:

(a) The Trustee may rely conclusively on any resolution, certificate (including any Officer's Certificate), statement, instrument, opinion (including any Opinion of Counsel), notice, request, direction, consent, order, bond, debenture, or other paper or 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 hereunder or under any Security Document, it may require an Officer's Certificate and an Opinion of Counsel, which shall conform to the provisions of Section 14.02. The Trustee shall 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.

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

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

(e) The Trustee may consult with counsel of its selection and the advice or opinion of such counsel as to matters of law shall be full and complete authorization and protection from liability in respect of any action taken, omitted or suffered by it hereunder or under a Security Document in good faith and in accordance with the advice or opinion of such counsel.

(f) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture or a Security Document at the request, order or direction of any of the Holders pursuant to the provisions of this Indenture or a Security Document, unless such Holders shall have offered to the Trustee reasonable security or indemnity satisfactory to it against the costs, expenses and liabilities which may be incurred therein or thereby.

(g) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate (including any Officer's Certificate), statement, instrument, opinion (including any Opinion of Counsel), 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, upon reasonable notice to the Company, to examine the books, records, and premises of the Company, personally or by agent or attorney at the sole cost of the Company and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation.

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

(i) The permissive rights of the Trustee to do things enumerated in this Indenture or in the Security Documents shall not be construed as duties.

(j) Except with respect to Sections 4.01 and 4.05, the Trustee shall have no duty to inquire as to the performance of the Company with respect to the covenants contained in Article Four. In addition, except as otherwise expressly provided herein or in the Security Documents, the Trustee shall have no obligation to monitor or verify compliance by the Company or any Guarantor with any other obligation or covenant under this Indenture or the Security Documents. 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 Sections 4.01, 6.01(1) or 6.01(2) or (ii) any Default or Event of Default actually known to a Responsible Officer.

(k) Except as otherwise expressly provided herein or in the Security Documents or as required by applicable law, the Trustee shall have no duty (i) to cause the maintenance of any insurance, (ii) with respect to the payment or discharge of any tax, charge or Lien levied against any part of the Collateral, or (iii) with respect to the filing or refiling of any Security Document.

(l) The rights, privileges, protections, immunities and benefits given to the Trustee, including its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and to each agent, custodian and other Person employed to act hereunder or under any Security Document.

(m) Except as otherwise expressly provided herein or in the Security Documents, the Trustee shall be under no obligation to the Holders to ascertain or to inquire as to the observance or performance of any of the agreements contained in, statements made in, or conditions of any of the Security Documents or to inspect the property (including the books and records) of the Company.

(n) The 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 upon any of the Collateral, whether impaired by operation of law or by reason of any action or omission to act on its part.

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, its Subsidiaries or their respective Affiliates with the same rights it would have if it were not Trustee. Any Agent may do the same with like rights. However, the Trustee must comply with Section 7.09.

SECTION 7.04. Trustee's Disclaimer.

The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture, the Security Documents, the Collateral or the Notes, it shall not be accountable for the Company's use of the proceeds from the Notes or any other money paid to or at the direction of the Company under any provision of this Indenture, and it shall not be responsible for any statement of the Company in this Indenture or any document issued in connection with the sale of Notes or any statement in the Notes other than the Trustee's certificate of authentication. The Trustee makes no representations with respect to the effectiveness or adequacy of this Indenture or any Security Document.

SECTION 7.05. Notice of Default.

If a Default occurs and is continuing and is deemed to be known to the Trustee pursuant to Section 7.02(j), the Trustee shall provide to each Holder, in accordance with Section 14.01, notice of the uncured Default within 30 days after the date on which the Trustee is deemed to have knowledge or notice of such Default. Except in the case of a Default in payment of principal of, or interest on, any Note, including an accelerated payment and the failure to make a payment on a Payment Date pursuant to an offer to purchase or a Default in complying with the provisions of Article Five, the Trustee may withhold the notice if and so long as the Board of

Directors, the executive committee, or a committee of directors and/or Responsible Officers, of the Trustee in good faith determines that withholding the notice is in the interest of the Holders.

SECTION 7.06. Compensation and Indemnity.

The Company shall pay to the Trustee from time to time such compensation as the Company and the Trustee shall from time to time agree in writing for its services hereunder. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Company shall reimburse the Trustee upon request for all reasonable disbursements, expenses and advances (including reasonable fees and expenses of counsel) incurred or made by it in addition to the compensation for its services, except any such disbursements, expenses and advances as may be attributable to the Trustee's negligence, bad faith or willful misconduct. Such expenses shall include the reasonable fees and expenses of the Trustee's agents, counsel, accountants and experts. When the Trustee incurs expenses or renders services after an Event of Default pursuant to Section 6.01(9) or 6.01(10) hereof, the expenses and compensation for the services (including the fees and expenses of its agents and counsel) are intended to constitute expenses of administration under the Bankruptcy Code.

The Company shall indemnify each of the Trustee or any predecessor Trustee and its officers, directors, employees and agents for, and hold them harmless against, any and all loss, damage, claims including taxes (other than taxes based upon, measured by or determined by the income of the Trustee), liability or expense incurred by them except for such actions to the extent caused by any gross negligence, bad faith or willful misconduct on their part, arising out of or in connection with this Indenture or any Security Document including the reasonable costs and expenses of defending themselves against or investigating any claim or liability in connection with the exercise or performance of any of the Trustee's rights, powers or duties hereunder. The Trustee shall notify the Company promptly of any claim asserted against the Trustee or any of its agents for which it may seek indemnity; *provided*, *however*, that any failure to provide such notice shall not affect the obligations of the Company under this Section 7.06 except to the extent of the harm caused by such failure. The Company may, subject to the approval of the Trustee (which approval shall not be unreasonably withheld), defend the claim and the Trustee shall cooperate in the defense. The Trustee and its agents subject to the claim may have separate counsel and the Company shall pay the reasonable fees and expenses of such counsel; *provided*, *however*, that the Company will not be required to pay such fees and expenses if, subject to the approval of the Trustee (which approval shall not be unreasonably withheld), it assumes the Trustee's defense and there is no conflict of interest between the Company and the Trustee and its agents subject to the claim in connection with such defense as reasonably determined by the Trustee. The Company need not pay for any settlement made without its written consent (which consent shall not be unreasonably withheld). The Company need not reimburse any expense or indemnify against any loss or liability to the extent incurred by the Trustee through its negligence, bad faith or willful misconduct.

To secure the Company's payment obligations in this Section 7.06, the Trustee shall have a Lien prior to the Notes against all money or property held or collected by the Trustee, in its capacity as Trustee, except money or property held in trust to pay principal and interest on particular Notes.

When the Trustee incurs expenses or renders services after a Default specified in Section 6.01(9) or (10) occurs, such expenses and the compensation for such services shall be paid to the extent allowed under any Bankruptcy Law.

Notwithstanding any other provision in this Indenture, the foregoing provisions of this Section 7.06 shall survive the satisfaction and discharge of this Indenture for any reason, including any termination or rejection hereof under any Bankruptcy Law, the resignation or removal of the Trustee or the appointment of a successor Trustee.

SECTION 7.07. Replacement of Trustee.

The Trustee may resign at any time by so notifying the Company in writing at least 30 days prior to such resignation. The Holders of a majority in principal amount of the outstanding Notes may remove the Trustee by so notifying the Company and the Trustee and such Holders may appoint a successor Trustee. The Company may remove the Trustee if:

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

(2) the Trustee is adjudged a bankrupt or an insolvent or any order for relief is entered with respect to the Trustee under any Bankruptcy Law;

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

(4) the Trustee becomes incapable of acting.

If the Trustee resigns or is removed, such resignation or removal will automatically constitute, without any further action by the Trustee, a resignation or removal of the Trustee in any capacity hereunder and under each of the Security Documents (including as Collateral Agent) and a release of all obligations of the Trustee (in such capacity and in any other capacity) hereunder and under any of the Security Documents; *provided* that to the extent the Trustee is also the Collateral Agent under the Security Documents, any such resignation or removal of the Trustee hereunder shall not constitute an automatic resignation or removal of the Collateral Agent (unless the Collateral Agent resigns or is otherwise removed pursuant to Section 11.06(e)).

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason (other than the removal of the Trustee by Holders of a majority in principal amount of the outstanding Notes), the Company shall notify each Holder of such event and shall promptly appoint a successor Trustee (which must assume the obligations of the Trustee in each of its capacities hereunder and, as applicable, under the Security Documents, including as Collateral Agent if the Collateral Agent has resigned or is otherwise removed pursuant to Section 11.06(e)). Within one year after the successor Trustee takes office, the Holders of a majority in principal amount of the Notes may appoint a successor Trustee to replace the successor Trustee appointed by the Company. For the avoidance of doubt, if the Trustee and Collateral Agent have both resigned or otherwise been removed hereunder, then no resignation or removal of either the Trustee or Collateral Agent shall be effective unless and until both the successor Trustee and

successor Collateral Agent have been appointed and have assumed the responsibilities of Trustee and Collateral Agent, respectively.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Immediately after that, the retiring Trustee shall transfer, after payment of all sums then owing to the Trustee pursuant to Section 7.06, all property held by it as Trustee to the successor Trustee, subject to the Lien provided in Section 7.06, the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. A successor Trustee shall provide notice, in accordance with Section 14.01, of its succession to each Holder.

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

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

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

SECTION 7.08. Successor Trustee by Merger, Etc.

If the Trustee consolidates with, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation, the resulting, surviving or transferee corporation without any further act shall, if such resulting, surviving or transferee corporation is otherwise eligible hereunder, be the successor Trustee; *provided* that such corporation shall be otherwise qualified and eligible under this Article Seven.

SECTION 7.09. Eligibility.

This Indenture shall always have a Trustee who has a combined capital and surplus of at least $[●] as set forth in its most recent published annual report of condition.

SECTION 7.10. Co-trustees, Separate Trustee, Collateral Agent.

At any time or times, for the purpose of meeting the Legal Requirements of any jurisdiction in which any of the Collateral may at the time be located, the Company and the Trustee shall have power to appoint, and, upon the written request of the Trustee or of the Holders of at least 25% of the outstanding principal amount of the Notes, the Company shall for such purpose join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to appoint, one or more Persons approved by the Trustee either to act as co-trustee, jointly with the Trustee, or to act as separate trustee or collateral agent of any such property, in either case with such powers as may be provided in the instrument of appointment, and to vest in such Person or Persons in the capacity aforesaid, any property, title, right or power deemed necessary or desirable, subject to the other provisions of this Section 7.10. If the Company does not join in such appointment within 15 days after the receipt by it of a

request so to do, or in case an Event of Default has occurred and is continuing, the Trustee alone shall have power to make such appointment.

Should any written instrument from the Company be requested by any co-trustee or separate trustee or separate collateral agent so appointed for more fully confirming to such co-trustee or separate trustee such property, title, right or power, any and all such instruments shall, on request of such co-trustee or separate trustee or separate collateral agent, be executed, acknowledged and delivered by the Company.

Any co-trustee, separate trustee or separate collateral agent shall agree in writing to be and shall be subject to the provisions of the Security Documents as if it were the Trustee thereunder (and the Trustee shall continue to be so subject).

Every co-trustee or separate trustee or separate collateral agent shall, to the extent permitted by law, but to such extent only, be appointed subject to the following terms, namely:

(a) The Notes shall be authenticated and delivered, and all rights, powers, duties and obligations hereunder in respect of the custody of securities, cash and other personal property held by, or required to be deposited or pledged with, the Trustee hereunder, shall be exercised solely, by the Trustee.

(b) The rights, powers, duties and obligations hereby conferred or imposed upon the Trustee in respect of any property covered by such appointment shall be conferred or imposed upon and exercised or performed by the Trustee or by the Trustee and such co-trustee or separate trustee jointly, or by the Trustee and such separate collateral agent or collateral agent jointly as shall be provided in the instrument appointing such co-trustee, separate trustee or separate collateral agent, except to the extent that under any law of any jurisdiction in which any particular act is to be performed, the Trustee shall be incompetent or unqualified to perform such act or acts, in which event such rights, powers, duties and obligations shall be exercised and performed by such co-trustee, separate trustee or separate collateral agent.

(c) The Trustee at any time, by an instrument in writing executed by it, with the concurrence of the Company evidenced by a Board Resolution, may accept the resignation of or remove any co-trustee, separate trustee or separate collateral agent appointed under this Section 7.10, and, in case an Event of Default has occurred and is continuing, the Trustee shall have power to accept the resignation of, or remove, any such co-trustee, separate trustee or separate collateral agent without the concurrence of the Company. Upon the written request of the Trustee, the Company shall join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to effectuate such resignation or removal. A successor to any co-trustee, separate trustee or separate collateral agent so resigned or removed may be appointed in the manner provided in this Section 7.10.

(d) No co-trustee, separate trustee or separate collateral agent hereunder shall be liable by reason of any act or omission of the Trustee, or any other such trustee hereunder.

(e) The Trustee shall not be liable by reason of any act or omission of any co-trustee, separate trustee or separate collateral agent.

(f) Any act of Holders delivered to the Trustee shall be deemed to have been delivered to each such co-trustee, separate trustee or separate collateral agent, as the case may be.

ARTICLE EIGHT

DISCHARGE OF INDENTURE; DEFEASANCE

SECTION 8.01. Termination of the Company's Obligations.

The Company may terminate its obligations under the Notes and this Indenture and the obligations of the Guarantors, if any, under the Guarantees and this Indenture and this Indenture shall cease to be of further effect, except those obligations referred to in the penultimate paragraph of this Section 8.01, if:

(1) either:

(a) all the Notes theretofore authenticated and delivered (except lost, stolen or destroyed Notes which have been replaced or paid and Notes for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust) have been delivered to the Trustee for cancellation; or

(b) all Notes not theretofore delivered to the Trustee for cancellation (1) have become due and payable and the Company has irrevocably deposited or caused to be deposited with the Trustee funds in an amount sufficient to pay and discharge the entire Indebtedness on the Notes not theretofore delivered to the Trustee for cancellation, for principal of, premium, if any and interest on the Notes to the date of maturity, together with irrevocable instructions from the Company directing the Trustee to apply such funds to the payment thereof at maturity or (2) have been submitted for conversion and the Company has (i) delivered to the Trustee shares of Company Common Stock sufficient to satisfy its conversion obligations in respect of all such Notes, and (ii) irrevocably deposited or caused to be deposited with the Trustee funds in an amount sufficient to pay the amount in cash due in lieu of fractional shares of Company Common Stock issued upon conversion of all such Notes;

(2) the Company has paid all other sums payable under this Indenture by the Company; and

(3) the Company has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel stating that all conditions precedent under this Indenture relating to the satisfaction and discharge of this Indenture have been complied with.

With respect to the foregoing, the Company's obligations in Sections 2.05, 2.06, 2.07, 2.08, 7.06, 8.05, 8.06 and Article Thirteen shall survive until the Notes are no longer outstanding pursuant to the last paragraph of Section 2.08. After the Notes are no longer outstanding, the Company's obligations in Sections 7.06, 8.05 and 8.06 shall survive.

After such delivery or irrevocable deposit, the Trustee upon request shall acknowledge in writing the discharge of the Company's obligations under the Notes and this Indenture except for those surviving obligations specified above.

SECTION 8.02. Covenant Defeasance.

(a) The Company may, at its option and at any time, elect to have paragraph (b) below be applied to all outstanding Notes upon compliance with the conditions set forth in Section 8.03.

(b) Upon the Company's exercise under paragraph (a) hereof of the option applicable to this paragraph (b), the Company and the Guarantors shall, subject to the satisfaction of the conditions set forth in Section 8.03, be released from their respective obligations under the covenants contained in Sections 4.03 (other than with respect to the legal existence of the Company), 4.04, 4.07 through 4.19, and clauses (2) and (3) of the first paragraph and clause (3) of the fourth paragraph of Section 5.01, Article Ten, Article Eleven and the Security Documents with respect to the outstanding Notes on and after the date the conditions set forth in Section 8.03 are satisfied (it being understood, for the avoidance of doubt, that the obligations of the Company and its Restricted Subsidiaries pursuant to Article Thirteen hereof shall remain in full force and effect) (hereinafter, "Covenant Defeasance"). For this purpose, Covenant Defeasance means that, with respect to the outstanding Notes, the Company and the Guarantors may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document and such omission to comply shall not constitute an Event of Default under Section 6.01, but, except as specified above, the remainder of this Indenture and such Notes shall be unaffected thereby. In addition, upon the Company's exercise under paragraph (a) hereof of the option applicable to this paragraph (b), subject to the satisfaction of the conditions set forth in Section 8.03, clauses (3), (4), (6), (7) and (8) of Section 6.01 shall not constitute Events of Default.

SECTION 8.03. Conditions to Covenant Defeasance.

The following shall be the conditions to the application of Section 8.02(b) hereof to the outstanding Notes:

(1) the Company must irrevocably deposit with the Trustee, in trust, for the benefit of the Holders, U.S. Legal Tender, U.S. Government Obligations, U.S. Government Securities or a combination thereof, in such amounts as will be sufficient, without reinvestment, in the opinion of a nationally recognized firm of independent public accountants selected by the Company to pay the principal of, premium, if any, and interest on the Notes on the stated date for payment thereof;

(2) the Company shall have delivered to the Trustee an Opinion of Counsel in the United States reasonably acceptable to the Trustee confirming that the Holders 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;

(3) no Default or Event of Default shall have occurred and be continuing on the date of such deposit (other than a Default or an Event of Default resulting from the borrowing of funds to be applied to such deposit and the grant of any Lien securing such borrowings);

(4) such Covenant Defeasance shall not result in a breach or violation of or constitute a default under this Indenture (other than a Default or an Event of Default resulting from the borrowing of funds to be applied to such deposit and the grant of any Lien securing such borrowings) or any other material agreement or instrument to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries is bound;

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

(6) the Company shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent provided for in, in the case of the Officer's Certificate, clauses (1) through (5), as applicable, and, in the case of the Opinion of Counsel, clauses (2) and (4) of this Section 8.03 have been complied with.

SECTION 8.04. Application of Trust Money.

The Trustee or Paying Agent shall hold in trust U.S. Legal Tender and U.S. Government Obligations deposited with it pursuant to this Article Eight, and shall apply the deposited U.S. Legal Tender and the money from U.S. Government Obligations in accordance with this Indenture to the payment of the principal of and the interest on the Notes; *provided* that, if there is a tender offer by the Company for outstanding Notes that is in progress at the time of such deposit, such money deposited with the Trustee pursuant to Section 8.01 may be applied to pay any cash consideration for any Notes validly tendered into such tender offer and not validly withdrawn. The Trustee shall be under no obligation to invest said U.S. Legal Tender and U.S. Government Obligations, except as it may agree with the Company.

The Company shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the U.S. Legal Tender and U.S. Government Obligations deposited pursuant to Section 8.03 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.

Anything in this Article Eight to the contrary notwithstanding, the Trustee shall deliver or pay to the Company from time to time upon the Company's request any U.S. Legal Tender and U.S. Government Obligations held by it as provided in Section 8.03 which, in the opinion of a

nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, are in excess of the amount thereof that would then be required to be deposited to effect an equivalent Covenant Defeasance.

SECTION 8.05. Repayment to the Company.

The Trustee and the Paying Agent shall pay to the Company upon request any money held by them for the payment of principal or interest that remains unclaimed for one year; *provided*, *however*, that the Trustee or such Paying Agent, before being required to make any payment, may at the expense of the Company cause to be published once in a newspaper of general circulation in the City of New York or provide to each Holder entitled to such money notice, in accordance with Section 14.01, that such money remains unclaimed and that after a date specified therein which shall be at least 30 days from the date of such publication or giving of notice any unclaimed balance of such money then remaining will be repaid to the Company. After payment to the Company, Holders entitled to such money must look to the Company for payment as general creditors unless an applicable law designates another Person.

SECTION 8.06. Reinstatement.

If the Trustee or Paying Agent is unable to apply any U.S. Legal Tender and U.S. Government Obligations in accordance with this Article Eight 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, or if the funds deposited with the Trustee to effect Covenant Defeasance are insufficient to pay the principal of, and interest on, the Notes when due, the Company's obligations under this Indenture, and the Notes and the Guarantees shall be revived and reinstated as though no deposit had occurred pursuant to this Article Eight until such time as the Trustee or Paying Agent is permitted to apply all such U.S. Legal Tender and U.S. Government Obligations in accordance with this Article Eight; *provided* that if the Company has made any payment of interest on, or principal of, 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 U.S. Legal Tender and U.S. Government Obligations held by the Trustee or Paying Agent.

ARTICLE NINE

AMENDMENTS, SUPPLEMENTS AND WAIVERS

SECTION 9.01. Without Consent of Holders.

The Company, the Guarantors, if any, and the Trustee and/or Collateral Agent, as applicable, together, may amend or supplement this Indenture, the Security Documents, the Notes or the Guarantees, without notice to or consent of any Holder:

(1) to evidence the succession of another Person to the Company or a Guarantor, and the assumption by any such successor of the covenants of the Company or such Guarantor in this Indenture, the Notes, any Guarantee and the Security Documents, as applicable, in accordance with Article Five;

(2) to add to the covenants of the Company, any Guarantor or any other obligor upon the Notes for the benefit of the Holders, to increase the Conversion Rate at the discretion of the Company, or to surrender any right or power conferred upon the Company or any Guarantor or any other obligor upon the Notes, as applicable, in this Indenture, the Notes, any Guarantee or any Security Document, or to make any change that would provide any additional rights or benefits to the Holders;

(3) to cure any ambiguity, omission or mistake, or to correct or supplement any provision in this Indenture, the Notes, any Guarantee or any Security Document which may be defective or inconsistent with any other provision in this Indenture, the Notes, any Guarantee or any Security Document, including to conform any Security Document to the form of any equivalent document securing the ABL Priority Lien Obligations as provided in the Intercreditor Agreement;

(4) to make any other provisions with respect to matters or questions arising under this Indenture, the Notes, any Guarantee or any Security Document; *provided* that, in each case, such actions pursuant to this clause (4) shall not adversely affect the interest of the Holders in any material respect, as determined in good faith by the Board of Directors of the Company;

(5) to comply with the requirements of the Commission in order to effect or maintain the qualification of this Indenture under the Trust Indenture Act to the extent this Indenture is or becomes so qualified;

(6) to add to the Collateral securing the Notes or Guarantees or to add or to release a Guarantor in accordance with this Indenture;

(7) to evidence and provide the acceptance of the appointment of a successor Trustee or Collateral Agent under this Indenture and the Security Documents;

(8) to mortgage, pledge, hypothecate or grant a Lien in favor of the Collateral Agent for the benefit of the Holders (and the holders or lenders of Notes Priority Lien Obligations or ABL Priority Lien Obligations) as additional security for the payment and performance of the Company's and any Guarantor's obligations under this Indenture, in any property, or assets, including any of which are required to be mortgaged, pledged or hypothecated, or in which a security interest is required to be granted to or for the benefit of the Trustee or the Collateral Agent pursuant to this Indenture, any of the Security Documents or otherwise;

(9) to provide for the issuance of Additional Notes or PIK Notes in accordance with this Indenture;

(10) to provide for the release of Collateral from the Lien of this Indenture and the Security Documents when permitted or required by any of the Security Documents, the Intercreditor Agreement and this Indenture;

(11) to add additional secured creditors holding Notes Priority Lien Obligations or ABL Priority Lien Obligations so long as such Obligations are not prohibited by this

Indenture or the Security Documents, and to appropriately include the same in the Intercreditor Agreement; or

(12) to provide for the conversion of the Notes in accordance with the terms of this Indenture.

SECTION 9.02. With Consent of Holders.

(a) Subject to Section 6.07, the Company, the Guarantors, if any, and the Trustee and/or the Collateral Agent, as applicable, together, with the written consent of the Holder or Holders of a majority in aggregate principal amount of the outstanding Notes (including consents obtained in connection with a tender offer or exchange offer for the Notes) may amend or supplement this Indenture, any Security Document (except as otherwise described herein), the Notes or the Guarantees, if any, without notice to any other Holders. Subject to Section 6.07, the Holder or Holders of a majority in aggregate principal amount of the outstanding Notes may waive compliance with any provision of this Indenture, the Notes, any Security Document or the Guarantees, if any, without notice to any other Holders.

(b) Notwithstanding Section 9.02(a), without the consent of each Holder affected, no amendment, supplement or waiver may (with respect to any Notes held by such non-consenting Holders):

(1) reduce the amount of Notes whose Holders must consent to an amendment;

(2) reduce the rate of or change or have the effect of changing the time for payment of interest, including default interest, on any Notes, or decrease the then current Conversion Rate (except pursuant to Section 13.05);

(3) reduce the principal of or change or have the effect of changing the fixed maturity of any Notes (other than (i) as provided in the definition of Maturity Date and (ii) provisions relating to the purchase of Notes pursuant to Section 4.10, but subject to clause (6) below) or alter or waive any of the provisions with respect to the redemption of the Notes pursuant to Article Three;

(4) make any Notes payable in money other than that stated in the Notes;

(5) make any change in provisions of this Indenture entitling each Holder to receive payment of principal of and interest on such Note on or after the due date thereof or setting forth the contractual right to bring suit to enforce such payment, or permitting Holders of a majority in principal amount of Notes to waive Defaults or Events of Default;

(6) after the Company's obligation to purchase Notes arises thereunder, amend, change or modify in any material respect the obligation of the Company to make and consummate a Change of Control Offer in the event of a Change of Control or make and consummate a Net Proceeds Offer with respect to any Asset Sale that has been

consummated or, after such Change of Control has occurred or such Asset Sale has been consummated, modify any of the provisions or definitions with respect thereto;

(7) modify or change any provision of this Indenture or the related definitions affecting the ranking of the Notes or any Guarantee as to contractual right of payment in a manner which adversely affects the Holders;

(8) release any Guarantor that is a Significant Subsidiary from any of its obligations under its Guarantee or this Indenture otherwise than in accordance with the terms of this Indenture; or

(9) adversely affect the right of Holders to convert Notes in accordance with Article Thirteen.

Notwithstanding Section 9.02(a) or the preceding clause, (i) without the consent of the Holders of at least 66 2/3% in aggregate principal amount of the outstanding Notes, no amendment may release from the Lien of this Indenture or the Notes and the Security Documents all or substantially all of the Collateral, otherwise than in accordance with the terms of the Security Documents, (ii) the provisions of Sections 13.05 to 13.14 may be waived or modified only with the consent of the Holders of at least 66 2/3% in aggregate principal amount of the outstanding Notes, and (iii) without the consent of the Holders of at least 66 2/3% in aggregate principal amount of the outstanding Notes, the Company shall not consent to, enter into an agreement with respect to, consummate, permit to occur or otherwise agree to or allow the occurrence of a Merger Event.

(c) It shall not be necessary for the consent of the Holders under this Section to approve the particular form of any proposed amendment, supplement or waiver but it shall be sufficient if such consent approves the substance thereof.

(d) A consent to any amendment, supplement or waiver under this Indenture by any Holder given in connection with an exchange (in the case of an exchange offer) or a tender (in the case of a tender offer) of such Holder's Notes will not be rendered invalid by such tender or exchange.

(e) After an amendment, supplement or waiver under this Section 9.02 becomes effective, the Company shall provide to the Holders affected thereby, in accordance with Section 14.01 (with a copy to the Trustee), a notice briefly describing the amendment, supplement or waiver. Any failure of the Company to provide such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such amendment, supplement or waiver.

SECTION 9.03. Revocation and Effect of Consents.

Until an amendment, waiver or supplement becomes effective, a consent to it by a Holder is a continuing consent by the Holder 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 or subsequent Holder may revoke the consent as to his Note or portion of his Note by notice to the Trustee or the Company received before the date on which the Trustee receives an Officer's Certificate certifying that the Holders of the

requisite principal amount of Notes have consented (and not theretofore revoked such consent) to the amendment, supplement or waiver.

The Company may, but shall not be obligated to, fix a record date for the purpose of determining the Holders entitled to consent to any amendment, supplement or waiver, which record date shall be at least 30 days prior to the first solicitation of such consent. If a record date is fixed, then notwithstanding the last sentence of the immediately preceding paragraph, those Persons who were Holders at such record date (or their duly designated proxies), and only those Persons, shall be entitled to revoke any consent previously given, whether or not such Persons continue to be Holders after such record date. No such consent shall be valid or effective for more than 90 days after such record date. The Company shall inform the Trustee in writing of the fixed record date if applicable.

After an amendment, supplement or waiver becomes effective, it shall bind every Holder, unless it makes a change described in any of clauses (1) through (9) of Section 9.02(b), in which case, the amendment, supplement or waiver shall bind only each Holder of a Note who has consented to it and every subsequent Holder of a Note or portion of a Note that evidences the same debt as the consenting Holder's Note; *provided*, *however*, that any such waiver shall not impair or affect the right of any Holder to receive payment of principal of, and interest on, a Note, on or after the respective due dates therefor, or to bring suit for the enforcement of any such payment on or after such respective dates without the consent of such Holder.

SECTION 9.04. Notation on or Exchange of Notes.

If an amendment, supplement or waiver changes the terms of a Note, the Company may require the Holder of the Note to deliver it to the Trustee. The Company shall provide the Trustee with an appropriate notation on the Note about the changed terms and cause the Trustee to return it to the Holder at the Company's expense. Alternatively, if the Company or the Trustee so determines, the Company in exchange for the Note shall issue, and the Trustee shall authenticate, a new Note that reflects the changed terms. Failure to make the appropriate notation or issue a new Note shall not affect the validity and effect of such amendment, supplement or waiver.

SECTION 9.05. Trustee and Collateral Agent To Sign Amendments, Etc.

The Trustee and/or the Collateral Agent, as applicable, shall execute any amendment, supplement or waiver authorized pursuant to this Article Nine; *provided*, *however*, that the Trustee and/or the Collateral Agent, as applicable, may, but shall not be obligated to, execute any such amendment, supplement or waiver which adversely affects the rights, duties or immunities of the Trustee and/or the Collateral Agent, as applicable. The Trustee and/or the Collateral Agent, as applicable, shall be entitled to receive, and shall be fully protected in relying upon, an Opinion of Counsel and an Officer's Certificate each stating that the execution of any amendment, supplement or waiver authorized pursuant to this Article Nine is authorized or permitted by this Indenture and/or the applicable Security Document, as applicable, all conditions precedent thereto have been complied with. Such Officer's Certificate or Opinion of Counsel, as applicable, shall be at the expense of the Company. The Trustee or Collateral Agent, as applicable, shall provide notice of the effectiveness of any amendment or supplement or

waiver to this Indenture, the Security Documents, the Notes or Guarantees to the ABL Agent to the extent required by the Intercreditor Agreement, but the failure to provide such notice shall not impair or affect the validity of such amendment, supplement or waiver or create any claim against the Trustee or Collateral Agent for such failure. Prior to executing any amendment, supplement or waiver to this Indenture, the Security Documents, the Notes or Guarantees and for so long as the Company's obligations under the ABL Facility Agreement remain outstanding, the Trustee or Collateral Agent, as applicable, shall receive from the Company an Officer's Certificate stating that such amendment, supplement or waiver is permitted under the terms of the ABL Facility Agreement as in effect on the date hereof, unless the ABL Agent has otherwise provided its written consent to the Trustee or Collateral Agent to such amendment, supplement or waiver.

ARTICLE TEN

GUARANTEE

SECTION 10.01. Guarantee.

Subject to this Article Ten, each of the 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 the Notes or the obligations of the Company hereunder or thereunder, that: (a) the principal of and interest on the Notes will be promptly paid in full when due, whether at Stated Maturity, by acceleration, or otherwise, and interest on the overdue principal of and interest on the Notes, if any, 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 (b) 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 Guarantors shall be jointly and severally obligated to pay the same immediately. Each Guarantor agrees that this is a guarantee of payment and not a guarantee of collection.

The Guarantors hereby agree that their obligations hereunder shall be 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 Guarantor hereby waives, to the extent permitted by applicable law, diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of the Company, any right to require a proceeding first against the Company, protest, notice and all demands whatsoever and covenant that this Guarantee shall not be discharged except by complete performance of the obligations contained in the Notes and this Indenture.

If any Holder or the Trustee is required by any court or otherwise to return to the Company, the Guarantors or any custodian, trustee, liquidator or other similar official acting in

relation to either the Company or the Guarantors, any amount paid by either to the Trustee or such Holder, this Guarantee, to the extent theretofore discharged, shall be reinstated in full force and effect.

Each Guarantor agrees that it shall not be entitled to any right of subrogation in relation to the Holders in respect of any obligations guaranteed hereby until payment in full of all obligations guaranteed hereby. Each Guarantor further agrees that, as between the Guarantors, on the one hand, and the Holders and the Trustee, on the other hand, (x) the maturity of the obligations guaranteed hereby may be accelerated as provided in Article Six hereof for the purposes of this Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (y) in the event of any declaration of acceleration of such obligations as provided in Article Six hereof, such obligations (whether or not due and payable) shall forthwith become due and payable by the Guarantors for the purpose of this Guarantee.

SECTION 10.02. Limitation on Guarantor Liability.

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

SECTION 10.03. Execution and Delivery of Guarantee.

To evidence its Guarantee set forth in Section 10.01, each Guarantor hereby agrees that a notation of such Guarantee substantially in the form included in Exhibit D shall be endorsed by an Officer of such Guarantor on each Note authenticated and delivered by the Trustee and that this Indenture shall be executed on behalf of such Guarantor by an Officer.

Each Guarantor hereby agrees that its Guarantee set forth in Section 10.01 shall remain in full force and effect notwithstanding any failure to endorse on each Note a notation of such Guarantee.

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

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

SECTION 10.04. Release of Guarantees.

Any Guarantee by a Restricted Subsidiary of the Notes shall provide by its terms that it (and all Liens securing such Guarantee) shall be automatically and unconditionally released and discharged, without any further action required on the part of the Trustee or any Holder, upon:

(1) the designation of the Guarantor as an Unrestricted Subsidiary;

(2) the exercise of the Company's covenant defeasance option as described under Section 8.02 (solely with respect to Guarantees of the Notes), or if Company's obligations under this Indenture are discharged in accordance with the terms of this Indenture;

(3) any sale, issuance or other disposition (by merger or otherwise) to any Person which is not a Restricted Subsidiary of the Company of (i) all or substantially all of the assets of such Restricted Subsidiary or (ii) Capital Stock of a Restricted Subsidiary such that such Restricted Subsidiary ceases to be a Subsidiary; *provided* that such sale or disposition of such Capital Stock is otherwise permitted by the terms of this Indenture; or

(4) if applicable, the Indebtedness that resulted in the creation of such Guarantee is released or discharged.

ARTICLE ELEVEN

COLLATERAL AND SECURITY DOCUMENTS

SECTION 11.01. Security Documents; Additional Collateral; Intercreditor Agreement.

(a) Security Documents. In order to secure the due and punctual payment and performance of the Notes Priority Lien Obligations (including the Indenture Obligations), the Company, the Guarantors, if any, the Collateral Agent and the other parties thereto have simultaneously with the execution of this Indenture entered or, in accordance with the provisions of Section 4.14, Section 4.15, Article Five and this Article Eleven, will enter into the Security Documents. In the event of a conflict between the terms of this Indenture and the Security Documents, the Security Documents shall control.

The Company shall, and shall cause each Guarantor to, and each Guarantor shall, make all filings (including filings of continuation statements and amendments to UCC financing statements that may be necessary to continue the effectiveness of such UCC financing statements) and take all other actions as are reasonably necessary or required by the Security Documents to maintain (at the sole cost and expense of the Company and the Guarantors) the security interest created by the Security Documents in the Collateral (other than with respect to any Collateral solely to the extent that any security interest therein is not required to be perfected under the Security Documents) as a perfected Notes Priority Lien subject only to Permitted Liens.

(b) Additional Collateral. With respect to assets acquired after the Issue Date, the applicable Company or Guarantor will take the actions required by the Notes Security Agreement and the other Security Documents.

(c) Intercreditor Agreement. The Trustee, the Collateral Agent and the Holders are bound by the terms of the Intercreditor Agreement and each Holder of a Note, by accepting such Note, agrees to all the terms and provisions of the Intercreditor Agreement and the other Security Documents and directs the Trustee and/or Collateral Agent to execute the same.

SECTION 11.02. Recording, Registration and Opinions.

The Company and the Guarantors shall furnish to the Trustee at least 30 days prior to the anniversary of the Issue Date in each year an Officer's Certificate, dated as of such date, either (i) stating that, in the opinion of such officer, such action has been taken with respect to the recording, filing, re-recording, and refiling of this Indenture or the Security Documents, as applicable, as are necessary to maintain the perfected Liens granted by the Company and the Guarantors under the applicable Security Documents securing the Indenture Obligations under applicable law to the extent required by the Security Documents other than any action as described therein to be taken or (ii) stating that, in the opinion of such officer, no such action is necessary to maintain such Liens or security interests.

SECTION 11.03. Releases of Collateral.

The Liens securing the Notes and the Guarantees, if any, will automatically and without the need for any further action by or notice to any Person be released:

(1) in whole or in part, as applicable, as to all or any portion of property subject to such Liens which has been taken by eminent domain, condemnation or other similar circumstances;

(2) in whole, as to all property subject to such Liens, upon full payment of all principal on, accrued and unpaid interest, including additional interest, on and premium, if any, under the Notes and Indenture;

(3) in whole, as to property subject to such Liens, upon:

(a) satisfaction and discharge of this Indenture as set forth under Article Eight; or

(b) a Covenant Defeasance of this Indenture as set forth under Article Eight;

(4) in part, as to any property that (a) is sold, transferred or otherwise disposed of by the Company or any Guarantor (other than to the Company or another Guarantor) in a transaction not prohibited by this Indenture at the time of such transfer or disposition, including, without limitation, as a result of a transaction of the type permitted under Sections 4.10 and 5.01, to the extent of the interest sold, transferred or disposed of or (b) is owned or at any time acquired by a Guarantor that has been released from its

Guarantee pursuant to Section 10.04, concurrently with the release of such Guarantee or (c) at any time becomes an Excluded Asset;

(5) in whole, as to property that constitutes all or substantially all of the Collateral securing the Notes, with the consent of the Holders of at least 66 2/3% in aggregate principal amount of the Notes then outstanding, as provided for in Section 9.02(b);

(6) in part, as to property that constitutes less than all or substantially all of the Collateral securing the Notes, with the consent of the Holders of at least a majority of the aggregate principal amount of Notes then outstanding, as provided for in Section 9.02(b); and

(7) in part, in accordance with the applicable provisions of the Security Documents and the Intercreditor Agreement.

SECTION 11.04. Form and Sufficiency of Release.

In the event that either the Company or any Guarantor has sold, exchanged, or otherwise disposed of or proposes to sell, exchange or otherwise dispose of any portion of the Collateral that, under the terms of this Indenture may be sold, exchanged or otherwise disposed of by the Company or any Guarantor, and the Company or such Guarantor requests the Trustee to furnish a written disclaimer, release or quitclaim of any interest in such property under this Indenture, the applicable Guarantee and the Security Documents, upon receipt of an Officer's Certificate to the effect that such release complies with or is permitted by Section 11.03 and specifying the provision in Section 11.03 pursuant to which such release is being made (upon which the Trustee may exclusively and conclusively rely), the Trustee shall execute, acknowledge and deliver to the Company or such Guarantor (or instruct the Collateral Agent to do the same) such an instrument in the form provided by the Company, and providing for release without recourse and shall take such other action as the Company or such Guarantor may reasonably request and as necessary to effect such release.

SECTION 11.05. Possession and Use of Collateral.

Subject to the provisions of the Security Documents, the Company and the Guarantors shall have the right to remain in possession and retain exclusive control of and to exercise all rights with respect to the Collateral (other than Trust Monies held by the Collateral Agent, other monies, U.S. Legal Tender, U.S. Government Obligations or U.S. Government Securities deposited pursuant to Article 8, and other than as set forth in the Security Documents and this Indenture), to freely operate, manage, develop, lease, use, consume and enjoy the Collateral (other than Trust Monies held by the Collateral Agent, other monies and U.S. Government Obligations deposited pursuant to Article 8 and other than as set forth in the Security Documents and this Indenture), to alter or repair any Collateral so long as such alterations and repairs do not impair the Lien of the Security Documents thereon, and to collect, receive, use, invest and dispose of the reversions, remainders, interest, rents, lease payments, issues, profits, revenues, proceeds and other income thereof and to effect transactions permitted under Sections 4.10 and 5.01.

SECTION 11.06. Collateral Agent.

(a) Each of the Holders by acceptance of the Notes hereby designates and appoints the Collateral Agent as its collateral agent under this Indenture and the Security Documents and each of the Holders by acceptance of the Notes hereby authorizes the Collateral Agent to enter into each of the Security Documents and to take such action on its behalf under the provisions of this Indenture and each of the Security Documents and to exercise such powers and perform such duties as are expressly required, permitted or delegated to the Collateral Agent by the terms of this Indenture and each of the Security Documents, together with such powers as are reasonably incidental thereto. The Collateral Agent agrees to act as such on the express conditions contained in this Section 11.06. The provisions of this Section 11.06 are solely for the benefit of the Collateral Agent and none of the Trustee, any of the Holders nor the Company or any Guarantors shall have any rights as a third party beneficiary of any of the provisions contained herein other than as expressly provided in Section 11.03. Notwithstanding any provision to the contrary contained elsewhere in this Indenture and the Security Documents, the Collateral Agent shall not have any duties or responsibilities, except those expressly set forth herein, nor shall the Collateral Agent have or be deemed to have any fiduciary relationship with the Trustee, any Holder or the Company or any Guarantor, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Indenture and the Security Documents or otherwise exist against the Collateral Agent. Without limiting the generality of the foregoing sentence, the use of the term "agent" in this Indenture with reference to the Collateral Agent shall not be construed 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. The Collateral Agent may and, upon direction from the Trustee or the requisite Holders as provided hereunder or under a Security Document, shall exercise or refrain from exercising such discretionary rights, or take or refrain from taking such actions which the Collateral Agent is expressly entitled to take or assert under this Indenture and the Security Documents, including the exercise of remedies pursuant to Article Six, and any action so taken or not taken shall be deemed consented to by the Trustee and the Holders.

(b) The Collateral Agent may execute any of its duties under this Indenture and the Security Documents by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. The Collateral Agent shall not be responsible for the bad faith, gross negligence or misconduct of any agent, employee or attorney-in-fact that it selects as long as such selection was made with due care.

(c) None of the Collateral Agent or any of its agents or employees shall (i) be liable for any action taken or omitted to be taken by any of them under or in connection with this Indenture or the transactions contemplated hereby (except for its own bad faith, gross negligence or willful misconduct) or under or in connection with any Security Document or the transactions contemplated thereby (except for its own bad faith, gross negligence or willful misconduct), or (ii) be responsible in any manner to the Trustee or any Holder for any recital, statement, representation, warranty, covenant or agreement made by the Company or any Guarantor, contained in this Indenture or any indenture, or in any certificate, report, statement or other document referred to or provided for in, or received by the Collateral Agent under or in connection with, this Indenture or any other indenture, the Security Documents, or the validity,

effectiveness, genuineness, enforceability or sufficiency of this Indenture or any other indenture or the Security Documents, or for any failure of the Company or any Guarantor or any other party to this Indenture or the Security Documents to perform its obligations hereunder or thereunder. None of the Collateral Agent or any of its agents or employees shall be under any obligation to the Trustee or any Holder to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Indenture or any other indenture or the Security Documents or to inspect the properties, books or records of the Company or any Guarantor.

(d) The Collateral Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, unless the Collateral Agent (i) shall have received written notice from the Trustee or the Company referring to this Indenture, describing such Default or Event of Default and stating that such notice is a "notice of default" or (ii) a Responsible Officer has actual knowledge of the occurrence of such Default or Event of Default. The Collateral Agent shall take such action with respect to such Default or Event of Default as may be requested by the Trustee in accordance with Article Six (subject to this Section 11.06) or the Holders as provided in the Security Documents; *provided*, *however*, that unless and until the Collateral Agent has received any such request, the Collateral Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable.

(e) A resignation or removal of the Collateral Agent and appointment of a successor Collateral Agent shall become effective only upon the successor Collateral Agent's acceptance of appointment as provided in this Section 11.06(e). The Collateral Agent may resign in writing at any time by so notifying the Company, the Trustee and each trustee, agent or representative of holders of Notes Priority Lien Obligations at least 30 days prior to the proposed date of resignation. The Company may remove the Collateral Agent if: (i) the Collateral Agent is removed as Trustee under this Indenture; (ii) the Collateral Agent (x) fails to meet the requirements for being a Trustee under Section 7.09 (prior to the discharge or defeasance of this Indenture) and (y) following the discharge or defeasance of this Indenture, fails to meet the requirements for being the trustee, agent or representative of holders of any extant Notes Priority Lien Obligations; (iii) the Collateral Agent is adjudged a bankrupt or an insolvent or an order for relief is entered with respect to the Collateral Agent under any Bankruptcy Law; (iv) a custodian or public officer takes charge of the Collateral Agent or its property; or (v) the Collateral Agent becomes incapable of acting. If the Collateral Agent resigns or is removed or if a vacancy exists in the office of Collateral Agent for any reason, the Company shall promptly appoint a successor Collateral Agent which complies with the eligibility requirements contained in this Indenture and each indenture, credit agreement or other agreements which any Notes Priority Lien Obligations (other than Additional Notes) are incurred. If a successor Collateral Agent does not take office within 10 days after the retiring Collateral Agent resigns or is removed, the retiring Collateral Agent, the Company or the holders of at least 10% in principal amount of the then outstanding principal amount of (x) the Notes (other than any Additional Notes except to the extent constituting Notes Priority Lien Obligations) and (y) Notes Priority Lien Obligations (to the extent the trustee, agent or representative of holders of such Notes Priority Lien Obligations executed a joinder to the applicable Security Documents) may petition any court of competent jurisdiction for the appointment of a successor Collateral Agent. A successor Collateral Agent shall deliver a written acceptance of its appointment to the retiring Collateral Agent and to the

Company. Thereupon, the resignation or removal of the retiring Collateral Agent shall become effective, and the successor Collateral Agent shall have all the rights, powers and the duties of the Collateral Agent under this Indenture and the Security Documents. The successor Collateral Agent shall provide a notice of its succession to the Trustee and each trustee, agent or representative of holders of Notes Priority Lien Obligations. The retiring Collateral Agent shall promptly transfer all property held by it as Collateral Agent to the successor Collateral Agent; *provided* that all sums owing to the Collateral Agent hereunder have been paid. Notwithstanding replacement of the Collateral Agent pursuant to this Section 11.06(e), the Company's obligations under this Section 11.06 and Section 11.10 shall continue for the benefit of the retiring Collateral Agent. If the Collateral Agent resigns or is removed, such resignation or removal will not constitute a resignation or removal of the Trustee hereunder (unless the Trustee resigns or is otherwise removed pursuant to Section 7.07).

(f) The Trustee shall initially act as Collateral Agent and shall be authorized to appoint co-Collateral Agents as necessary in its sole discretion. Except as otherwise explicitly provided herein or in the Security Documents, neither the Collateral Agent nor any of its officers, directors, employees or agents shall be liable for failure to demand, collect or realize upon any of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any other Person or to take any other action whatsoever with regard to the Collateral or any part thereof. The Collateral Agent shall be accountable only for amounts that it actually receives as a result of the exercise of such powers, and neither the Collateral Agent nor any of its officers, directors, employees or agents shall be responsible for any act or failure to act hereunder, except for its own willful misconduct, gross negligence or bad faith.

(g) The Trustee, as such and as Collateral Agent, is authorized and directed by the Holders and the Holders by acquiring the Notes and deemed to have authorized the Trustee and Collateral Agent to (i) enter into the Security Documents, (ii) bind the Holders on the terms as set forth in the Security Documents and (iii) perform and observe its obligations under the Security Documents.

(h) The Collateral Agent shall have no obligation whatsoever to the Trustee or any of the Holders to assure that the Collateral exists or is owned by the Company and the Guarantors or is cared for, protected or insured or has been encumbered, or that the Collateral Agent's Liens have been properly or sufficiently or lawfully created, perfected, protected, maintained or enforced or are entitled to any particular priority, or to determine whether all of the grantor's property constituting collateral intended to be subject to the Lien and security interest of the Security Documents has been properly and completely listed or delivered, as the case may be, or the genuineness, validity, marketability or sufficiency thereof or title thereto, or to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to the Collateral Agent pursuant to this Indenture or any Security Document, it being understood and agreed that in respect of the Collateral, or any act, omission or event related thereto, the Collateral Agent may act in any manner it may deem appropriate, in its sole discretion given the Collateral Agent's own interest in the Collateral, and that the Collateral Agent shall have no other duty or liability whatsoever to the Trustee or any Holder as to any of the foregoing.

(i) The Collateral Agent (i) shall not be liable for any action it takes or omits to take in good faith which it reasonably believes to be authorized or within its rights or powers, or for any error of judgment made in good faith by an authorized officer, unless it is proved that the Collateral Agent was grossly negligent in ascertaining the pertinent facts, (ii) shall not be liable for interest on any money received by it except as the Collateral Agent may agree in writing with the Company (and money held in trust by the Collateral Agent need not be segregated from other funds except to the extent required by law), and (iii) may consult with counsel of its selection and the advice or opinion of such counsel as to matters of law shall be full and complete authorization and protection from liability in respect of any action taken, omitted or suffered by it in good faith and in accordance with the advice or opinion of such counsel. The grant of permissive rights or powers to the Collateral Agent shall not be construed to impose duties to act.

SECTION 11.07. Purchaser Protected.

No purchaser or grantee of any property or rights purporting to be released shall be bound to ascertain the authority of the Collateral Agent or Trustee to execute the release or to inquire as to the existence of any conditions herein prescribed for the exercise of such authority so long as the conditions set forth in Section 11.04 have been satisfied.

SECTION 11.08. Authorization of Actions to be Taken by the Collateral Agent Under the Security Documents.

(a) Each Holder of Notes, by accepting such Note, agrees that the Collateral Agent shall be entitled to the rights, privileges, protections, immunities, indemnities and benefits provided to the Collateral Agent by the Security Documents. Furthermore, each holder of a Note, by accepting such Note, consents to the terms of and authorizes and directs the Trustee (in each of its capacities) and the Collateral Agent to enter into and perform the Security Documents in each of its capacities thereunder.

(b) The Collateral Agent and the Trustee are authorized and empowered to receive for the benefit of the Holders of Notes and the holders of any other Notes Priority Lien Obligations or ABL Priority Lien Obligations any funds collected or distributed under the Security Documents to which the Collateral Agent or Trustee is a party and to make further distributions of such funds to the Holders of Notes, any other Notes Priority Lien Obligations or ABL Priority Lien Obligations according to the provisions of this Indenture, and the Security Documents.

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

(i) foreclose upon or otherwise enforce any or all of the Notes Priority Liens;

(ii) enforce any of the terms of the Security Documents to which the Collateral Agent or Trustee is a party; or

(iii) collect and receive payment of any and all Obligations.

Subject to the Intercreditor Agreement, the Trustee is authorized and empowered to institute and maintain, or direct the Collateral Agent to institute and maintain, such suits and proceedings as it may deem expedient to protect or enforce the Notes Priority Liens or the Security Documents to which the Collateral Agent or Trustee is a party or to prevent any impairment of Collateral by any acts that may be unlawful or in violation of the Security Documents to which the Collateral Agent or Trustee is a party or this Indenture, and such suits and proceedings as the Trustee or the Collateral Agent 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 Notes Priority Liens on the Collateral or be prejudicial to the interests of Holders, the Trustee or the Collateral Agent.

SECTION 11.09. Powers Exercisable by Receiver or Collateral Agent.

In case the Collateral shall be in the possession of a receiver or trustee, lawfully appointed, the powers conferred in this Article Eleven upon the Company or any Guarantor, as applicable, with respect to the release, sale or other disposition of such property may be exercised by such receiver or trustee, and an instrument signed by such receiver or trustee shall be deemed the equivalent of any similar instrument of the Company or any Guarantor, as applicable, or of any officer or officers thereof required by the provisions of this Article Eleven.

SECTION 11.10. Compensation and Indemnification.

The Collateral Agent shall be entitled to the compensation and indemnification set forth in Section 7.06 (with the references to the Trustee therein being deemed to refer to the Collateral Agent).

ARTICLE TWELVE

APPLICATION OF TRUST MONIES

SECTION 12.01. Collateral Account.

No later than 30 days following the earlier of (i) the first date on which the Company or any Guarantor receives any Net Proceeds from an Asset Sale of Collateral (other than, prior to the Discharge of ABL Obligations, ABL Priority Collateral) and (ii) the first date on which the Trustee or the Collateral Agent receives any Trust Monies, there shall be established and, at all times thereafter until this Indenture shall have terminated, there shall be maintained the Collateral Account as set forth in the following paragraph.

The Collateral Account shall be established and maintained by the Collateral Agent at the office of the Collateral Agent or as a deposit account or securities account with a third-party depositary bank or securities intermediary subject to a control agreement in favor of the Collateral Agent. For the avoidance of doubt, no other deposit account or securities account shall be, or shall be deemed to be, the Collateral Account and Trust Monies shall include only

cash and Cash Equivalents required to be deposited into the Collateral Account pursuant to the terms of this Indenture.

The Company shall cause all such Net Proceeds specified in clause (i) of the first paragraph of this Section 12.01 to be deposited in the Collateral Account and any such Trust Monies, together with any Trust Monies received directly by the Trustee or Collateral Agent as contemplated by clause (ii) of the first paragraph of this Section 12.01, shall be held in the Collateral Account for the benefit of the Collateral Agent and for the benefit of the Secured Parties (as defined in the Security Documents) as a part of the Collateral until released in accordance with this Article Twelve.

SECTION 12.02. Withdrawal of Net Cash Proceeds to Fund a Net Proceeds Offer .

To the extent that any Trust Monies consist of Net Cash Proceeds received by the Collateral Agent pursuant to the provisions of Section 4.10 and a Net Proceeds Offer has been made in accordance therewith, such Trust Monies may be withdrawn by the Company and shall be paid by the Trustee to the Paying Agent for application in accordance with Section 4.10 upon written notice by the Company to the Trustee and upon receipt by the Trustee and the Collateral Agent of an Officer's Certificate, dated not more than 30 days prior to the date of purchase, stating:

(1) that no Event of Default shall have occurred and be continuing;

(2) (x) that such Trust Monies constitute Net Cash Proceeds, (y) that pursuant to and in accordance with Section 4.10, the Company has made a Net Proceeds Offer and (z) the amount of Net Cash Proceeds, as applicable, to be applied to the repurchase of the Notes and Notes Priority Lien Obligations pursuant to the a Net Proceeds Offer;

(3) the date of purchase; and

(4) that all conditions precedent and covenants herein provided for relating to such application of Trust Monies have been complied with. Upon compliance with the foregoing provisions of this Section 12.02, the Trustee shall apply the Trust Monies as directed and specified by the Company.

SECTION 12.03. Withdrawal of Trust Monies for Investment in Replacement Assets.

In the event the Company intends to reinvest Net Cash Proceeds of an Asset Sale in assets in compliance with Section 4.10 ("Replacement Assets"), such Net Cash Proceeds constituting Trust Monies (the "Released Trust Monies") may be withdrawn by the Company and shall be paid by the Collateral Agent to the Company upon receipt by the Trustee and the Collateral Agent of the following:

(a) A notice from the Company (i) referring to this Section 12.03, (ii) containing all documents referred to below, (iii) setting forth the amount of the Released Trust Monies and (iv) describing in reasonable detail the Replacement Assets to be invested in with respect to the Released Trust Monies; and

(b) An Officer's Certificate certifying that (i) such Trust Monies constitute Net Cash Proceeds and are being reinvested in compliance with Section 4.10, (ii) the release of the Released Trust Monies complies with the terms and conditions of this Indenture, (iii) there is no Event of Default (both before and after investing in the Replacement Assets) in effect or continuing on the date thereof and (iv) all conditions precedent herein to such release have been complied with.

Upon compliance with the foregoing provisions of this Section 12.03, the Trustee shall apply the Released Trust Monies as directed and specified by the Company.

SECTION 12.04. Investment of Trust Monies.

So long as no Event of Default shall have occurred and be continuing, all or any part of any Trust Monies held by (or held in account subject to the sole control of) the Collateral Agent shall from time to time be invested or reinvested by the Collateral Agent in any Cash Equivalents pursuant to a written direction by the Company in the form of an Officer's Certificate, which shall specify the Cash Equivalents in which such Trust Monies shall be invested and shall certify that such investments constitute Cash Equivalents; and the Collateral Agent shall sell any such Cash Equivalent only upon receipt of such a written request by the Company specifying the particular Cash Equivalent to be sold. So long as no Event of Default occurs and is continuing, any interest or dividends accrued, earned or paid on such Cash Equivalents (in excess of any accrued interest or dividends paid at the time of purchase) that may be received by the Collateral Agent shall be forthwith paid to the Company. Such Cash Equivalents shall be held by the Collateral Agent as a part of the Collateral, subject to the same provisions hereof as the cash used by it to purchase such Cash Equivalents.

The Trustee and Collateral Agent shall not be liable or responsible for any loss resulting from such investments or sales except only for its own negligent action, its own negligent failure to act or its own willful misconduct in complying with this Section 12.04.

SECTION 12.05. Use of Trust Monies; Retirement of Notes.

At the written direction of the Company, the Collateral Agent shall apply Trust Monies not required to be applied to fund a Net Proceeds Offer and not being held pending application in connection with the acquisition of Replacement Assets pursuant to Section 4.10 from time to time to (x) any other reinvestment permitted under this Indenture or as otherwise required by the Intercreditor Agreement or (y) the payment of the principal of, premium, and interest on, any Notes and any other Notes Priority Lien Obligations by lot or by such other method as the Trustee shall deem to be fair and appropriate (in such manner as complies with applicable Legal Requirements and *provided* that the Trustee shall not select Notes or such other Notes Priority Lien Obligations for purchase which would result in a Holder with a principal amount of Notes or such other Notes Priority Lien Obligations less than the applicable minimum denomination to the extent practicable), on the maturity date or the purchase thereof upon tender or in the open market or at private sale or upon any exchange or in any one or more of such ways, including, without limitation, pursuant to a Change of Control Offer or a Net Proceeds Offer upon receipt by the Trustee and the Collateral Agent of the following:

(a) in the case such moneys are to be applied pursuant to clause (y) above, Board Resolutions of the Company directing the application pursuant to this Section 12.05 of a specified amount of Trust Monies, designating the Notes and other Notes Priority Lien Obligations so to be paid and prescribing the method of purchase, the price or prices to be paid and the maximum aggregate principal amount of Notes and other Notes Priority Lien Obligations to be purchased and any other provisions of this Indenture governing such purchase;

(b) an Officer's Certificate, dated not more than 10 days prior to the date of the relevant application, stating:

(1) that no Event of Default exists unless such Event of Default would be cured thereby; and

(2) that all conditions precedent and covenants herein provided for relating to such application of Trust Monies have been complied with; and

(c) an Opinion of Counsel stating that all conditions precedent herein provided for relating to such application of Trust Monies have been complied with.

Upon compliance with the foregoing provisions of this Section 12.05, the Collateral Agent shall apply Trust Monies as directed and specified by such resolution of the Board of Directors of the Company.

A Board Resolution of the Company expressed to be irrevocable directing the application of Trust Monies under this Section 12.05 to the payment of the principal of, premium and interest on the Notes and any other Notes Priority Lien Obligations shall for all purposes of this Indenture be deemed the equivalent of the deposit of money with the Collateral Agent in trust for such purpose. Such Trust Monies and any cash deposited with the Collateral Agent pursuant to clause (c) of this Section 12.05 for the payment of accrued interest shall not, after compliance with the foregoing provisions of this Section 12.05, be deemed to be part of the Collateral or Trust Monies.

SECTION 12.06. Disposition of Notes Retired.

All Notes received by the Trustee and for whose purchase Trust Monies are applied under Section 12.05, if not otherwise cancelled, shall be promptly delivered to the Trustee for cancellation and destruction in accordance with the Trustee's customary procedures.

ARTICLE THIRTEEN

CONVERSION

SECTION 13.01. Conversion Privilege; Restrictive Legends.

(a) Subject to the provisions of this Article Thirteen and the other provisions of this Indenture, including Section 2.06 hereof, at any time and from time to time, each Holder shall have the right to convert all or any portion of the Notes at such Holder's option into a number of shares of Company Common Stock as described under Section 13.02(a)(1).

(b) The Conversion Rate shall be subject to adjustment in accordance with Sections 13.05 through 13.13.

(c) A Holder may convert a portion of the principal amount of a Note if such portion is $1.00 principal amount or an integral multiple of $1.00 in excess thereof. Provisions of this Indenture that apply to conversion of all of a Note also apply to conversion of a portion of such Note.

(d) Any shares of Company Common Stock that are issued upon conversion of a Note that bears the Private Placement Legend shall also bear the Private Placement Legend. Any shares of Company Common Stock that are issued upon conversion of a Note that does not bear the Private Placement Legend shall also not bear the Private Placement Legend. Upon the transfer, exchange or replacement of shares of Company Common Stock not bearing the Private Placement Legend, the registrar and transfer agent for the Company Common Stock shall deliver Company Common Stock that do not bear the Private Placement Legend. Upon the transfer, exchange or replacement of shares of Company Common Stock bearing the Private Placement Legend, the registrar and transfer agent for the Company Common Stock shall deliver only Company Common Stock that bear the Private Placement Legend unless (i) the requested transfer is after the Resale Restriction Termination Date or (ii) there is delivered to the Company and the registrar and transfer agent for the Company Common Stock an Opinion of Counsel reasonably satisfactory to the Company and addressed to the Company to the effect that neither such legend nor the related restrictions on transfer are required in order to maintain compliance with the provisions of the Securities Act.

(e) Upon receipt of shares of Company Common Stock, a holder of such shares of Company Common Stock shall become a party to the Stockholders Agreement and such shares of Company Common Stock shall be made subject to the Stockholders Agreement, including the transfer restrictions set forth therein, if such holder is not already a party to the Stockholders Agreement and such shares of Company Common Stock would not automatically become subject to the Stockholders Agreement.

(f) Notwithstanding any other provision of this Indenture, the Person in whose name the certificate for any shares of Company Common Stock delivered upon conversion is registered shall be treated as a stockholder of record as of the close of business on the relevant Conversion Date. Upon a conversion of Notes, such Person shall no longer be a Holder of such Notes surrendered for conversion.

SECTION 13.02. Conversion Procedure and Payment upon Conversion.

(a) To convert a Note, a Holder must satisfy the requirements of paragraph 8 of the Notes. In addition, such Holder shall execute and deliver a joinder to the Stockholders Agreement with respect to the shares of Company Common Stock to be received upon conversion, to the extent that such shares of Company Common Stock are not already subject to the Stockholders Agreement absent such joinder. If a Note is tendered for conversion in accordance with this Article Thirteen, then:

(1) the Company shall deliver, through the Conversion Agent, to each converting Holder a number of shares of Company Common Stock equal to (i) the aggregate principal amount of Notes to be converted, *multiplied by* (ii) the Conversion Rate in effect on the relevant Conversion Date *(provided* that the Company shall deliver cash in lieu of fractional shares as described in clause (2) below);

(2) The Company will not issue a fractional share of Company Common Stock upon conversion of a Note. Instead, the Company shall pay cash in lieu of fractional shares based on the Per Share FMV of Company Common Stock on the Conversion Date.

The Company shall deliver the shares of Company Common Stock due upon conversion, together with cash in lieu of fractional shares, to each converting Holder on the third Business Day following the Conversion Date.

(b) Except as provided in the Notes or in this Article Thirteen, no payment or adjustment will be made for accrued interest on a converted Note or for dividends on any Company Common Stock issued on or prior to conversion. If any Holder surrenders a Note for conversion after the close of business on the record date for the payment of an installment of interest and prior to the related interest payment date, then, notwithstanding such conversion, the interest payable with respect to such Note on such interest payment date shall be paid on such interest payment date to the Holder of record of such Note at the close of business on such record date; *provided, however,* that such Note, when surrendered for conversion, must be accompanied by payment to the Conversion Agent on behalf of the Company of an amount equal to the interest payable on such interest payment date on the portion so converted unless either (i) the Company shall have, in respect of a Change of Control, specified a Change of Control Payment Date which is after such record date and on or before such interest payment date; or (ii) such Note is surrendered for conversion after the close of business on the record date immediately preceding the Maturity Date; *provided further, however,* that, if the Company shall have, prior to the Conversion Date with respect to a Note, defaulted in a payment of interest on such Note, then in no event shall the Holder of such Note who surrenders such Note for conversion be required to pay such default interest or the interest that shall have accrued on such default interest pursuant to Section 2.14 or otherwise (it being understood that nothing in this Section 13.02(b) shall affect the Company's obligations under Section 2.12).

(c) If a Holder converts more than one Note at the same time, the number of full shares of Company Common Stock issuable upon such conversion, if any, shall be based on the total principal amount of all Notes converted.

(d) Upon surrender of a Note that is converted in part, the Trustee shall authenticate for the Holder a new Note equal in principal amount to the unconverted portion of the Note surrendered.

(e) If the last day on which a Note may be converted is a not a Business Day in a place where a Conversion Agent is located, the Note may be surrendered to that Conversion Agent on the next succeeding day that is a Business Day.

SECTION 13.03. Taxes on Conversion.

If a Holder converts its Note, the Company shall pay any documentary, stamp or similar issue or transfer tax or duty due on the issue, if any, of shares of Company Common Stock upon the conversion. However, such Holder shall pay any such tax, duty or transfer fee which is due because such shares are issued in a name other than such Holder's name. The Conversion Agent may refuse to deliver a certificate representing the Company Common Stock to be issued in a name other than such Holder's name until the Conversion Agent receives a sum sufficient to pay any tax or duty which will be due because such shares are to be issued in a name other than such Holder's name. Nothing herein shall preclude any tax withholding required by law or regulation.

SECTION 13.04. Company to Provide Company Common Stock.

The Company shall at all times reserve out of its authorized but unissued Company Common Stock enough Company Common Stock to permit the conversion, in accordance herewith, of all of the Notes into Company Common Stock.

All Company Common Stock which may be issued upon conversion of the Notes shall be validly issued, fully paid and non-assessable and shall be free of preemptive or similar rights and free of any lien or adverse claim.

The Company shall comply with all securities laws regulating the offer and delivery of Company Common Stock upon conversion of Notes and shall list such shares on each national securities exchange or automated quotation system on which the Company Common Stock are then listed, if any.

SECTION 13.05. Adjustment of Conversion Rate.

The Conversion Rate shall be subject to adjustment from time to time, without duplication, upon the occurrence of any of the following events:

(a) If the Company issues Company Common Stock as a dividend or distribution on the Company Common Stock, or if the Company effects a share split or share combination, the Conversion Rate shall be adjusted based on the following formula:

$$CR' = CR_0 \times \frac{OS'}{OS_0}$$

where

CR_0 = the Conversion Rate in effect immediately prior to the open of business on the Ex Date for such dividend or distribution, or the open of business on the effective date of such share split or share combination, as the case may be;

CR' = the Conversion Rate in effect immediately after the open of business on the Ex Date for such dividend or distribution, or the open of business on the effective date of such share split or share combination, as the case may be;

OS_0 = the number of shares of Company Common Stock outstanding immediately prior to the open of business on the Ex Date for such dividend or distribution, or the open of business on the effective date of such share split or share combination, as the case may be; and

OS' = the number of shares of Company Common Stock outstanding immediately after such dividend or distribution, or such share split or share combination, as the case may be.

Any adjustment made under this Section 13.05(a) shall become effective immediately after the open of business on the Ex 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 the case may be. If any dividend or distribution of the type described in this Section 13.05(a) is declared but not so paid or made, or any share split or combination of the type described in this Section 13.05(a) is announced but the outstanding shares of Company Common Stock are not split or combined, as the case may be, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors of the Company determines not to pay such dividend or distribution, or not to split or combine the outstanding shares of Company Common Stock, as the case may be, to the Conversion Rate that would then be in effect if such dividend, distribution, share split or share combination had not been declared or announced.

(b) If the Company issues additional shares of Company Common Stock (including through the issuance, either as a dividend or distribution on shares of Company Common Stock or otherwise, of derivative securities with respect to the Company Common Stock that will result in the issuance of additional shares of Company Common Stock upon the exercise or conversion thereof), other than the issuance of Company Common Stock as a dividend or distribution for which an adjustment is required to be made pursuant to paragraph (a) above, without consideration or for a consideration per share less than the Per Share FMV as of the Trading Day immediately preceding (i) in the case of an issuance of rights options or warrants to subscribe for additional shares of Company Common Stock as a dividend or distribution to substantially all holders of Company Common Stock (each, a "Rights Distribution"), the close of business on the Ex Date with respect to such Rights Distribution, or (ii) in the case of all other issuances of additional shares of Company Common Stock or derivative securities, the date of announcement of such issue (the time described in clause (i) or (ii), the "Additional Issuance Time"), the Conversion Rate shall be increased based on the following formula:

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

where

CR_0 = the Conversion Rate in effect immediately prior to the Additional Issuance Time;

CR' = the Conversion Rate in effect immediately after the Additional Issuance Time;

OS_0 = the number of shares of Company Common Stock that are outstanding immediately prior to the Additional Issuance Time;

X = the total number of additional shares of Company Common Stock to be issued (calculated on an as-converted or as-exercised basis, in the case of derivative securities); and

Y = the number of shares of Company Common Stock equal to the aggregate consideration received by the Company for such additional shares of Company Common Stock (and/or derivative securities), *divided by* the Per Share FMV as of the Trading Day immediately preceding the Company's announcement of such issuance.

The Conversion Rate, as adjusted as provided above, shall be further adjusted to equal the quotient of (x) $1.00 *divided* by (y) the consideration per share received by the Company for such issue of such additional shares of Company Common Stock, if such quotient is higher than the Conversion Rate as adjusted as provided above; *provided* that if the relevant issuance of additional shares of Company Common Stock or derivative securities was without consideration, then the Board of Directors of the Company, acting reasonably and in good faith, shall determine the appropriate adjustment to the Conversion Rate, including, without limitation, making an adjustment as provided in paragraph (a) above.

In determining whether an issuance of additional shares of Company Common Stock for a consideration per share less than the Per Share FMV as of the Trading Day immediately preceding the date of announcement of such issue, there shall be taken into account any consideration received by the Company for additional shares of Company Common Stock or derivative securities and any amount payable on exercise or conversion of any such derivative securities, the value of such consideration, if other than cash, to be determined by the Board of Directors of the Company.

Any increase in the Conversion Rate pursuant to this Section 13.05(b) shall take effect as of the Additional Issuance Time.

Any increase made under this Section 13.05(b) with respect a Rights Distribution shall be made successively whenever any additional Rights Distributions occur and shall become effective immediately after the open of business on the Ex Date for such Rights Distribution. The Company shall not make a Rights Distribution in respect of Company Common Stock held in treasury by the Company. To the extent that Company Common Stock is not delivered after the expiration of such rights, options or warrants issued in a Rights Distribution, the Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect had the increase with

respect to the Rights Distribution been made on the basis of delivery of only the number of shares of Company Common Stock actually delivered. If such rights, options or warrants subject to Rights Distribution are not so distributed, the Conversion Rate shall be decreased to be the Conversion Rate that would then be in effect if such Ex Date for such Rights Distribution had not occurred.

(c) If the Company distributes shares of its Capital Stock, evidences of its indebtedness or other of its assets, securities or property, but excluding (i) dividends or distributions covered by Sections 13.05(a) and 13.05(b), (ii) dividends or distributions paid exclusively in cash covered by Section 13.05(d), and (iii) Spin-Offs to which the provisions set forth in the latter portion of this Section 13.05(c) shall apply (any of such shares of Capital Stock, indebtedness or other assets, Notes or property, the "Distributed Property"), to all or substantially all holders of Company Common Stock, then, in each such case the Conversion Rate shall be increased based on the following formula:

$$CR' = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

where

CR_0 = the Conversion Rate in effect immediately prior to the open of business on the Ex Date for such distribution;

CR' = the Conversion Rate in effect immediately after the open of business on the Ex Date for such distribution;

SP_0 = the Per Share FMV of the Company Common Stock as of the Trading Day immediately preceding the Ex Date for such distribution; and

FMV = the fair market value (as determined by the Board of Directors of the Company) of the Distributable Property distributable with respect to each outstanding share of Company Common Stock as of the open of business on the Ex Date for such distribution.

Notwithstanding the foregoing, if "FMV" (as defined above) is equal to or greater than the "SP_0" (as defined above), in lieu of the foregoing increase, each Holder shall receive, for each $1.00 principal amount of Notes, at the same time and upon the same terms as the holders of the Company Common Stock, the amount and kind of Distributed Property that such Holder would have received as if such Holder owned a number of shares of Company Common Stock equal to the Conversion Rate in effect on the Ex Date for such distribution.

Any increase made under the portion of this Section 13.05(c) above shall become effective immediately after the open of business on the Ex Date for such distribution. If such distribution is not so paid or made, the Conversion Rate shall be decreased to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

With respect to an adjustment pursuant to this Section 13.05(c) where there has been a payment of a dividend or other distribution on the Company Common Stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit 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 U.S. national securities exchange (a "Spin-Off"), the Conversion Rate in effect immediately before 5:00 p.m., New York City time, on the 10th Trading Day immediately following, and including, the Ex Date of the Spin-Off shall be increased based on the following formula:

$$CR' = CR_0 \times \frac{FMV_0 + MP_0}{MP_0}$$

CR_0 = the Conversion Rate in effect immediately prior to the open of business on the Ex Date for the Spin-Off;

CR' = the Conversion Rate in effect immediately after the open of business on the Ex Date for the Spin-Off;

FMV_0 = the Per Share FMV of the Capital Stock or similar equity interest distributed to holders of the Company Common Stock applicable to one share of Company Common Stock as of the 10th Trading Day immediately following, and excluding, the Ex Date for the Spin-Off; and

MP_0 = the Per Share FMV of the Company Common Stock as of the 10th Trading Day immediately following, and excluding, the Ex Date for the Spin-Off.

The adjustment to the Conversion Rate under the preceding paragraph shall be determined on the 10th Trading Day immediately following, and excluding, the Ex Date for the Spin-Off but shall be given retroactive effect as of the open of business on the Ex Date for the Spin-Off; *provided* that, for purposes of determining the Conversion Rate, in respect of any conversion during the 10 Trading Days immediately following, and excluding, the effective date of any Spin-Off, references in the portion of this Section 13.05(c) related to Spin-Offs to 10 consecutive Trading Days shall be deemed replaced with such lesser number of consecutive Trading Days as have elapsed between the effective date of such Spin-Off and the Conversion Date for such conversion.

Rights, options or warrants distributed by the Company to all holders of its shares of Company Common Stock entitling the holders thereof to subscribe for or purchase shares of the Company's Capital Stock, including Company Common Stock (either initially or under certain circumstances), which rights, options or warrants, until the occurrence of a specified event or events ("Trigger Event"): (i) are deemed to be transferred with such Company Common Stock; (ii) are not exercisable; and (iii) are also issued in respect of future issuances of the shares Company Common Stock, shall be deemed not to have been distributed for purposes of this Section 13.05(c) (and no adjustment to the Conversion Rate under this Section 13.05(c) will be required) until the occurrence of the earliest Trigger Event, whereupon such rights, options or warrants shall be deemed to have been distributed and an appropriate adjustment (if any is

required) to the Conversion Rate shall be made under this Section 13.05(c). If any such right, option or warrant, including any such existing rights, options or warrants distributed prior to the date of this Indenture, are subject to events, upon the occurrence of which such rights, options or warrants become exercisable to purchase different Notes, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Ex Date with respect to new rights, options or warrants with such rights (and a termination or expiration of the existing rights, options or warrants without exercise by any of the holders thereof. In addition, in the event of any distribution (or deemed distribution) of rights, options or warrants, or any Trigger Event or other event (of the type described in the preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under this Section 13.05(c) was made, (1) in the case of any such rights, options or warrants that shall all have been redeemed or repurchased without exercise by any holders thereof, the Conversion Rate shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or repurchase price received by a holder or holders of shares of Company Common Stock with respect to such rights, options or warrants (assuming such holder had retained such rights, options or warrants), made to all holders of shares of Company Common Stock as of the date of such redemption or repurchase, and (2) in the case of such rights, options or warrants that shall have expired or been terminated without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such rights, options or warrants had not been issued.

For purposes of Section 13.05(a), Section 13.05(b) and this Section 13.05(c), if any dividend or distribution to which this Section 13.05(c) is applicable also includes one or both of:

(i) a dividend or distribution of Company Common Stock to which Section 13.05(a) is applicable (the "Clause A Distribution"); or

(ii) a dividend or distribution of rights, options or warrants to which Section 13.05(b) is applicable (the "Clause B Distribution"),

then (1) such dividend or distribution, other than the Clause A Distribution and the Clause B Distribution, shall be deemed to be a dividend or distribution to which this Section 13.05(c) is applicable (the "Clause C Distribution") and any Conversion Rate adjustment required by this Section 13.05(c) with respect to such Clause C Distribution shall then be made and (2) the Clause A Distribution and Clause B Distribution shall be deemed to immediately follow the Clause C Distribution and any Conversion Rate adjustment required by Section 13.05(a) and Section 13.05(b) with respect thereto shall then be made, except that, if determined by the Board of Directors of the Company (X) the Ex Date of the Clause A Distribution and the Clause B Distribution shall be deemed to be the Ex Date of the Clause C Distribution and (Y) any Company Common Stock included in the Clause A Distribution or Clause B Distribution shall be deemed not to be "outstanding immediately prior to the open of business on the Ex Date for such dividend or distribution, or the open of business on the effective date of such share split or share combination, as the case may be" within the meaning of Section 13.05(a) or "outstanding immediately prior to the open of business on the Ex Date for such distribution" within the meaning of Section 13.05(b).

In no event shall the Conversion Rate be decreased pursuant to this Section 13.05(c).

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

$$CR' = CR_0 \times \frac{SP_0}{SP_0 - C}$$

where

CR_0 = the Conversion Rate in effect immediately prior to the open of business on the Ex Date for such dividend or distribution;

CR' = the Conversion Rate in effect immediately after the open of business on the Ex Date for such dividend or distribution;

SP_0 = the Per Share FMV of the Company Common Stock as of the Ex Date for such dividend or distribution; and

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

Such increase shall become effective immediately after the open of business on the Ex Date for such dividend or distribution. If such dividend or distribution is not so paid, the Conversion Rate shall be decreased to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

Notwithstanding the foregoing, if "C" (as defined above) is equal to or greater than "SP_0" (as defined above), in lieu of the foregoing increase, each Holder of a Note shall receive, for each $1.00 principal amount of Notes, at the same time and upon the same terms as holders of the Company Common Stock, the amount of cash such Holder would have received as if such Holder owned a number of Company Common Stock equal to the Conversion Rate on the Ex Date for such dividend or distribution.

In no event shall the Conversion Rate be decreased pursuant to this Section 13.05(d).

(e) If the Company or any of its Subsidiaries makes a payment in respect of a tender offer or exchange offer for the Company Common Stock, if the cash and value of any other consideration included in the payment per share of Company Common Stock exceeds the Per Share FMV of the Company Common Stock as of the 10th Trading Day after the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer (such 10th Trading Day, the "Tender Determination Date"), the Conversion Rate shall be increased based on the following formula:

$$CR' = CR_0 \times \frac{AC + (SP' \times OS')}{OS_0 \times SP'}$$

where

CR_0 = the Conversion Rate in effect immediately prior to the open of business on the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer;

CR' = the Conversion Rate in effect immediately after to the open of business on the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer;

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

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

OS' = the number of shares of Company Common Stock outstanding immediately after the date such tender or exchange offer expires (after giving effect to such tender offer or exchange offer); and

SP'= the Per Share FMV of the Company Common Stock as of the Tender Determination Date.

The increase to the Conversion Rate under this Section 13.05(e) shall be determined on the Tender Determination Date but shall be given retroactive effect as of the open of business on the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer; *provided* that, for purposes of determining the Conversion Rate, in respect of any conversion during the 10 Trading Days immediately following, but excluding, the date that any such tender or exchange offer expires, references in this Section 13.05(e) or in the definition of Per Share FMV to 10 Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed between the date that such tender or exchange offer expires and the Conversion Date for such conversion. In no event shall the Conversion Rate be decreased pursuant to this Section 13.05(e).

(f) Notwithstanding this Section 13.05 or any other provision of this Indenture or the Notes, if a Conversion Rate adjustment becomes effective on any Ex Date, and a Holder that has converted its Notes on or after such Ex Date and on or prior to the related record date would be treated as the record holder of Company Common Stock as of the related Conversion Date as described under Section 13.02 based on an adjusted Conversion Rate for such Ex Date, then, notwithstanding the Conversion Rate adjustment provisions in this Section 13.05, the Conversion Rate adjustment relating to such Ex Date (other than a Conversion Rate adjustment made pursuant to the second paragraph of Section 13.05(b)) shall not be made for such converting

Holder. Instead, such Holder shall be treated as if such Holder were the record owner of the Company Common Stock on an unadjusted basis and participate, following conversion, as a holder of Company Common Stock, in the related dividend, distribution or other event giving rise to such adjustment.

(g) In addition to the foregoing adjustments in subsections (a), (b), (c), (d) and (e) above, the Company may, from time to time and to the extent permitted by law and applicable listing requirements (if any), increase the Conversion Rate by any amount for a period of at least 20 Business Days or any longer period as may be permitted or required by law if the Board of Directors of the Company has made a determination, which determination shall be conclusive, that such increase would be in the best interests of the Company. Such Conversion Rate increase shall be irrevocable during such period. The Company shall give notice to the Trustee and cause notice of such increase to be delivered to each Holder, in accordance with Section 14.01, at least 15 days prior to the date on which such increase commences.

(h) Any such increases in the Conversion Rate by the Board of Directors of the Company shall not, without the approval of Company's shareholders (if required by the rules of the any national or regional exchange or market on which Company Common Stock are then listed or quoted), result in the sale or issuance of 20% (or the highest percentage permitted under applicable listing rules in the case of such other national or regional exchange or market on which Company Common Stock are then listed or quoted) or more of Company Common Stock, or 20% (or the highest percentage permitted under applicable listing rules in the case of such other national or regional exchange or market on which Company Common Stock is then listed or quoted) or more of the voting power, outstanding on the date of this Indenture.

(i) All calculations under this Article Thirteen shall be made to the nearest cent or to the nearest one-ten thousandth of a share, as the case may be.

SECTION 13.06. No Adjustment.

Notwithstanding anything herein or in the Notes to the contrary, in no event shall the Conversion Rate be adjusted:

(a) upon the issuance of any shares of Company Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Company's securities;

(b) upon the issuance of any shares of Company Common Stock or restricted stock, restricted stock units, non-qualified stock options, incentive stock options or any other options or rights or other derivatives (including stock appreciation rights) to purchase Company Common Stock pursuant to any present or future employee, director or consultant benefit plan or program of, or assumed by, the Company or any of the Subsidiaries;

(c) upon the issuance of any shares of Company Common Stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security outstanding as of the Issue Date and not described in clause (b) above;

(d) for accrued and unpaid interest and premium, if any;

(e) upon the repurchase of any shares of Company Common Stock pursuant to an open-market stock repurchase program or other buy-back transaction that is not a tender offer or exchange offer of the nature described in Section 13.05;

(f) for any issuance of PIK Notes, any adjustment of the Conversion Rate or the conversion of any Notes as provided in this Indenture; or

(g) for a change in the par value of Company Common Stock.

No adjustment in the Conversion Rate pursuant to Section 13.05 shall be required until cumulative adjustments amount to 1% or more of the Conversion Rate as last adjusted (or, if never adjusted, the initial Conversion Rate); *provided, however,* that any adjustments to the Conversion Rate which by reason of this paragraph are not required to be made shall be carried forward and taken into account in any subsequent adjustment to the Conversion Rate; *provided further*, that at the end of each fiscal year of the Company, beginning with the fiscal year ending on December 31, 2020, any adjustments to the Conversion Rate that have been, and at such time remain, deferred pursuant to this Section 13.06 shall be given effect, and such adjustments, if any, shall no longer be carried forward and taken into account in any subsequent adjustment to the Conversion Rate; *provided further*, that if a Change of Control occurs, then, any adjustments to the Conversion Rate that have been, and at such time remain, deferred pursuant to this Section 13.06 shall be given effect, and such adjustments, if any, shall no longer be carried forward and taken into account in any subsequent adjustment to the Conversion Rate.

If any rights, options or warrants issued by the Company and requiring an adjustment to the Conversion Rate in accordance with Section 13.05 are only exercisable upon the occurrence of certain triggering events, then the Conversion Rate will not be adjusted as provided in Section 13.05 until the earliest of such triggering event occurs. Upon the expiration or termination of any such rights, options or warrants without the exercise of such rights, options or warrants, the Conversion Rate then in effect shall be adjusted immediately to the Conversion Rate which would have been in effect at the time of such expiration or termination had such rights, options or warrants, to the extent outstanding immediately prior to such expiration or termination, never been issued.

If any dividend or distribution is declared and the Conversion Rate is adjusted pursuant to Section 13.05 on account of such dividend or distribution, but such dividend or distribution is thereafter not paid or made, the Conversion Rate shall again be adjusted to the Conversion Rate which would then be in effect had such dividend or distribution not been declared.

No adjustment to the Conversion Rate need be made pursuant to Section 13.05 for a transaction if Holders are to participate in the transaction without conversion on a basis and with notice that the Board of Directors of the Company determines in good faith to be fair and appropriate in light of the basis and notice on which holders of Company Common Stock (or all Holders of Notes) participate in the transaction (which determination shall be described in a Board Resolution).

SECTION 13.07. Other Adjustments.

In the event that, as a result of an adjustment made pursuant to this Article Thirteen, the Holder of any Note thereafter surrendered for conversion shall become entitled to receive any Capital Stock other than Company Common Stock, thereafter the Conversion Rate of such other shares of Capital Stock so receivable upon conversion of any Note shall be subject to adjustment from time to time in a manner and on terms as nearly equivalent as practicable to the provisions with respect to Company Common Stock contained in this Article Thirteen.

SECTION 13.08. Adjustments for Tax Purposes.

Except as prohibited by law or applicable rules, the Company may make such increases in the Conversion Rate, in addition to those required by Section 13.05 hereof, as it determines to be advisable in order that any stock dividend, subdivision of stock, distribution of rights to purchase stock or securities or distribution of securities convertible into or exchangeable for stock made by the Company or to its shareholders will not be taxable to the recipients thereof.

SECTION 13.09. Notice of Adjustment.

Whenever the Conversion Rate is adjusted, the Company shall promptly deliver to Holders, in accordance with Section 14.01, a notice of the adjustment and file with the Trustee an Officer's Certificate briefly stating the facts requiring the adjustment and the manner of computing it. The certificate shall be conclusive evidence of the correctness of such adjustment.

SECTION 13.10. Notice of Certain Transactions.

In the event that:

(a) the Company or any of its Subsidiaries takes any action that would require an adjustment in the Conversion Rate,

(b) the Company or any of its Subsidiaries takes any action that would require a supplemental indenture pursuant to Section 13.11, or

(c) there is a dissolution or liquidation of the Company,

the Company shall as promptly as possible provide to Holders and the Trustee, in accordance with Section 14.01, a written notice stating the proposed record, effective or expiration date, as the case may be, of any transaction referred to in clause (a), (b) or (c) of this Section 13.10. In any event, the Company shall provide such notice at least 10 days before such date; however, failure to provide such notice or any defect therein shall not affect the validity of any transaction referred to in clause (a), (b) or (c) of this Section 13.10. If the Company becomes aware of any other event that requires an adjustment to the Conversion Rate, the Company shall provide such notification of the relevant record, effective or expiration date to Holders and the Trustee as promptly as possible.

SECTION 13.11. Effect of Reclassifications, Consolidations, Mergers, Binding Share Exchanges or Sales on Conversion Privilege.

If any of the following shall occur: (i) any reclassification or change in the Company Common Stock issuable upon conversion of Notes (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination of Company Common Stock), (ii) any consolidation, amalgamation, statutory arrangement, merger or binding share exchange involving a third party in which the Company is not the surviving party or (iii) any sale, transfer, lease, conveyance or other disposition of all or substantially all of the Company's property or assets, in each case pursuant to which the Company Common Stock would be converted into or exchanged for, or would constitute solely the right to receive, cash, securities or other property, then the Company or such successor or purchasing Person, as the case may be, shall, as a condition precedent to such reclassification, change, consolidation, amalgamation, statutory arrangement, merger, binding share exchange, sale, transfer, lease, conveyance or disposition, execute and deliver to the Trustee a supplemental indenture in form reasonably satisfactory to the Trustee providing that, at and after the effective time of such reclassification, change, consolidation, amalgamation, statutory arrangement, merger, binding share exchange, sale, transfer, lease, conveyance or disposition, the Holder of each Note then outstanding shall have the right to convert such Note into the kind and amount of cash, securities or other property (collectively, "Reference Property") receivable upon such reclassification, change, consolidation, amalgamation, statutory arrangement, merger, binding share exchange, sale, transfer, lease, conveyance or disposition by a holder of a number of shares of Company Common Stock equal to the product of the principal amount of such Note and the Conversion Rate in effect immediately prior to such reclassification, change, consolidation, merger, binding share exchange, sale, transfer, lease, conveyance or disposition (assuming, if holders of shares of Company Common Stock shall have the opportunity to elect the form of consideration to be received pursuant to such reclassification, change, consolidation, merger, binding share exchange, sale, transfer, lease, conveyance or disposition, that the Collective Election shall have been made with respect to such election). If the Reference Property consists solely of cash, such consideration shall be paid by the Company no later than the third Trading Day after the relevant Conversion Date. If holders of Company Common Stock shall have the opportunity to elect the form of consideration to be received pursuant to such reclassification, change, consolidation, amalgamation, statutory arrangement, merger, binding share exchange, sale, transfer, lease, conveyance or disposition, then the Company shall make adequate provision to give Holders, treated as a single class, a reasonable opportunity to elect (the "Collective Election") the form of such consideration for purposes of determining the composition of the Reference Property referred to in the immediately preceding sentence, and once such election is made, such election shall apply to all Holders after the effective time of such reclassification, change, consolidation, amalgamation, statutory arrangement, merger, binding share exchange, sale, transfer, lease, conveyance or disposition.

Notwithstanding any other provision of this Indenture, the Company shall not consent to, enter into an agreement with respect to, consummate, permit to occur or otherwise agree to or allow the occurrence of any of the events specified in clauses (ii) or (iii) above (each, a "Merger Event") without the consent of the Holders of at least 66 2/3% in aggregate principal amount of the outstanding Notes.

The Company shall give notice to the Holders, in accordance with Section 14.01, at least 30 calendar days prior to the effective date of any transaction set forth in this Section 13.11, stating the consideration into which the Notes will be convertible after the effective date of such transaction; *provided* that if the Company has no knowledge of such transaction at least 30 calendar days prior to the effective date of such transaction, the Company shall give such notice to the Holders as soon as reasonably practicable and in no event later than two Business Days from the day on which the Company acquires knowledge of such transaction. After such notice, the Company or the successor or acquirer, as the case may be, may not change the consideration to be delivered upon conversion of the Note except in accordance with any other provision of this Indenture.

The supplemental indenture referred to in the first sentence of this paragraph shall provide for adjustments of the Conversion Rate which shall be as nearly equivalent as may be practicable to the adjustments of the Conversion Rate provided for in this Article Thirteen. The foregoing, however, shall not in any way affect the right a Holder may otherwise have, pursuant to Section 13.13, to receive rights or warrants upon conversion of a Note. If, in the case of any such consolidation, amalgamation, statutory arrangement, merger, binding share exchange, sale, transfer, lease, conveyance or disposition, the stock or other Notes and property (including cash) receivable thereupon by a holder of shares of Company Common Stock includes shares of stock or other securities and property of a Person other than the successor or purchasing Person, as the case may be, in such consolidation, amalgamation, statutory arrangement, merger, binding share exchange, sale, transfer, lease, conveyance or disposition, then such supplemental indenture shall also be executed by such other Person and shall contain such additional provisions to protect the interests of the Holders as the Board of Directors of the Company in good faith shall reasonably determine necessary by reason of the foregoing (which determination shall be described in a Board Resolution). The provisions of this Section 13.11 shall similarly apply to successive consolidations, amalgamations, statutory arrangements, mergers, binding share exchanges, sales, transfers, leases, conveyances or dispositions.

In the event the Company shall execute a supplemental indenture pursuant to this Section 13.11, the Company shall promptly file with the Trustee an Officer's Certificate briefly stating the reasons therefor, 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 such reclassification, change, consolidation, amalgamation, statutory arrangement, merger, binding share exchange, sale, transfer, lease, conveyance or disposition and any adjustment to be made with respect thereto.

The Company shall not become a party to any such reclassification, change, consolidation, amalgamation, statutory arrangement, merger, binding share exchange, sale, transfer, lease, conveyance or disposition unless the terms thereof are consistent with this Section 13.11.

SECTION 13.12. Trustee and Conversion Agent's Disclaimer.

Neither the Trustee nor the Conversion Agent has any duty to determine when an adjustment under this Article Thirteen should be made, how it should be made or what such adjustment should be, but may accept as conclusive evidence of the correctness of any such

adjustment, and shall be protected in relying upon, the Officer's Certificate with respect thereto which the Company is obligated to file with the Trustee pursuant to Section 13.09 hereof. Neither the Trustee nor the Conversion Agent makes any representation as to the validity or value of any securities or assets issued upon conversion of Notes, and neither the Trustee nor the Conversion Agent shall be responsible for the failure by the Company to comply with any provisions of this Article Thirteen.

The Trustee shall not be under any responsibility to determine the correctness of any provisions contained in any supplemental indenture executed pursuant to Section 13.11, but may accept as conclusive evidence of the correctness thereof, and shall be protected in relying upon, the Officer's Certificate with respect thereto which the Company is obligated to file with the Trustee pursuant to Section 13.11.

SECTION 13.13. Rights Distributions Pursuant to Shareholders' Rights Plans.

Upon conversion of any Note or a portion thereof, the Company shall make provision for the Holder thereof, to the extent such Holder is to receive Company Common Stock upon such conversion, to receive, in addition to, and concurrently with the delivery of, the consideration otherwise payable hereunder upon such conversion, the rights described in any shareholders' rights plan the Company may have in effect at such time, unless such rights have separated from the Company Common Stock at the time of such conversion, in which case the Conversion Rate shall be adjusted upon such separation in accordance with Section 13.05(c).

SECTION 13.14. Mandatory Conversion.

The Notes are not subject to any mandatory conversion.

ARTICLE FOURTEEN

MISCELLANEOUS

SECTION 14.01. Notices.

Any notices or other communications required or permitted hereunder shall be in writing, and shall be sufficiently given if made by hand delivery, by email, by nationally recognized overnight courier service, by telecopier or registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

if to the Company or any Guarantor:

[Reorganized Holdco]
[Address]
Attention: [●]
Telephone: [●]
Facsimile: [●]
Email: [●]

with a copy to:

if to the Trustee:

Wilmington Savings Fund Society, FSB
Mailcode: [●]
[Address]
Attention: [●]
Telephone: [●]
Facsimile: [●]

Each of the Company and the Trustee by written notice to each other such Person may designate additional or different addresses for notices to such Person. Any notice or communication to the Company and the Trustee, shall be deemed to have been given or made as of the date so delivered if personally delivered; when replied to; when receipt is acknowledged, if telecopied or emailed; five (5) calendar days after mailing if sent by registered or certified mail, postage prepaid (except that a notice of change of address shall not be deemed to have been given until actually received by the addressee); and next Business Day if by nationally recognized overnight courier service.

Any notice or communication mailed to a Holder shall be mailed to him by first class mail or other equivalent means at his address as it appears on the registration books of the Registrar and shall be sufficiently given to him if so mailed within the time prescribed.

Failure to provide 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 provided in the manner provided above, it is duly given, whether or not the addressee receives it.

Notwithstanding anything to the contrary contained herein, as long as the Notes are in the form of Global Notes, notice to the Holders may be made electronically in accordance with procedures of the Depository.

SECTION 14.02. 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 at the request of the Trustee:

(1) an Officer's Certificate, in form and substance satisfactory to the Trustee, stating that, in the opinion of the signers, all conditions precedent to be performed or effected by the Company, if any, provided for in this Indenture relating to the proposed action have been complied with; and

(2) an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

SECTION 14.03. Statements Required in Certificate or Opinion.

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture, other than the Officer's Certificate required by Section 4.05, shall 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 has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with or satisfied; and

(4) a statement as to whether or not, in the opinion of each such Person, such condition or covenant has been complied with.

SECTION 14.04. Rules by Paying Agent or Registrar.

The Paying Agent or Registrar may make reasonable rules and set reasonable requirements for their functions.

SECTION 14.05. Legal Holidays.

If a payment date is not a Business Day, payment may be made on the next succeeding day that is a Business Day.

SECTION 14.06. Governing Law.

This Indenture, the Notes and the Guarantees, if any, will be governed by and construed in accordance with the laws of the State of New York, but without giving effect to applicable principals of conflicts of law to the extent that the application of the law of another jurisdiction would be required thereby.

SECTION 14.07. No Adverse Interpretation of Other Agreements.

This Indenture may not be used to interpret another indenture, loan or debt agreement of any of the Company or any of its Subsidiaries. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

SECTION 14.08. No Recourse Against Others.

No director, officer, employee, incorporator, stockholder, member or manager of the Company, any Guarantor or any Subsidiary thereof shall have any liability for any obligations of the Company under this Indenture, the Notes or the Security Documents, or of any Guarantor

under its Guarantee or this Indenture, 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. Such waiver and release are part of the consideration for issuance of the Notes.

SECTION 14.09. Successors.

All agreements of the Company and the Guarantors, if any, in this Indenture, the Notes and the Guarantees shall bind their respective successors. All agreements of the Trustee in this Indenture shall bind its successor.

SECTION 14.10. Duplicate Originals.

All parties may sign any number of copies of this Indenture. Each signed copy or counterpart shall be an original, but all of them together shall represent the same agreement.

SECTION 14.11. Severability.

To the extent permitted by applicable law, in case any one or more of the provisions in this Indenture, in the Notes or in the Guarantees shall be held invalid, illegal or unenforceable, in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions shall not in any way be affected or impaired thereby, it being intended that all of the provisions hereof shall be enforceable to the full extent permitted by law.

SECTION 14.12. Intercreditor Agreement.

Notwithstanding anything herein to the contrary, the Liens and security interests granted in favor of the Trustee pursuant to this Indenture and the exercise of any right or remedy by the Trustee hereunder and under the various Security Documents are subject to the provisions of the Intercreditor Agreement. In the event of any conflict between the terms of the Intercreditor Agreement and this Indenture, the terms of the Intercreditor Agreement shall govern and control.

SIGNATURES

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

[REORGANIZED HOLDCO]
as issuer

By: _____
Name:
Title:

WILMINGTON SAVINGS FUND SOCIETY, FSB,
as Trustee and Collateral Agent

By: _____
Name:
Title:

EXHIBIT A

[Insert the Global Note Legend, if applicable pursuant to the provisions of this Indenture]

[Insert the Private Placement Legend, if applicable pursuant to the provisions of this Indenture]

[REORGANIZED HOLDCO]
8.0%/10.0% Senior Secured Convertible PIK Toggle Notes due 2026

CUSIP No. [ ][b]
ISIN No. [ ][c]
No. [ ] $[ ]

[REORGANIZED HOLDCO], a Delaware corporation (the "Company"), for value received, promises to pay to [Cede & Co.][ ] or its registered assigns, the principal sum of [ ] [or such other amount as is provided in a schedule attached hereto][d] on the Maturity Date.

Interest Payment Dates: [●] 1 and [●] 1, commencing [●] 1, 2026.

Record Dates: [●] 15 and [●] 15.

Maturity Date: [●], 2026.

Reference is made to the further provisions of this Note contained herein, which will for all purposes have the same effect as if set forth at this place.

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[b] 144A CUSIP: [●]
Reg S CUSIP: [●]
AI CUSIP: [●]

[c] 144A ISIN: [●]
Reg S ISIN: [●]
AI ISIN: [●]

[d] This language should be included only if the Note is issued in global form.

IN WITNESS WHEREOF, the Company has caused this Note to be signed manually or by facsimile by its duly authorized officer.

Dated: [●], 2020

[REORGANIZED HOLDCO]
as issuer

By: _____
Name:
Title:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is one of the 8.0%/10.0% Senior Secured Convertible PIK Toggle Notes due 2026 described in the within-mentioned Indenture.

Dated: [●], 2020

Wilmington Savings Fund Society, FSB,
as Trustee

By: _____
Authorized Signatory

(Reverse of Note)

8.0%/10.0% Senior Secured Convertible PIK Toggle Notes due 2026

Capitalized terms used herein shall have the meanings assigned to them in the Indenture referred to below unless otherwise indicated.

SECTION 1. Interest. [Reorganized Holdco], a Delaware corporation (the "Company") promises to pay interest on the principal amount of this Note as Cash Interest or PIK Interest, at the Company's election pursuant to a PIK Election, from [●], 2020 until maturity. Cash Interest (as defined in the Indenture) on this Note will accrue at the rate of 8.00% per annum and be payable in cash. PIK Interest (as defined in the Indenture) on this Note will accrue at the rate of 10.00% per annum and shall be payable either (x) by increasing the principal amount of the outstanding Note by an amount equal to the amount of PIK Interest for the applicable interest period (rounded up to the nearest $1.00) or (y) by issuing PIK Notes in certificated form in an aggregate principal amount equal to the amount of PIK Interest for the period (rounded up to the nearest $1.00), and the Trustee will, at the request of the Company, authenticate and deliver such PIK Notes in certificated form for original issuance to the Holders on the relevant record date, as shown by the records of the register of Holders. Following an increase in the principal amount of the outstanding global Notes as a result of a PIK Payment, the global Notes will bear interest on such increased principal amount from and after the date of such PIK Payment. All Notes issued pursuant to a PIK Payment will mature on the Maturity Date and will be governed by, and subject to the terms, provisions and conditions of, the Indenture and shall have the same rights and benefits as Notes issued on the Issue Date. Any certificated PIK Notes will be issued with the description PIK on the face of such PIK Note.

The Company will pay interest semi-annually on [month] 1 and [month] 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"), commencing [month] 1, 2020. 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 and including the date of original issuance. The Company shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal, from time to time on demand to the extent lawful, at the interest rate applicable to the Notes; it shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest (without regard to any applicable grace periods), from time to time on demand to the extent lawful, at the interest rate applicable to the Notes. Interest will be computed on the basis of a 360-day year of twelve 30-day months.

SECTION 2. Method of Payment.

For any interest payment period, the Company shall pay interest on this Note by paying Cash Interest or PIK Interest at the Company's election pursuant to a PIK Election.

The Company will pay interest on the Notes to the Persons who are registered Holders of Notes at the close of business on the [month] 15 or [month] 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 default interest. The Notes will be issued in denominations of $1.00 and integral multiples of $1.00 in excess thereof. Principal, premium, if any, and interest on the Notes will be payable at the office or agency of the Company maintained for such purpose. Until otherwise designated by the Company, such office or agency will be the Trustee at its Corporate Trust Office.

SECTION 3. Paying Agent and Registrar. Initially, Wilmington Savings Fund Society, FSB, the Trustee under the Indenture, will act as Paying Agent and Registrar. The Company may change any Paying Agent or Registrar without notice to any Holder. Except as provided in the Indenture, the Company or any of their Subsidiaries may act in any such capacity.

SECTION 4. Indenture. The Company issued the Notes under an Indenture dated as of [●], 2020 ("Indenture") by and between the Company and the Trustee and Collateral Agent. 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 the terms and provisions of this Note are inconsistent with the terms and provisions of the Indenture, the terms and provisions of the Indenture shall govern and be controlling. The Indenture is not required to be qualified under the Trust Indenture Act of 1939, so the provisions of such Act do not apply to the Indenture.

SECTION 5. No Redemption. The Notes may not be redeemed by the Company in whole or in part at any time.

SECTION 6. No Mandatory Redemption. For the avoidance of doubt, an offer to purchase pursuant to Section 7 hereof shall not be deemed a redemption. The Company shall not be required to make mandatory redemption payments with respect to the Notes.

SECTION 7. Repurchase at Option of Holder. Upon the occurrence of a Change of Control, and subject to certain conditions set forth in the Indenture, each Holder shall have the right to require that the Company to purchase all or a portion of such Holder's Notes pursuant to a Change of Control Offer at a purchase price equal to 101% of the principal amount thereof, plus accrued and unpaid interest, if any, thereon to but not including the date of purchase.

The Company is, subject to certain conditions and exceptions, obligated to make an offer to all Holders to purchase that amount of Notes equal to the Net Proceeds Offer Amount at a price equal to 100% of their principal amount, plus accrued and unpaid interest thereon, if any, to but not including the date of purchase, with certain Net Cash Proceeds, in each case of certain sales or other dispositions of assets in accordance with the Indenture.

SECTION 8. Conversion. Subject to the provisions of Article Thirteen of the Indenture, the Notes shall be convertible, in integral multiples of $1.00 principal amount, into shares of Company Common Stock at any time until the close of business on the second Business Day immediately preceding [●], 2026.

The initial Conversion Rate is [●] shares of Company Common Stock per $1.00 principal amount of Notes, subject to adjustment pursuant to Section 13.05 of the Indenture. Outstanding Notes are subject to mandatory conversion pursuant to Section 13.14 of the Indenture.

To convert a Note, a Holder must (1) complete and sign the Conversion Notice, with appropriate signature guarantee, on the back of the Note, (2) surrender the Note to a Conversion Agent, (3) furnish appropriate endorsements and transfer documents if required by the Registrar or Conversion Agent, (4) pay the amount of interest, if any, the Holder must pay in accordance with the Indenture and (5) pay any tax or duty if required pursuant to the Indenture. A Holder may convert a portion of a Security if the portion is $1.00 principal amount or an integral multiple of $1.00 principal amount.

SECTION 9. Denominations, Transfer, Exchange. The Notes are in registered form without coupons in denominations of $1.00 and integral multiples of $1.00 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 and the Registrar are not required to register the transfer of or exchange of any Note beginning at the opening of business on any Record Date and ending on the close of business on the related Interest Payment Date.

SECTION 10. Persons Deemed Owners. The registered Holder of a Note may be treated as its owner for all purposes.

SECTION 11. Amendment, Supplement and Waiver. The Indenture, the Security Documents, the Notes and the Guarantees may be amended, supplemented or waived as provided in the Indenture.

SECTION 12. Defaults and Remedies. If an Event of Default occurs and is continuing, the Trustee or the Holders of at least 25% in principal amount of the then outstanding Notes generally may declare all the Notes to be due and payable immediately. Notwithstanding the foregoing, in the case of an Event of Default arising from certain events of bankruptcy or insolvency as set forth in the Indenture, with respect to the Company, all outstanding Notes will become due and payable without further action or notice. Holders of the Notes may not enforce the Indenture or the Notes except as provided in the Indenture. Subject to certain limitations, Holders of a majority in principal amount of the then outstanding Notes may direct the Trustee in its exercise of any trust or power. Subject to certain limitations, the Trustee may withhold from Holders of the Notes notice of any continuing Default if it determines that withholding notice is in their interest. Subject to certain limitations, the Holders of a majority in aggregate principal amount of the Notes then outstanding by 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 under the Indenture except a continuing Default in the payment of interest on, or the principal of, or the premium on, the Notes.

SECTION 13. Restrictive Covenants. The Indenture contains certain covenants that, among other things, limit the ability of the Company and its Restricted Subsidiaries to make restricted payments, to incur indebtedness, to create liens, to sell assets, to permit restrictions on dividends and other payments by Restricted Subsidiaries of the Company, to consolidate, merge or sell all or substantially all of its assets or to engage in transactions with affiliates. The limitations are subject to a number of important qualifications and exceptions. The Company

must annually report to the Trustee on compliance with such limitations and other provisions in the Indenture.

SECTION 14. No Recourse Against Others. No director, officer, employee, incorporator, stockholder, member or manager of the Company, any Guarantor or any Subsidiary thereof shall have any liability for any obligations of the Company under the Indenture, the Notes or the Security Documents, or of any Guarantor under its Guarantee or the Indenture, 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 15. Guarantees. This Note may be entitled to the benefits of certain Guarantees, if any, made for the benefit of the Holders. Reference is hereby made to the Indenture for a statement of the respective rights, limitations of rights, duties and obligations thereunder of the Guarantors, if any, the Trustee and the Holders.

SECTION 16. Trustee Dealings with the Company. Subject to certain terms, the Trustee under the Indenture, in its individual or any other capacity, may become the owner or pledgee of Notes and may otherwise deal with the Company, its Subsidiaries or their respective Affiliates as if it were not the Trustee.

SECTION 17. Authentication. This Note shall not be valid until authenticated by the manual signature of the Trustee or an authenticating agent.

SECTION 18. Abbreviations. Customary abbreviations may be used in the name of a Holder or an assignee, such as: TEN COM (= tenants in common), TEN ENT (= tenants by the entirety), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= Custodian), and U/G/M/A (= Uniform Gifts to Minors Act).

SECTION 19. CUSIP and ISIN Numbers. Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Company has caused CUSIP and ISIN numbers to be printed on the Notes and the Trustee may use CUSIP or ISIN numbers in notices 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 and reliance may be placed only on the other identification numbers placed thereon.

SECTION 20. Governing Law. **This Note shall be governed by, and construed in accordance with, the laws of the State of New York, but without giving effect to applicable principles of conflicts of law to the extent that the application of the law 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.

ASSIGNMENT FORM

I or we assign and transfer this Note to

_____

_____

(Print or type name, address and zip code of assignee or transferee)

_____

(Insert Social Security or other identifying number of assignee or transferee)

and irrevocably appoint _____agent to transfer this Note on the books of the
Company. The agent may substitute another to act for him.

Dated: Signed: _____

(Sign exactly as name appears on the other side of this Note)

Signature Guarantee: _____

Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor program reasonably acceptable to the Trustee)

TO BE COMPLETED IN CONNECTION WITH TRANSFER OF ANY RESTRICTED SECURITY:

In connection with any transfer of this Note occurring prior to the date which is the date following the first anniversary of the later of the original issue date hereof (or any predecessor of this Note) or the date of any subsequent reopening of the Notes and the last date on which the Company or any Affiliate of the Company was the owner of this Note (or any predecessor of this Note), the undersigned confirms that it has not utilized any general solicitation or general advertising in connection with the transfer and is making the transfer pursuant to one of the following:

[Check One]

(1) [___] to the Company; or

(2) [___] to a person who the transferor reasonably believes is a "qualified institutional buyer" pursuant to and in compliance with Rule 144A under the Securities Act of 1933, as amended (the "Securities Act"); or

(3) [___] to an "accredited investor" (as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act) that has furnished to the Trustee a signed letter containing certain representations and agreements (the form of which letter can be obtained from the Trustee); or

(4) [___] outside the United States to a non-"U.S. person" as defined in Rule 902 of Regulation S under the Securities Act in compliance with Rule 904 of Regulation S under the Securities Act; or

(5) [___] pursuant to the exemption from registration provided by Rule 144 under the Securities Act or another exemption from, or in a transaction not subject to, the registration requirements of the Securities Act; or

(6) [___] pursuant to an effective registration statement under the Securities Act.

and unless the box below is checked, the undersigned confirms that such Note is not being transferred to an "affiliate" of the Company as defined in Rule 144 under the Securities Act (an "Affiliate"):

[___] The transferee is an Affiliate of the Company.

Unless one of the foregoing items (1) through (6) 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*, *however*, that if item (3), (4) or (5) is checked, the Company or the Trustee may require, prior to registering any such transfer of the Notes, in their sole discretion, such written legal opinions, certifications (including an investment letter in the case of box (3) or (4)) and other information as the Trustee or the Company has reasonably requested

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 items (1) through (6) are 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 2.16 of the Indenture shall have been satisfied.

Dated: Signed: _____
(Sign exactly as name appears on the other side of this Note)

Signature Guarantee: _____
Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor program reasonably acceptable to the Trustee)

TO BE COMPLETED BY PURCHASER IF (2) 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.

Dated: _____
NOTICE: To be executed by an executive officer

CONVERSION NOTICE

[REORGANIZED HOLDCO]
8.0%/10.0% Senior Secured Convertible PIK Toggle Notes due 2026

Please fax this completed and executed Conversion Notice to:

Wilmington Savings Fund Society, FSB,
as Conversion Agent
Attention: [●]
Facsimile: [●]

With a copy to:
[Reorganized Holdco]
Attention: [●]
Facsimile: [●]

Please enter the aggregate principal amount and serial or identifying numbers of Notes to be converted:

Aggregate principal amount of Notes to be converted:	
Serial or identifying number of Notes:*	
ISIN number of Notes:	[_____]

* Not required for Notes represented by a Global Note.

To: Wilmington Savings Fund Society, FSB, as Conversion Agent
[Reorganized Holdco] (the "Company")

I/We, being the holder of the Notes specified above, hereby irrevocably elect to convert such Notes or portion thereof (which is $1.00 or an integral multiple of $1.00 in excess thereof) into shares of common stock of the Company (the "Company Common Stock") in accordance with Article 13 of the Indenture, dated as of [●], 2020, by and between the Company and Wilmington Savings Fund Society, FSB, as Trustee (the "Indenture").

Please read and complete Item A or B below:

A. Check here ☐ and complete items 1 and 2 below if you wish to receive shares of Company Common Stock upon conversion of Notes:

1. Names and address of the person in whose name the shares of Company Common Stock are to be registered upon conversion of the Notes:

Name:	
Securities Broker:	
Custodian Bank:	
Address:	

Note: Shares of Company Common Stock may not be registered in the name of a Competitor.

Cash accounts for cash amounts related to fractions of shares of Company Common Stock payable as a result of this Conversion Notice, if any:

Account Number:	
Account Name:	
Bank:	
Branch:	
Routing Number:	

B. The Notes converted hereby and any documents required in relation to the declarations below or to verify the same accompany this form.

C. I/We hereby declare that I/we have been notified by the Company that the Company's register of shareholders may be closed from time to time. I/We hereby declare that any applicable condition to conversion of the Notes, if any, has been complied with by me/us, that I/we am/are not acting on behalf of the Company or any of its affiliates and that the shares of Company Common Stock delivered upon conversion have not been and, when

received by the converting Holder, will not be registered under the Securities Act of 1933, as amended (the "Securities Act") or with any securities regulatory authority in any state or jurisdiction of the United States.

D. I/We certify that I/we are, or at the time the shares of Company Common Stock issued upon conversion of the Notes are deposited will be, the beneficial owner of the shares of Company Common Stock, and:

(a) such registered holder of Company Common Stock will own _____ shares of Company Common Stock from the conversion of this Note surrendered herewith (not including shares of Company Common Stock mentioned below);

(b) ☐I/we am/are a "qualified institutional buyer" pursuant to and in compliance with Rule 144A under the Securities Act;

(c) ☐I/we am/are an "accredited investor" (as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act;

(d) ☐I/we am/are not a U.S. person (as defined in Regulation S under the Securities Act) and I/we am/are located outside the United States (within the meaning of Regulation S under the Securities Act) and acquired, or have agreed to acquire and will have acquired, the Notes converted into the shares of Company Common Stock to be deposited outside the United States (within the meaning of Regulation S under the Securities Act);

(e) ☐I/we am/are not an "affiliate" of the Company or a person acting on behalf of such an "affiliate"; and

(f) ☐such Registered Shareholder has converted from this Note _____ shares of Company Common Stock prior to the date hereof.

E. I/We agree (or if we are a broker-dealer, our customer has confirmed to us that it agrees) that prior to expiration of, in the case of 144A Global Notes or Physical Notes, one year, or, in the case of Regulation S Global Notes or Physical Notes, forty (40) days, after the later of the original Issue Date of the Note being converted (or any predecessor of such Note) or the date of any subsequent reopening of the Notes and the last date on which the Company or any Affiliate of the Company was the owner of the Note being converted (or any predecessor of such Note) (the "restricted period"), not to offer, sell, pledge or otherwise transfer the shares of Company Common Stock delivered upon conversion of the Notes except (1) to the Company, (2) pursuant to a registration statement that has been declared effective under the Securities Act, (3) for so long as the Notes or shares of Company Common Stock, as applicable, are eligible for resale under the Securities Act, to a person I/we reasonably believe 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 whom notice is given that the transfer is being made in reliance on Rule 144A, (4) pursuant to offers and sales that occur outside the United States to

a non-U.S. person within the meaning of Regulation S under the Securities Act, (5) to an "accredited investor" (as defined in Rule 501(a) (1), (2), (3) or (7) of the Securities Act) ore (6) (F) pursuant to another available exemption from the registration requirements of the Securities Act.

F. I/We hereby declare that all stamp, issue, registration or similar taxes and duties payable on conversion of the Notes in the jurisdiction where the Notes are delivered to the Conversion Agent have been paid.

G. Converting Holder Information and Signature:

Please complete the following information with respect to the converting Holder:

Name:	
Date:	
Euroclear/Clearstream A/C No.:*	
Address:	
Contact Person:	
Daytime Telephone No.:	
Fax No.:	

* Only if applicable.

Dated:

Signed: _____
(Sign exactly as name appears on the other side of this Note)

Signature Guarantee: _____
Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor program reasonably 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 4.10 or Section 4.13 of the Indenture, check the appropriate box:

Section 4.10 [ ] Section 4.13 [ ]

If you want to elect to have only part of this Note purchased by the Company pursuant to Section 4.10 or Section 4.13 of the Indenture, state the amount (in denominations of $1.00 and integral multiples $1.00 in excess thereof): $

Dated: Signed: _____
(Sign exactly as name appears on the other side of this Note)

Signature Guarantee: _____
Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor program reasonably acceptable to the Trustee)

SCHEDULE OF EXCHANGES OF INTERESTS IN THE GLOBAL NOTE[a]

The following exchanges of a part of this Global Note for an interest in another Global Note or for a Physical Note, or exchanges of a part of another Global Note or Physical Note for an interest in this Global Note, have been made:

Date of Exchange	Amount of decrease Principal Amount of this Global Note	Amount of increase in Principal Amount of this Global Note	Principal Amount of this Global Note in following such decrease (or increase)	Signature of authorized officer of Trustee or Note Custodian

[a] This schedule should be included only if the Note is issued in global form.

EXHIBIT B

FORM OF LEGENDS

Each Global Note and Physical Note that constitutes a Restricted Security shall bear the following legend (the "Private Placement Legend") on the face thereof until after the first anniversary of the Issue Date, unless otherwise agreed by the Company and the Holder thereof or if such legend is no longer required by Section 2.16(f) of the Indenture:

This Security and the Shares of common stock of the company deliverable upon conversion of the Notes (the "Common Stock") have not been registered under the U.S. Securities Act of 1933, as amended (the "Securities Act"), or the securities laws of any state or other jurisdiction. None of this Security, the Shares of Common Stock or any interest or participation herein or therein 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, such registration. The holder of this Security, by its acceptance hereof, agrees on its own behalf and on behalf of any investor account for which it has purchased the Security to offer, sell, or otherwise transfer such Security or the Shares or Common Stock deliverable upon conversion of the Security, prior to the date (the "Resale Restriction Termination Date") that is [in the case of 144A Global Notes or Physical Notes: one year] [in the case of Regulation S Global Notes or Physical Notes: 40 days] after the later of the original Issue Date hereof (or any predecessor of this Security) or the date of any subsequent reopening of the Security and the last date on which the Company or any Affiliate of the Company was the owner of this Security (or any predecessor of such Security), only (a) to the Company, (b) pursuant to a registration statement that has been declared effective under the Securities Act, (c) for so long as the Security is eligible for resale pursuant to Rule 144A under the Securities Act, 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 whom notice is given that the transfer is being made in reliance on Rule 144A, (d) pursuant to offers and sales that occur outside the United States to a non-U.S. person within the meaning of Regulation S under the Securities Act, (e) to an "accredited investor" (as defined in Rule 501(a)(1), (2), (3) or (7) of 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 right prior to any such offer, sale, or transfer pursuant to clauses (d), (e) or (f) to require the delivery of an opinion of counsel, certification, and/ or other information satisfactory to each of them. Any conversion notice provided by a converting Holder of this Security must include a certification that, at the time of such conversion, the converting Holder is (a) a "qualified institutional buyer" as defined in Rule 144A under the Securities Act, (b) not in the United States, is not a U.S. person and is not exchanging the Security on behalf of a U.S. person or (c) an "accredited investor" (as defined in Rule 501(a)(1), (2), (3) or (7) of the Securities Act). This legend will be removed upon the request of the Holder after the Resale Restriction Termination Date.

Each Global Note authenticated and delivered hereunder shall also bear the following legend (the "Global Note Legend"):

This Note is a Global Note within the meaning of this Indenture hereinafter referred to and is registered in the name of a Depository or a nominee of a Depository or a successor Depository. This Note is not exchangeable for Notes registered in the name of a person other than the Depository or its nominee except in the limited circumstances described in this Indenture, and no transfer of this Note (other than a transfer of this Note as a whole by the Depository to a nominee of the Depository or by a nominee of the Depository to the Depository or another nominee of the Depository) may be registered except in the limited circumstances described in this Indenture.

Unless this certificate is presented by an authorized representative of the Depository Trust Company, a New York Corporation ("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 in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), any transfer, pledge or other use hereof for value or otherwise by or to any person is wrongful inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

Transfers of this Global Note shall be limited to transfers in whole, but not in part, to nominees of Cede & Co. or to a successor thereof or such successor's nominee and transfers of portions of this Global Note shall be limited to transfers made in accordance with the restrictions set forth in Section 2.16 of this Indenture.

[*If OID Legend applicable pursuant to the provisions of the Indenture*]

For the purposes of Sections 1272, 1273 and 1275 of the Internal Revenue Code of 1986, as amended, this note is being issued with original issue discount. You may contact the Company at [●], attention: [●], and the Company will provide you with the issue price, the amount of original issue discount, the issue date and the yield to maturity of this Note.

EXHIBIT C

Form of Certificate To Be Delivered
in Connection with Transfers
Pursuant to Regulation S

[ ], [ ]

Wilmington Savings Fund Society, FSB
[Address]
Attention: [●]

Re: [Reorganized Holdco] (the "Company")
8.0%/10.0% Senior Secured Convertible PIK Toggle Notes due 2026 (the "Notes")

Ladies and Gentlemen:

In connection with our proposed sale of $[ ] aggregate principal amount of the Notes, we confirm that such sale has been effected pursuant to and in accordance with Regulation S under the U.S. Securities Act of 1933, as amended (the "Securities Act"), and, accordingly, we represent that:

(1) the offer of the Notes was not made to a person in the United States;

(2) either (a) at the time the buy offer was originated, the transferee was outside the United States or we and any person acting on our behalf reasonably believed that the transferee was outside the United States, or (b) the transaction was executed in, on or through the facilities of a designated offshore securities market and neither we nor any person acting on our behalf knows that the transaction has been prearranged with a buyer in the United States;

(3) no directed selling efforts have been made in the United States in contravention of the requirements of Rule 903(b) or Rule 904(b) of Regulation S, as applicable;

(4) the transaction is not part of a plan or scheme to evade the registration requirements of the Securities Act; and

(5) we have advised the transferee of the transfer restrictions applicable to the Notes.

You, as Trustee, the Company, counsel for the Company and others 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. Terms used in this certificate have the meanings set forth in Regulation S.

Very truly yours,

[Name of Transferor]

By: _____
Authorized Signatory

EXHIBIT D

GUARANTEE

For value received, each of the undersigned (including any successor Person under the Indenture) hereby unconditionally guarantees, jointly and severally, to the extent set forth in the Indenture (as defined below) to the Holder of this Note the payment of principal, premium, if any, and interest on this Note in the amounts and at the times when due and interest on the overdue principal, premium, if any, and interest, if any, of this Note when due, if lawful, and, to the extent permitted by law, the payment or performance of all other obligations of the Company under the Indenture or the Notes, to the Holder of this Note and the Trustee, all in accordance with and subject to the terms and limitations of this Note, the Indenture, including Article Ten thereof, and this Guarantee. This Guarantee will become effective in accordance with Article Ten of the Indenture and its terms shall be evidenced therein. The validity and enforceability of any Guarantee shall not be affected by the fact that it is not affixed to any particular Note.

Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Indenture dated as of [●], 2020, among [Reorganized Holdco], a Delaware corporation (the "Company") and Wilmington Savings Fund Society, FSB, as trustee (the "Trustee") and collateral agent, as amended or supplemented (the "Indenture").

The obligations of the undersigned to the Holders of Notes and to the Trustee pursuant to this Guarantee and the Indenture are expressly set forth in Article Ten of the Indenture and reference is hereby made to the Indenture for the precise terms of the Guarantee and all of the other provisions of the Indenture to which this Guarantee relates.

No director, officer, employee, incorporator, stockholder, member or manager of any Guarantor or any Subsidiary thereof, as such, shall have any liability for any obligations of such Guarantors under such Guarantors' Guarantee or the Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation.

This Guarantee shall be governed by, and construed in accordance with, the laws of the State of New York, but without giving effect to applicable principals of conflicts of law to the extent that the application of the law of another jurisdiction would be required thereby.

This Guarantee is subject to release upon the terms set forth in the Indenture.

IN WITNESS WHEREOF, each Guarantor has caused its Guarantee to be duly executed.

Date:

[ ]

By: _____
Name:
Title:

EXHIBIT E

[FORM OF INTERCREDITOR AGREEMENT]

EXHIBIT F

[FORM OF NOTES SECURITY AGREEMENT]

Exhibit E

New Stockholders Agreement

PLEASE TAKE FURTHER NOTICE that certain documents, or portions thereof, contained in this Exhibit E and the Plan Supplement remain subject to continuing negotiations among the Debtors and interested parties with respect thereto. The Debtors reserve all rights, subject to the terms and conditions set forth in the Plan and the Restructuring Support Agreement, to amend, revise, or supplement the Plan Supplement, and any of the documents and designations contained herein, at any time before the Effective Date of the Plan, or any such other date as may be provided for by the Plan or by order of the Bankruptcy Court.

STOCKHOLDERS AGREEMENT

by and among

HI-CRUSH INC.

and

the STOCKHOLDERS that are parties hereto

Dated as of [●], 2020

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STOCKHOLDERS AGREEMENT

This Stockholders Agreement (as amended, supplemented or modified from time to time, this "Agreement") is made as of [●], 2020 (the "Agreement Date"), by and among Hi-Crush Inc., a Delaware corporation (the "Company" and, together with its direct and indirect wholly-owned domestic subsidiaries, the "Company Group"), the consenting noteholders listed on Schedule I hereto ("Consenting Noteholders"), the holders of the New Secured Convertible Notes (as defined herein) (the "New Secured Convertible Noteholders") and all of the other stockholders of the Company from time to time on and as of or after the Agreement Date, in each case, who become, or are deemed to become, a party hereto pursuant to the terms hereof.

WHEREAS, on August 15, 2020, the Company Group filed a Joint Plan of Reorganization under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") with the United States Bankruptcy Court for the District of Texas (the "Bankruptcy Court");

WHEREAS, on [●], 2020, the Bankruptcy Court entered an order (the "Confirmation Order") confirming the Plan (as defined herein) pursuant to the Bankruptcy Code;

WHEREAS, pursuant to the Plan, as of the date hereof, (i) the effective date as provided for in the Plan and the Confirmation Order (the "Effective Date") occurred, and (ii) a total of [●] shares of Common Stock (as defined herein) were issued pursuant to the Plan;

WHEREAS, pursuant to the Plan and the Confirmation Order, any Person entitled to receive shares of Common Stock pursuant to the Plan shall execute this Agreement or otherwise be deemed party to this Agreement without the need for execution by such Person; and

WHEREAS, the parties hereto wish to enter into this Agreement to set forth their agreements with respect to certain governance matters concerning the Company.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein and for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Definitions. As used in this Agreement, and unless the context requires a different meaning, the following terms have the meanings indicated:

"Affiliate" means, with respect to any specified Person, any other Person that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such specified Person. As used in this definition, the

term "control," including the correlative terms "controlling," "controlled by" and "under common control with," means, with respect to the relationship between or among two or more Persons, the possession, directly or indirectly or as trustee, personal representative or executor, of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting securities, as trustee, personal representative or executor, by contract or otherwise.

"Affiliate Transaction" has the meaning set forth in Section 6.7.

"Agreement" has the meaning set forth in the preamble.

"Authorized Recipients" has the meaning set forth in Section 9.15.

"Bankruptcy Code" has the meaning set forth in the recitals.

"Bankruptcy Court" has the meaning set forth in the recitals.

"Board of Directors" means the Board of Directors of the Company.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks in the State of New York are authorized or required by law or executive order to close.

"CEO" means the Chief Executive Officer of the Company.

"CEO Director" has the meaning set forth in Section 6.1(a).

"Certificate of Incorporation" means the Certificate of Incorporation of the Company filed with the Secretary of State of the State of Delaware on May 31, 2019, as amended, restated or otherwise modified from time to time.

"Charter Documents" means the Certificate of Incorporation and the By-laws of the Company each as in effect on the date hereof.

"Code" means the Internal Revenue Code of 1986, as amended from time to time.

"Commission" means the United States Securities and Exchange Commission or any similar agency then having jurisdiction to enforce the Securities Act.

"Common Stock" means the Common Stock, par value $[0.001] per share, of the Company, issued on the Effective Date, or any other capital stock of the Company into which such stock is reclassified or reconstituted and any other common stock of the Company.

"Common Stock Equivalents" means any security or obligation which is by its terms convertible into or exchangeable or exercisable for shares of Common Stock,

including, without limitation, any option, warrant or other subscription or purchase right with respect to Common Stock or any Common Stock Equivalent.

"Company" has the meaning set forth in the preamble.

"Company Group" has the meaning set forth in the preamble.

"Company Offeror" means (a) the Company, (b) any successor to the Company or any surviving entity resulting from a merger, consolidation or other business combination involving the Company or any wholly-owned Subsidiary of the Company, (c) any Subsidiary of the Company that is a holding company for all or substantially all of the operating assets of the Subsidiaries of the Company or (d) any other entity the securities of which are exchanged for Common Stock in anticipation of an initial public offering.

"Competitor" means any Person engaged in direct competition with the business of the Company or any of the Company's Subsidiaries, as determined by the Board of Directors in good faith.

"Confidential Information" has the meaning set forth in Section 9.15.

"Confirmation Order" has the meaning set forth in the recitals.

"Consenting Noteholders" has the meaning set forth in the preamble.

"Director" means any of the individuals elected or designated to serve on the Board of Directors.

"Drag-Along Notice" has the meaning set forth in Section 3.2(a).

"Drag-Along Rightholders" has the meaning set forth in Section 3.2(a).

"Drag-Along Sellers" has the meaning set forth in Section 3.2(a).

"Excess New Securities" has the meaning set forth in Section 4.2(a).

"Exchange Act" means the United States Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission thereunder.

"Exempt Issuances" has the meaning set forth in Section 4.1.

"Exercising Tag-Along Rightholder" has the meaning set forth in Section 3.1(a)(ii).

"Fair Market Value" means, with respect to any Common Stock, the price at which a willing seller would sell, and a willing buyer would buy, such Common Stock having full knowledge of the relevant facts (but excluding any change of control premium, any premium for voting shares, any discount for non-voting shares, and any minority, liquidity or underwriting discounts), in an arm's-length transaction without either party

having time constraints, and without either party being under any compulsion to buy or sell.

"Family Members" means, with regard to a Stockholder that is an individual, any member of such Stockholder's immediate family, which shall include his or her spouse, siblings, children or grandchildren.

"GAAP" means United States generally accepted accounting principles in effect from time to time.

"Governmental Authority" means the government of any nation, state, city, locality or other political subdivision thereof, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, and any corporation or other entity owned or controlled, through stock or capital ownership or otherwise, by any of the foregoing.

"Initial Tag Notice" has the meaning set forth in Section 3.1(b).

"Law" means any federal, state, local, municipal, foreign or other law, statute, legislation, constitution, principle of common law, ordinance, code, decree, order, judgment, rule, regulation, ruling or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Authority and any order or decision of an applicable arbitrator or arbitration panel.

"Lien" means any mortgage, deed of trust, pledge, hypothecation, assignment, encumbrance, lien (statutory or other) or preference, priority, right or other security interest or preferential arrangement of any kind or nature whatsoever (excluding preferred stock and equity related preferences).

"Major Stockholder" means each Stockholder that, either individually or together with its Affiliates, holds more than ten percent (10%) of the Common Stock (on an as-converted basis).

"Management Incentive Plan" means that certain negotiated Management Incentive Plan providing for grants of options and/or restricted stock or restricted stock units/equity reserved for management, directors, and employees for up to 10% of the Common Stock issued as of the Effective Date on a fully-diluted basis, the terms of which shall be determined by the Board of Directors.

"New Issuance Notice" has the meaning set forth in Section 4.1.

"New Securities" has the meaning set forth in Section 4.1.

"New Secured Convertible Notes" has the meaning set forth in the Plan.

"New Secured Convertible Noteholders" has the meaning set forth in the preamble.

"Non-Selling Major Stockholders" means any Major Stockholders, excluding the ROFR Seller.

"Offer Period" has the meaning set forth in Section 3.3(b).

"Offered Securities" has the meaning set forth in Section 3.1(a)(i).

"Offering Notice" has the meaning set forth in Section 3.3(a).

"Permitted Transferee" means (i) Family Members of a Stockholder that is an individual, (ii) a trust, corporation, partnership or limited liability company all of the beneficial interests in which shall be held by a Stockholder or one or more Family Members of such Stockholder or (iii) any Related Fund or (iv) any Other Stockholder.

"Person" means any individual, firm, corporation, partnership, trust, incorporated or unincorporated association, joint venture, joint stock company, limited liability company, Governmental Authority or other entity of any kind, and shall include any successor (by merger or otherwise) of such entity.

"Plan" means that certain Joint Plan of Reorganization for the Company and its Affiliated Debtors (as defined therein) confirmed by the Bankruptcy Court on [●], 2020.

"Preemptive Rightholder(s)" has the meaning set forth in Section 4.1.

"Prohibited Transfer" has the meaning set forth in Section 2.2.

"Proportionate Percentage" has the meaning set forth in Section 4.2(a).

"Proposed Price" has the meaning set forth in Section 4.1.

"QIPO Effective Date" means the date upon which the Company closes its Qualified Initial Public Offering.

"Qualified Initial Public Offering" means an initial public offering pursuant to a listing of shares of Common Stock on the New York Stock Exchange or the Nasdaq Stock Market, having an aggregate offering value (net of underwriters' discounts and selling commissions) of at least $[100,000,000][1].

"Related Fund" means, with respect to any Stockholder, an entity now or hereafter existing that is (i) directly or indirectly controlled by one or more general partners or managing members of such Stockholder or (ii) otherwise, directly or indirectly, managed or advised by such Stockholder or the entity that manages or advises such Stockholder.

[1] **Note to Ad Hoc Group**: Please confirm that $100m is an appropriate threshold for determining a qualified IPO.

"Remaining Offered Securities" has the meaning set forth in Section 3.1(a)(ii).

"ROFO Acceptance Period" has the meaning set forth in Section 3.3(c).

"ROFO Purchaser" has the meaning set forth in Section 3.3(a).

"ROFO Rightholder" has the meaning set forth in Section 3.3(a).

"ROFO Seller" has the meaning set forth in Section 3.3(a).

"Selling Stockholder" has the meaning set forth in Section 3.1(a)(i).

"Sale Transaction" has the meaning set forth in Section 3.2(a).

"Securities Act" means the United States Securities Act of 1933, as amended, and the rules and regulations of the Commission promulgated thereunder.

"Shares" means, with respect to each Stockholder, all shares, whether now owned or hereafter acquired, of Common Stock.

"Significant Stockholder" means each Stockholder that, either individually or together with its Affiliates, holds more than five percent (5%) of the Common Stock (on an as-converted basis) and MSD Credit Opportunity Master Fund, L.P. for so long as it, together with its Affiliates, holds the Shares issued to it on the Effective Date.

"Specified Activity" has the meaning set forth in Section 6.8.

"Stockholders" means each holder of Shares and any transferee thereof who has agreed to be bound by the terms and conditions of this Agreement.

"Stockholders Meeting" means any regular or special meeting of Stockholders.

"Subject Purchaser" has the meaning set forth in Section 4.1.

"Subject Securities" has the meaning set forth in Section 3.3(a).

"Subsidiary" means, with respect to any specified Person, any Person of which the specified Person, directly or indirectly, owns more than 50% of the issued and outstanding share capital or voting interests.

"Tag-Along Rightholder" has the meaning set forth in Section 3.1(a)(i).

"Tag-Along Shares" has the meaning set forth in Section 3.1(a)(i).

"Third Party Purchaser" has the meaning set forth in Section 3.1(a)(i).

"transfer" has the meaning set forth in Section 2.1.

"Treasury Regulations" means the Treasury regulations promulgated under the Code, as amended from time to time.

ARTICLE II

TRANSFER

Section 2.1 Transfer of Shares. Any Stockholder may directly or indirectly sell, give, assign, hypothecate, pledge, encumber, grant a security interest in or otherwise dispose of (whether by operation of law or otherwise) (each a "transfer") any Shares or any right, title or interest therein or thereto; provided that such transfer complies with the provisions of this Agreement, including, without limitation, this Article II. Any attempt to transfer any Shares or any rights thereunder in violation of the preceding sentence shall be null and void *ab initio*.

Section 2.2 Permitted Transfers. No Stockholder shall transfer any Shares if the Company reasonably determines (i) that such transfer would, if effected (after taking into account any other proposed transfers that have been authorized by the Company pursuant to the provisions of this Article II but not yet made), result in the Company having 2000 or more holders of record (as such concept is defined for purposes of Section 12(g) of the Exchange Act and any relevant rules promulgated thereunder) of any class of capital securities of the Company, (ii) that such transfer would, if effected, require the Company to register the Common Stock under the Exchange Act, unless, in any such case, at the time of such transfer, the Company is already subject to the reporting obligations under Sections 8 and 15(d) of the Exchange Act with respect to its capital securities or (iii) that the proposed transferee is a Competitor (each a "Prohibited Transfer"). Any Prohibited Transfer consummated without such required consent of the Company shall be null and void *ab initio*.

Section 2.3 Permitted Transfer Procedures. If any Stockholder wishes to transfer Shares pursuant to Section 2.2, such Stockholder shall give notice to the Company and the Board of Directors of its intention to make such a transfer not less than five (5) Business Days prior to effecting such transfer, which notice shall state the name and address of each prospective transferee, the relationship of such prospective transferee to such Stockholder, and the number of Shares proposed to be transferred. In the event that the Company determines in its reasonable discretion that the proposed transfer will violate the terms of Section 2.2, the Company shall deliver written notice of such determination to the applicable transferring Stockholder as soon as practicable (but in any event within one (1) Business Day prior to the date of the proposed transfer).

Section 2.4 Transfers in Compliance with Law; Substitution of Transferee. Notwithstanding any other provision of this Agreement, no transfer may be made pursuant to this Article II, Section 3.1(a), Section 3.2(a) or Section 3.3(d) unless (a) the transferee has agreed in writing to be bound by the terms and conditions of this Agreement pursuant to an instrument substantially in the form attached hereto as Exhibit A-1, (b) the transfer complies in all respects with the applicable provisions of this Agreement and (c) the transfer complies in all respects with applicable federal and state securities laws, including,

without limitation, the Securities Act. If requested by the Company, an opinion of counsel to such transferring Stockholder shall be supplied to the Company, at such transferring Stockholder's expense, to the effect that such transfer complies with the applicable federal and state securities laws. Upon becoming a party to this Agreement, the transferee shall be substituted for, and shall enjoy the same rights and be subject to the same obligations as, the transferring Stockholder hereunder with respect to the Shares transferred to such transferee.

ARTICLE III

TAG-ALONG RIGHTS; DRAG-ALONG RIGHTS; RIGHT OF FIRST OFFER

Section 3.1 Tag-Along Rights.

(a) (i) Subject to compliance with Section 3.3, if any Stockholder or group of Stockholders (each, a "Selling Stockholder") wishes to transfer all or any portion of its Shares (the "Offered Securities") to any Person (other than a Permitted Transferee) (a "Third Party Purchaser"), or group of related Persons, and such transfer represents greater than a majority of the then-issued and outstanding Shares, then each of the Significant Stockholders (other than the Selling Stockholder, if applicable) (each, a "Tag-Along Rightholder") shall have the right to sell to such Third Party Purchaser, upon the terms set forth in a written notice from the Selling Stockholder to the Company, that number of Shares (the "Tag-Along Shares") held by such Tag-Along Rightholder equal to that percentage of the Offered Securities determined by dividing (A) the total number of Shares owned by such Tag-Along Rightholder as of the date of the Initial Tag Notice by (B) the sum of (x) the total number of Shares owned by all such Tag-Along Rightholders exercising their rights pursuant to this clause (i) as of the date of the Initial Tag Notice and (y) the total number of Shares owned by the Selling Stockholder as of the date of the Initial Tag Notice.

(ii) If any Tag-Along Rightholder does not sell all of the Tag-Along Shares such Tag-Along Rightholder is entitled to sell pursuant to this Section 3.1(a) (the aggregate of all such Tag-Along Shares, the "Remaining Offered Securities"), then each Tag-Along Rightholder that fully exercised its rights pursuant to clause (i) (each, an "Exercising Tag-Along Rightholder") shall have the right to sell that number of Shares equal to that percentage of the Remaining Offered Securities determined by dividing (x) the total number of Shares owned by such Exercising Tag-Along Rightholder as of the date of the Initial Tag Notice by (y) the total number of Shares owned by all Exercising Tag-Along Rightholders as of the date of the Initial Tag Notice. The Selling Stockholder and the Exercising Tag-Along Rightholder(s) shall effect the sale of the Offered Securities and such Exercising Tag-Along Rightholder(s) shall sell the number of Offered Securities required to be sold by such Exercising Tag-Along Rightholder(s) pursuant to this Section 3.1(a), and the number of Offered Securities to be sold to such Third Party Purchaser by the Selling Stockholder shall be reduced accordingly.

(b) The Selling Stockholder shall give written notice (the "Initial Tag Notice") to each Tag-Along Rightholder of each proposed sale by it of Offered

Securities which gives rise to the rights of the Tag-Along Rightholders set forth in this Section 3.1, at least [ten (10) Business Days][2] prior to the proposed consummation of such sale, setting forth the name and address of such Selling Stockholder, the number of Offered Securities, the name and address of the proposed Third Party Purchaser, the proposed amount and form of consideration and terms and conditions of payment offered by such Third Party Purchaser, the percentage of Shares that such Tag-Along Rightholder may sell to such Third Party Purchaser (determined in accordance with Section 3.1(a)), and a representation that such Third Party Purchaser has been informed of the "tag-along" rights provided for in this Section 3.1 and has agreed to purchase Shares in accordance with the terms hereof. The tag-along rights provided by this Section 3.1 must be exercised by any Tag-Along Rightholder wishing to sell its Shares within [ten (10)][3] Business Days following receipt of the Initial Tag Notice, by delivery of a written notice to the Selling Stockholder at the address of the Selling Stockholder indicated in the Initial Tag Notice indicating such Tag-Along Rightholder's wish to exercise its rights and specifying the number of Shares (up to the maximum number of Shares owned by such Tag-Along Rightholder required to be purchased by such Third Party Purchaser pursuant to Section 3.1) it wishes to sell, provided that any Tag-Along Rightholder may waive its rights under this Section 3.1 prior to the expiration of such ten (10) Business Day period by giving written notice to the Selling Stockholder, with a copy to the Company, of such waiver. The failure of a Tag-Along Rightholder to respond within such ten (10) Business Day period shall be deemed to be a waiver of such Tag-Along Rightholder's rights under this Section 3.1. If a Third Party Purchaser fails to purchase Shares from any Tag-Along Rightholder that has properly exercised its tag-along rights pursuant to this Section 3.1, then the Selling Stockholder shall not be permitted to consummate the proposed sale of the Offered Securities, and any such attempted sale shall be null and void *ab initio*.

(c) In connection with the exercise of any rights under this Section 3.1 by an Exercising Tag-Along Rightholder, no such Exercising Tag-Along Rightholder shall be required to (1) make any representations or warranties (except as they relate to such Exercising Tag-Along Rightholder's ownership of and authority to sell its Shares), (2) agree to any noncompetition or nonsolicitation covenants or (3) provide any indemnity, except for (A) indemnification related to breaches of the representations and warranties by such Exercising Tag-Along Rightholder with respect to its ownership of and authority to sell its Shares and (B) any other indemnity agreed to by the Tag-Along Rightholders; provided, that (x) in the case of clause (B) above, each Exercising Tag-Along Rightholder's obligation shall be several and on a pro-rata basis in proportion to its ownership interest in the Company and (y) in no event shall any Exercising Tag-Along Rightholder be held liable under either clause (A) or (B) above for any amount in excess of the net proceeds received by such Exercising Tag-Along Rightholder in connection with any such transaction.

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[2] **Note to Ad Hoc Group**: Please confirm that 10 business days is sufficient notice.

[3] **Note to Ad Hoc Group**: Please confirm that 10 business days is a sufficient period of time to exercise the tag along rights.

Section 3.2 Drag-Along Rights.

(a) Prior to a Qualified Initial Public Offering, in the event that one or more Stockholders collectively holding greater than sixty percent (60%) of the then-issued and outstanding Shares (the "Drag-Along Rightholders") determine to cause a bona fide sale, in one transaction or a series of related transactions of (i) greater than a majority of the then-issued and outstanding Shares or (ii) all or substantially all of the consolidated assets of the Company and its Subsidiaries, taken as a whole, in each case to any Third Party Purchaser (in each case, other than to an Affiliate or Related Fund of such Drag-Along Rightholders), whether directly or indirectly or by way of merger, statutory share exchange, recapitalization, reclassification, consolidation, or other business combination transaction or purchase of beneficial ownership (either (i) or (ii), a "Sale Transaction"), the Drag-Along Rightholders may (but shall be under no obligation to) send written notice (the "Drag-Along Notice") to the Company and the other Stockholders (each, a "Drag-Along Seller") no later than twenty (20) Business Days prior to the consummation of the Sale Transaction notifying them of such proposed Sale Transaction and that they will be required to sell their Shares in such Sale Transaction (or, in the case of an asset sale or any other transaction such as a merger which requires a vote of the Stockholders, vote in favor of such sale). Upon receipt of a Drag-Along Notice, each Drag-Along Seller receiving such notice shall be obligated to (i) sell Shares in the Sale Transaction (including a sale or merger) contemplated by the Drag-Along Notice in an amount equal to that percentage of the Shares being sold by the Drag-Along Rightholders determined by dividing (A) the total number of Shares being sold by the Drag-Along Rightholders in such Sale Transaction by (B) the total number of Shares owned by the Drag-Along Rightholders as of the date of the Drag-Along Notice on the same terms and conditions as the Drag-Along Sellers (including payment of its pro rata share of all costs associated with such transaction other than costs incurred for the benefit of a particular Stockholder) and (ii) otherwise take all necessary action to cause the consummation of such transaction, including voting all of its Shares in favor of such Sale Transaction and not exercising any appraisal or dissenters rights in connection therewith. Each Drag-Along Seller further agrees to (A) take all actions (including executing documents) in connection with the consummation of the proposed Sale Transaction as may reasonably be requested of it by the Drag-Along Rightholders and (B) appoint the Drag-Along Rightholders, or one of them, as its attorney-in-fact to do the same on its behalf.

(b) In connection with any Sale Transaction, no Drag-Along Seller shall be required to (i) make any representations or warranties (except as they relate to such Drag-Along Seller's ownership of and authority to sell its Shares), (ii) agree to any noncompetition or nonsolicitation covenants or (iii) provide any indemnity, except for (A) indemnification related to breaches of the representations and warranties by such Drag-Along Rightholder with respect to its ownership of and authority to sell its Shares and (B) any other indemnity agreed to by the Drag-Along Rightholders; provided, that (x) in the case of clause (B) above, each Drag-Along Seller's obligation shall be several and on a pro-rata basis in proportion to its ownership interest in the Company (except in respect of any indemnification to be made from any escrow account or other form of holdback), and (y) other than in the case of fraud of such Drag-Along Seller, in no event shall a Drag-Along Seller be held liable under either clause (A) or (B) above for any amount in excess

of the net proceeds received by such Drag-Along Seller in connection with any such Sale Transaction.

Section 3.3 Right of First Offer.

(a) Offering Notice. Prior to a Qualified Initial Public Offering, if any Significant Stockholder or New Secured Convertible Noteholder desires to transfer to any Person(s) (a "ROFO Purchaser") all or any portion of its Shares or New Secured Convertible Notes, as applicable (together, the "Subject Securities") (other than with respect to a transfer to a Permitted Transferee or pursuant to rights as set forth in Section 3.1 and Section 3.2), such Significant Stockholder or New Secured Convertible Noteholder (a "ROFO Seller") shall first grant to the Major Stockholders a right, but not an obligation, pursuant to the terms of this Section 3.3, to purchase all of the Subject Securities that the ROFO Seller desires to transfer by sending written notice (an "Offering Notice") to the Company and each Major Stockholder not including the ROFR Seller (each Major Stockholder in its capacity as such, a "ROFO Rightholder"), which shall state (i) the number of Subject Securities and (ii) the intended date of such transfer (which shall be not less than sixty (60) days from the date of the Offering Notice).

(b) Rightholder Option; Exercise. For a period of seven (7) Business Days following the Company and each ROFO Rightholder's receipt of the Offering Notice (the "Offer Period"), the ROFO Rightholders shall have the right to offer to purchase all, but not less than all, of the Subject Securities at a purchase price equal to the highest price for the Subject Securities proposed by any of the ROFO Rightholders electing to submit an offer price for the Subject Securities); provided, that if more than one ROFO Rightholder submits an offer pursuant to this Section 3.3, then pro rata according to the number of Shares (on an as-converted basis) owned by each ROFO Rightholder.

(i) The right of the ROFO Rightholders to offer to purchase all of the Subject Securities under this Section 3.3(b) shall be exercisable by delivering written notice of the exercise thereof, prior to the expiration of the Offer Period, to the ROFO Seller with a copy to the Company. Each such notice shall state that the ROFO Rightholder is willing to purchase all of the Subject Securities pursuant to this Section 3.3(b), the purchase price they offer for the Subject Securities and, in the event that there is more than one ROFO Rightholder exercising its right under this Section 3.3(b), confirmation that they will pay a purchase price equal to the highest price for all of the Subject Securities proposed by any of the ROFO Rightholders electing to submit an offer price for the Subject Securities (the "Offer Price"). The failure of any ROFO Rightholder to respond within the Offer Period to the ROFO Seller shall be deemed to be a waiver of such ROFO Rightholder's rights under this Section 3.3(b). The ROFO Rightholders may waive their respective rights under this Section 3.3 prior to the expiration of the Offer Period by giving written notice to the ROFO Seller, with a copy to the Company. The ROFO Rightholders' offer to purchase all of the Subject Securities at the Offer Price pursuant to the terms of this Section 3.3 shall be irrevocable once accepted and, in any event, for the duration of the ROFO Acceptance Period (as defined below).

(c) Sale to the ROFO Rightholders. If the ROFO Rightholders have collectively offered to purchase all, but not less than all, of the Subject Securities under Section 3.3(b), then the ROFO Seller may, within [twenty (20)][4] days of the delivery of the last written notice of the exercise from the ROFO Rightholders accept the offer of the ROFO Rightholders to purchase all, but not less than all, of the Subject Securities in accordance with Section 3.3(e) (the "ROFO Acceptance Period").

(d) Sale to a ROFO Purchaser.

(i) If the ROFO Rightholders have collectively offered to purchase all, but not less than all, of the Subject Securities under Section 3.3(b), and the ROFO Seller elects not to accept the offer of the ROFO Rightholders, then the ROFO Seller may only sell the Subject Securities to the ROFO Purchaser at a price that exceeds the Offer Price [by 5%][5] and on terms and conditions no less favorable than those set forth in Section 3.3(e); provided, however, that (A) such sale of any Subject Securities to the ROFO Purchaser is *bona fide* and is consummated within [one hundred eighty (180)][6] days after the earlier to occur of (x) the waiver by all of the ROFO Rightholders of their options to offer to purchase all of the Subject Securities and (y) the expiration of the ROFO Rightholder Acceptance Period (as applicable for this Section 3.3(d)(i), the "ROFO Purchaser Period"), and (B) such sale shall not be consummated unless and until (x) such ROFO Purchaser shall represent in writing to the ROFO Rightholders that it is aware of the rights of the Stockholders and New Secured Convertible Noteholders contained in this Agreement, and (y) prior to the purchase by the ROFO Purchaser of any of such Subject Securities, such ROFO Purchaser shall become a party to this Agreement and shall agree to be bound by the terms and conditions hereof in accordance with Section 2.4.

(ii) If the ROFO Rightholders have not collectively offered to purchase all of the Subject Securities under Section 3.3(b), then the ROFO Seller may sell the Subject Securities to one or more ROFO Purchasers at any price and on any terms and conditions selected by the ROFO Seller; provided, however, that (A) such sale of any Subject Securities to the ROFO Purchaser(s) is bona fide and is consummated within [one hundred eighty (180)] days after the earlier to occur of (x) the waiver by all of the ROFO Rightholders of their options to offer to purchase all of the Subject Securities, and (y) the expiration of the Offer Period (as applicable for this Section 3.3(d)(ii), the "ROFO Purchaser Period") and (B) such sale shall not be consummated unless and until (x) such ROFO Purchaser(s) shall represent in writing to the Company and the ROFO Rightholders that it is aware of the rights of the Major Stockholders contained in this Agreement, and (y) prior to the purchase by the ROFO Purchaser(s) of any of such Subject Securities, such ROFO Purchaser shall become a party to this Agreement and shall agree to be bound by the terms and conditions hereof in accordance with Section 2.4.

(iii) If such sale is not consummated within the applicable ROFO Purchaser Period set forth in clause (A) or clause (B) above (plus such number of

[4] **Note to Ad Hoc Group**: Please confirm that 20 days is sufficient for the ROFO Acceptance Period.

[5] **Note to Ad Hoc Group**: Please confirm whether a 5% premium is sufficient.

[6] **Note to Ad Hoc Group**: Please confirm that 180 days is sufficient for the ROFO Purchaser Period.

additional days (if any) necessary to obtain any consents or approvals or allow the expiration or termination of all waiting periods under applicable Law) for any reason, then the restrictions provided for in this Section 3.3 shall again become effective, and no transfer of such Subject Securities may be made thereafter by the ROFO Seller without again offering the same to the ROFO Rightholders in accordance with this Section 3.3. No ROFO Seller shall take any action that is governed by the provisions of this Section 3.3 more than once in a [180-day] period.

(e) Sale to ROFO Rightholders. If the ROFO Seller elects to accept the offer of the ROFO Rightholders to purchase all, but not less than all, of the Subject Securities under Section 3.3(b), then the closing of the purchases of such Subject Securities subscribed for by the ROFO Rightholders under Section 3.3(b) shall be held at the executive office of the Company at 11:00 a.m., local time, on the forty-fifth (45th) day (plus such number of additional days (if any) necessary to obtain any consents or approvals or allow the expiration or termination of all waiting periods under applicable Law) after acceptance by the ROFO Seller of such offer or at such other day, time and place as the parties to the transaction may agree. At such closing, the ROFO Seller shall deliver certificates, if any, representing the Subject Securities, duly endorsed for transfer and accompanied by all requisite transfer taxes, if any, and such Subject Securities shall be free and clear of any Liens (other than those attributable to actions by the purchasers thereof) and the ROFO Seller shall so represent and warrant, and shall further represent and warrant that it is the sole beneficial and record owner of such Subject Securities. At the closing, the ROFO Rightholders purchasing the Subject Securities shall deliver payment in full in immediately available funds for the Subject Securities equal to the Offer Price (calculated on a per security basis) purchased by it. At such closing, all of the parties to the transaction shall execute such additional documents as are otherwise necessary or appropriate.

(f) Cooperation. In connection with this Section 3.3, the Company and the other Stockholders shall cooperate with the ROFO Seller in good faith to effect such proposed transfer and take actions reasonably requested by such ROFO Seller so long as such actions do not unreasonably interfere with the business of the Company or its Subsidiaries, including the Company furnishing the ROFO Seller and the ROFO Purchasers information, including Confidential Information, about the Company; provided, however, that the Company shall not be required to furnish any such Confidential Information to a proposed ROFO Purchaser (i) until the proposed ROFO Purchasers have entered into a customary non-disclosure agreement in form and substance reasonably satisfactory to the Company, (ii) if the ROFO Seller is not otherwise entitled to receive such information pursuant to the terms of this Agreement, (iii) if the Board of Directors, in its good faith discretion, determines that such ROFO Purchaser would not reasonably be able to satisfy the conditions set forth in Section 2.2, or (iv) if the Board of Directors, in its good faith discretion, determines that providing such information would be materially detrimental to the Company.

ARTICLE IV

FUTURE ISSUANCE OF SHARES; PREEMPTIVE RIGHTS

Section 4.1 Offering Notice. Except for (a) options to purchase Common Stock or restricted stock which may be issued pursuant to the Management Incentive Plan, (b) a subdivision of the outstanding shares of Common Stock into a larger number of shares of Common Stock, (c) capital stock issued upon exercise, conversion or exchange of any Common Stock Equivalent either (x) previously issued or (y) issued in accordance with the terms of this Agreement, (d) capital stock of the Company issued in consideration of an acquisition, approved by the Board of Directors in accordance with the terms of this Agreement, by the Company (or a Subsidiary of the Company) of another Person, (e) issuances to the public pursuant to an effective registration statement filed under the Securities Act, (f) pro rata distributions or dividends of Shares to the then current stockholders of the Company, (g) issuances of capital stock of any Subsidiary of the Company to the Company or any of its Subsidiaries, and (h) issuances in connection with any dividend or distribution on shares of preferred stock of the Company, if any ((a)-(h) being referred to collectively as "Exempt Issuances"), if the Company or any of its Subsidiaries wishes to issue or sell any capital stock or any other securities convertible into or exchangeable for capital stock of the Company or its Subsidiaries (collectively, "New Securities") to any Person (the "Subject Purchaser"), then, pursuant to Section 4.2, the Company shall offer such New Securities to each of the Significant Stockholders (each, a "Preemptive Rightholder", and collectively, the "Preemptive Rightholders") by sending written notice (the "New Issuance Notice") to the Preemptive Rightholders, which New Issuance Notice shall state (x) the number of New Securities proposed to be issued and (y) the proposed purchase price per security of the New Securities (the "Proposed Price"). Upon delivery of the New Issuance Notice, such offer shall be irrevocable unless and until the rights provided for in Section 4.2 shall have been waived or shall have expired.

Section 4.2 Exercise.

(a) For a period of [twenty (20)][7] days after the giving of the New Issuance Notice pursuant to Section 4.1, each of the Preemptive Rightholders shall have the right to purchase its Proportionate Percentage (as hereinafter defined) of the New Securities, at a purchase price equal to the Proposed Price and upon the same terms and conditions set forth in the New Issuance Notice. Each such Preemptive Rightholder shall have the right to purchase that percentage of the New Securities determined by dividing (x) the total number of Shares then owned by such Preemptive Rightholder exercising its rights under this Section 4.2 by (y) the total number of Shares owned by all of the Preemptive Rightholders exercising their rights under this Section 4.2 (the "Proportionate Percentage"). If any Preemptive Rightholder does not fully subscribe for the number or amount of New Securities that it is entitled to purchase pursuant to the preceding sentence, then each Preemptive Rightholder that elected to purchase New Securities shall have the

[7] **Note to Ad Hoc Group**: Please confirm that 20 business days is sufficient for the preemptive rights period.

right to purchase that percentage of the remaining New Securities not so subscribed for (for the purposes of this Section 4.2(a), the "Excess New Securities") determined by dividing (x) the total number of Shares then owned by such fully participating Preemptive Rightholder by (y) the total number of Shares then owned by all fully participating Preemptive Rightholders who elected to purchase Excess New Securities.

(b) The right of each Preemptive Rightholder to purchase the New Securities under subsection (a) above shall be exercisable by delivering written notice of the exercise thereof, prior to the expiration of the [20-day] period referred to in Section 4.2(a) to the Company, which notice shall state the amount of New Securities that such Preemptive Rightholder elects to purchase pursuant to Section 4.2(a). The failure of a Preemptive Rightholder to respond within such [20-day] period shall be deemed to be a waiver of such Preemptive Rightholder's rights under Section 4.2(a), provided that each Preemptive Rightholder may waive its rights under Section 4.2(a) prior to the expiration of such [20-day period] by giving written notice to the Company.

Section 4.3 Closing. The closing of the purchase of New Securities subscribed for by the Preemptive Rightholders under Section 4.2 shall be held at the executive office of the Company at 11:00 a.m., local time, on (a) the 45th day after the giving of the New Issuance Notice pursuant to Section 4.1, if the Preemptive Rightholders elect to purchase all of the New Securities under Section 4.2, (b) the date of the closing of the sale to the Subject Purchaser made pursuant to Section 4.4 if the Preemptive Rightholders elect to purchase some, but not all, of the New Securities under Section 4.2 or (c) at such other time and place as the parties to the transaction may agree. At such closing, the Company shall deliver certificates representing the New Securities, and such New Securities shall be issued free and clear of all Liens (other than those arising hereunder and those attributable to actions by the purchasers thereof) and the Company shall so represent and warrant, and further represent and warrant that such New Securities shall be, upon issuance thereof to the Preemptive Rightholders and after payment therefor, duly authorized, validly issued, fully paid and non-assessable. Each Preemptive Rightholder purchasing the New Securities shall deliver at the closing payment in full in immediately available funds for the New Securities purchased by him, her or it. At such closing, all of the parties to the transaction shall execute such additional documents as are otherwise necessary or appropriate.

Section 4.4 Sale to Subject Purchaser. The Company may sell to the Subject Purchaser all of the New Securities not purchased by the Preemptive Rightholders pursuant to Section 4.2 on terms and conditions that are no more favorable to the Subject Purchaser than those set forth in the New Issuance Notice; provided, however, that such sale is bona fide and made pursuant to a contract entered into within [ninety (90)][8] days following the earlier to occur of (i) the waiver by all Preemptive Rightholders of their option to purchase New Securities pursuant to Section 4.2(b), and (ii) the expiration of the [20-day] period referred to in Section 4.2(b). If such sale is not consummated within such [90-day] period

[8] **Note to Ad Hoc Group**: Please confirm that 90 days is enough time for the waiver of preemptive rights to remain effective.

for any reason, then the restrictions provided for herein shall again become effective, and no issuance and sale of New Securities may be made thereafter by the Company without again offering the same in accordance with this Article IV. The closing of any issuance and purchase pursuant to this Section 4.4 shall be held at a time and place as the parties to the transaction may agree within such [90-day] period.

Section 4.5 Emergency Funding. Nothing in Article IV shall be deemed to prevent any Stockholder from purchasing for cash any New Securities without first complying with the provisions of Article IV (other than this Section 4.5); provided, that (i) in connection with such purchase the delay caused by compliance with the provisions of Article IV in connection with such investment would be likely to cause harm to the Company; (ii) the Company gives prompt notice to the other holders of Shares, which notice shall describe in reasonable detail the New Securities being purchased by the Person making such purchase (for purposes of this Section 4.5, the "Purchasing Holder") and the purchase price thereof and (iii) the Purchasing Holder and the Company take all steps necessary to enable the other holders of Shares to effectively exercise their respective rights under Article IV with respect to their purchase of a pro rata share of the New Securities issued to the Purchasing Holder as promptly as reasonably practicable after such purchase by the Purchasing Holder on the terms specified in Article IV.

ARTICLE V

AFTER-ACQUIRED SECURITIES; AGREEMENT TO BE BOUND

Section 5.1 After-Acquired Securities. All of the provisions of this Agreement shall apply to all of the Shares and Common Stock Equivalents now owned or which may be issued or transferred hereafter to a Stockholder in consequence of any additional issuance, purchase, exchange or reclassification of any of such Shares or Common Stock Equivalents, corporate reorganization, or any other form of recapitalization, consolidation, merger, share split or share dividend, or which are acquired by a Stockholder in any other manner.

Section 5.2 Agreement to be Bound. The Company shall not issue any Shares or Common Stock Equivalents to any Person not a party to this Agreement, other than to directors, officers, employees or consultants of the Company pursuant to the Management Incentive Plan, unless either (a) such Person has agreed in writing to be bound by the terms and conditions of this Agreement pursuant to an instrument substantially in the form attached hereto as Exhibit A-2, or (b) such Person has entered into an agreement with the Company restricting the transfer of his, her or its Shares and Common Stock Equivalents in form and substance reasonably satisfactory to the Board of Directors. Upon becoming a party to this Agreement, such Person shall be deemed to be, and shall be subject to the same obligations as, a Stockholder hereunder. Any issuance of Shares or Common Stock Equivalents by the Company in violation of this Section 5.2 shall be null and void *ab initio*.

ARTICLE VI

CORPORATE GOVERNANCE

Section 6.1 Designation Rights. The Company and the Stockholders shall take all such corporate and stockholder actions as may be required to ensure that (a) the initial number of directors constituting the entire Board of Directors shall be equal to five (5) and (b) the number of directors constituting the entire Board of Directors shall not be fewer than five (5). The Company hereby agrees that the Board of Directors shall be composed as follows:

(a) CEO Director. The Stockholders shall designate the CEO to serve as a Director, [who shall initially be Robert Rasmus] (the "CEO Director").

(b) Designation Rights of Major Stockholders.

(i) Each Major Stockholder that holds, from time to time, fifteen percent (15%) or more (but less than thirty percent (30%)) (on an as-converted basis excluding any Common Stock issued pursuant to the Management Incentive Plan or any New Secured Convertible Notes held by management of the Company) of the Common Stock shall have the right to designate one (1) Director, for so long as such Major Stockholder and its Affiliates or Related Funds collectively continue to hold at least fifteen percent (15%) of the Shares.

(ii) Each Major Stockholder that holds, from time to time, thirty percent (30%) or more (but less than fifty percent (50%)) (on an as-converted basis excluding any Common Stock issued pursuant to the Management Incentive Plan or any New Secured Convertible Notes held by management of the Company) of the Common Stock shall have the right to designate two (2) Directors, for so long as such Major Stockholder and its Affiliates or Related Funds collectively continue to hold at least thirty percent (30%) of the Shares.

(iii) Each Major Stockholder that holds, from time to time, fifty percent (50%) or more (on an as-converted basis excluding any Common Stock issued pursuant to the Management Incentive Plan or any New Secured Convertible Notes held by management of the Company) of the Common Stock shall have the right to designate three (3) Directors, for so long as such Major Stockholder and its Affiliates or Related Funds collectively continue to hold at least fifty percent (50%) of the Shares.

For the avoidance of doubt, to the extent a Major Stockholder does not elect to exercise its rights to designate a Director pursuant to this Section 6.1(b), such failure to exercise such right shall not cause such right to expire; provided, however, that if a Major Stockholder elects not to exercise any such right, the Board of Directors shall have the right to designate additional Directors pursuant to Section 6.1(d).

(c) Each Director shall have one (1) vote, except (i) in connection with the matters set forth in Section 6.6 and (ii) each Director that is designated pursuant to Section 6.1(b)(iii) will have 1.5 votes.

(d) If clauses (a)-(b) of Section 6.1 would result in the Board of Directors consisting of less than five (5) Directors, then the remaining Directors shall have the right to designate additional Directors by a majority vote of the Board of Directors, until such time as the Board of Directors consists of five (5) Directors.

(e) If clauses (a)-(b) of Section 6.1 would result in the Board of Directors consisting of more than five (5) Directors, then the Directors shall increase the size of the Board of Directors by a majority vote of the Board of Directors in order to allow the applicable Major Stockholder(s) to designate the additional Director(s).

(f) Death; Retirement; Resignation; Removal; Vacancies. Each director is to hold office until his or her successor shall have been duly appointed and qualified or until his or her earlier death, retirement, resignation, disqualification or removal in accordance with the terms of this Section 6.1(f). The CEO Director shall be automatically removed as a Director if such person ceases to be the CEO, and the new CEO shall automatically be designated to fill such vacancy. Any Director designated pursuant to Section 6.1(b) may be removed as a Director at any time by the Major Stockholder entitled to designate such Director. If a vacancy on the Board of Directors is caused by the death, retirement, resignation or removal of any Director designated pursuant to Section 6.1(b) then the designating Major Stockholder shall, to the fullest extent permitted by applicable Law, have the exclusive right to designate a Director to fill such vacancy for the remainder of the deceased, retired, resigned or removed, as applicable, Director's term, and the Company and the Board of Directors shall take all action to cause such Director to be appointed to the Board of Directors. In the case of a vacancy with respect to the Director entitled to be designated by the other Directors pursuant to Section 6.1(d), the Directors shall designate a new Director pursuant to Section 6.1(d).

(g) Notwithstanding anything herein to the contrary, if a Major Stockholder no longer has the right to designate a Director (and therefore no longer has the right to remove any such Director) pursuant to Section 6.1(b), then upon a written request of the Board of Directors for the resignation of the Director who was designated pursuant to Section 6.1(b), each such designating Major Stockholder hereby agrees that it shall take all necessary actions to cause such Director to resign or otherwise be removed from office as a Director; provided, that any such resignation or removal shall be without prejudice to, and shall not constitute any waiver of, any right to limitation of liability, indemnification or advancement of expenses under the Charter Documents or any insurance policy of or other agreement with the Company that such Director may have as a result of his or her service as a Director prior to the effective time of such resignation or removal. For avoidance of doubt, no provision in this Agreement shall in any way limit or restrict the right of any Director to resign voluntarily at any time and for any reason.

(h) Each Director other than the CEO Director shall be entitled to serve on each committee of the Board of Directors.

(i) The Company shall take such corporate actions as may be required to effectuate and further the intent of the provisions of this Section 6.1.

Section 6.2 Assurances. The Company agrees that it shall (and shall cause its controlled Affiliates to) cooperate in facilitating any action or right described in or required by this Agreement. Without limiting the generality of the foregoing, the Company further agrees that it shall:

(a) take all actions necessary to give effect to the provisions of this Agreement;

(b) take all actions to oppose any action or proposal that is reasonably likely to impair, delay, frustrate or otherwise serve to interfere with any provision of this Agreement (including (x) removing or supporting the removal of any Director designee (except at the direction of the designating Major Stockholder(s) in accordance with this Agreement), or (y) designating a number of Directors that exceeds the number of Directors permitted to sit on the Board of Directors at any time, pursuant to the Charter Documents and this Agreement) or otherwise impairing, delaying, frustrating or otherwise interfering with the rights of the parties as set forth in this Article VI; and

(c) not (1) solicit proxies or participate in a solicitation, (2) assist any Person in taking or planning any action, or (3) cooperate in any way with, assist or participate in, knowingly encourage or otherwise facilitate or encourage any effort or attempt, in each case, that is reasonably likely to impair, delay, frustrate or otherwise serve to interfere with any provision of this Agreement (including the rights of the parties as set forth in this Article VI).

Section 6.3 Stockholder Actions.

(a) In order to effectuate the provisions of this Agreement, subject to applicable law, each Stockholder (a) hereby agrees that when any action or vote is required to be taken by such Stockholder pursuant to this Agreement, such Stockholder shall call, or cause the appropriate officers and directors of the Company to call, a Stockholders Meeting, or to execute or cause to be executed a written consent to effectuate such stockholder action, (b) shall vote their Shares at any meeting of the Stockholders, however called, and in any written action by consent of the Stockholders, and shall take such stockholder actions as may be required to effectuate and further the intent of the provisions of this Article VI, (c) shall cause the Board of Directors to adopt, either at a meeting of the Board of Directors or by unanimous written consent of the Board of Directors, all the resolutions necessary to effectuate the provisions of this Agreement, and (d) shall cause the Board of Directors to cause the Secretary of the Company, or if there be no Secretary, such other officer of the Company as the Board of Directors may appoint to fulfill the duties of Secretary, not to record any vote or consent contrary to the terms of this Agreement.

(b) As long as the New Secured Convertible Notes are outstanding, the New Secured Convertible Noteholders shall have the right to vote upon

all matters upon which the Stockholders have the right to vote (including the designation of Directors pursuant to Section 6.1(b)) together with the Stockholders as a single class and on an as-converted to Common Stock basis (assuming the full conversion of each Common Stock Equivalent into Common Stock).

Section 6.4 Reimbursement of Expenses. The Company shall promptly reimburse each Director for his or her reasonable out-of-pocket fees, charges and expenses (including travel and related expenses) incurred in connection with: (i) attending the meetings of the Board of Directors and all committees thereof; and (ii) conducting any other Company business expressly requested by the Company. The Company shall maintain directors and officers indemnity insurance coverage reasonably satisfactory to the Stockholders, and the Charter Documents shall provide for indemnification and exculpation of directors to the fullest extent permitted under applicable law.

Section 6.5 Vote Required. All actions of the Board of Directors, other than those governed by Section 6.6 and Section 6.7, shall require approval by a majority of the Board of Directors.

Section 6.6 Matters Requiring Certain Approval. The Company shall not, and shall not permit any of its Subsidiaries to, either directly or indirectly, by amendment, merger, plan of arrangement, consolidation or otherwise, in each case without the prior written consent or affirmative vote of Directors designated by one or more Major Stockholders that collectively own Common Stock representing at least sixty percent (60%) of the issued and outstanding Common Stock (on an as-converted basis):

(a) enter into a transaction (or enter into any agreement or commitment to do so) providing for the direct or indirect sale of a majority or greater of the Shares or all or substantially all of the Company's assets, whether in a single or series of transactions, including by means of a merger, consolidation, other business combination, share exchange or other reorganization of the Company (other than a Sale Transaction in accordance with Section 3.1 and Section 3.2);

(b) issue any equity securities of the Company, or any securities convertible into or exchangeable or exercisable for equity securities of the Company, other than in accordance with the Management Incentive Plan;

(c) change, modify or amend the number of directors constituting the entire Board of Directors to be greater than or less than five (5), other than in accordance with Section 6.1(e);

(d) register any securities of the Company or any Subsidiary under the Securities Act or any public offering of securities (including any initial public offering);

(e) incur any indebtedness that would cause the aggregate consolidated indebtedness of the Company to, at any time, be in excess of $[●] or in a leverage ratio above [●] or a debt service coverage ratio below [●]], including any liens,

guarantees or security in respect of such indebtedness, except any indebtedness incurred pursuant to any credit facilities approved by the Board of Directors;[9]

(f) any voluntary liquidation or dissolution of, or any filing of a petition in bankruptcy or entering into any receivership or other arrangement for the benefit of creditors with respect to, the Company or any of its Subsidiaries (other than a voluntary liquidation or dissolution of any Subsidiary of the Company pursuant to which substantially all of the assets thereof are distributed or otherwise transferred to the Company or one or more of its wholly-owned Subsidiaries);

(g) amend the Company's Charter Documents;

(h) adopt or change a material tax election or the Company's auditors;

(i) settle any material litigation proceedings or claims, or commence any material litigation proceedings or claims against any third party; or

(j) commit, offer or agree to do any of the foregoing.

Section 6.7 Affiliate Transactions. The consummation of any agreement, transaction or arrangement between the Company or any of its Subsidiaries, on the one hand, and any Stockholder or any Affiliates, officers, directors, managers or employees of such Stockholder or its Affiliates (other than the Company or any of its Subsidiaries), on the other hand (each, an "Affiliate Transaction"), shall in each case require the approval of a majority of the disinterested Directors; provided, however, that the approval requirement of this Section 6.7 shall not apply to any agreement, transaction or arrangement (a) expressly contemplated in connection with the Plan, (b) entered into on arm's length terms, (c) entered into in the ordinary course of business, (d) entered into in connection with an issuance of securities in accordance with preemptive rights as contemplated in Article IV (in which, for the avoidance of doubt, no Stockholder receives any special rights or fees that are different from those to be received by any other Stockholder), (e) entered into with Directors, officers, managers, employees or unaffiliated consultants in the ordinary course of business and approved by the Board of Directors, (f) in the case of an Affiliate Transaction that is a merger, sale or other strategic transaction involving the Company, any such transaction in which the Board of Directors obtains a fairness opinion from a nationally recognized independent financial advisor that such Affiliate Transaction is fair to the Company and the Stockholders, taken as a whole, from a financial point of view or (g) in the case of an Affiliate Transaction that is a debt financing, any such debt financing in which a particular Stockholder holds less than a majority of the debt issuance.

Section 6.8 Corporate Opportunity. The Company waives (on behalf of itself and each of its Subsidiaries), to the maximum extent permitted by law, the application of the doctrine of corporate opportunity, or any other analogous doctrine, with respect to the

[9] **Note to Ad Hoc Group/Moelis**: Please provide the applicable thresholds.

Company and its Subsidiaries, to the Stockholders and any Transferees thereof pursuant to Section 2.1 or any Directors of the Company (other than any such Person who is an employee or officer of the Company or any of its Subsidiaries). The Company and each Stockholder acknowledges and agrees that no Stockholder nor any of its Affiliates nor any Director (other than any such Person who is an employee or officer of the Company or any of its Subsidiaries) shall have any obligation to refrain from (a) engaging in the same or similar activities or lines of business as the Company or any of its Subsidiaries or developing or marketing any products or services that compete, directly or indirectly, with those of the Company or any of its Subsidiaries, (b) investing or owning any interest publicly or privately in, or developing a business relationship with, any Person engaged in the same or similar activities or lines of business as, or otherwise in competition with, the Company or any of its Subsidiaries or (c) doing business with any client or customer of the Company or any of its Subsidiaries (each of the activities referred to in clauses (a), (b) and (c), a "Specified Activity"); provided, that in engaging in any such Specified Activity no Confidential Information of the Company is used or disclosed in violation of any applicable confidentiality obligations. The Company (on behalf of itself and its Subsidiaries) and each other Stockholder renounces any interest or expectancy in, or in being offered an opportunity to participate in, any Specified Activity that may be presented to or become known to any Stockholder or any of its Affiliates or any Director (other than any such Person who is an employee or officer of the Company or any of its Subsidiaries) other than any such opportunity presented to a Director in his or her capacity as such.

ARTICLE VII

INFORMATION AND ACCESS

Section 7.1 Books and Records. The Company shall, and shall cause each of its Subsidiaries to, keep proper books of records and account, in which full and correct entries shall be made of all financial transactions and the assets and business of the Company and each of its Subsidiaries in accordance with generally accepted accounting principles consistently applied.

Section 7.2 Financial Statements and Other Information.

(a) For as long as (x) a Significant Stockholder holds Shares and (y) the Company has not registered the Common Stock under the Exchange Act, the Company shall deliver to such Significant Stockholder the following information and materials:

(i) as soon as reasonably practicable, but not later than forty-five (45) days after the end of each applicable month, the monthly financial statements of the Company;

(ii) commencing with the fiscal quarter ending on [September 30, 2020], as soon as available, but in any event not later than sixty (60) days after the end of the applicable fiscal quarter, the unaudited consolidated balance sheet of the Company and its subsidiaries, and the related statements of operations and cash flows

for such quarter and for the period commencing on the first day of the fiscal year and ending on the last day of such quarter, all certified by an appropriate officer of the Company as presenting fairly the consolidated financial condition as of such date and results of operations and cash flows for the periods indicated in conformity with GAAP applied on a consistent basis, subject to normal year-end adjustments and the absence of footnotes required by GAAP; and

(iii) as soon as available, but not later than one hundred and twenty (120) days after the end of each fiscal year of the Company, a copy of the audited consolidated balance sheet of the Company and its subsidiaries as of the end of such fiscal year and the related statements of operations and cash flows for such fiscal year prepared in accordance with GAAP, setting forth in each case in comparative form the figures for the previous year, all in reasonable detail and accompanied by a management summary and analysis of the operations of the Company for such fiscal year.

(b) Promptly following each delivery of the Company's quarterly and annual financial statements as contemplated by Section 7.2(a)(ii) and Section 7.2(a)(iii), respectively, the Company shall cause its management team to schedule and participate in a teleconference call, including a question-and-answer period during which the applicable Stockholders and bona fide good faith proposed transferees (subject to such transferees' prior execution of a customary written confidentiality agreement with the Company in form and substance reasonably acceptable to the Company) may direct questions to the management team.

(c) Notwithstanding anything to the contrary herein, (i) no Stockholder shall be entitled to receive the information specified in Section 7.2(a) and Section 7.2(b) above if a majority of the Directors (other than the Directors designated by such Stockholder) has determined, in its reasonable discretion, that the delivery of such information to such Stockholder would be detrimental to the Company (including, without limitation, in circumstances where such Stockholder is Competitor), and (ii) no employee or other Person that is a participant in the Management Incentive Plan shall have the right to view or inspect information relating to the awards of any other Person pursuant to the Management Incentive Plan.

(d) Subject to Section 9.15, bona fide good faith proposed transferees may gain access to a password-protected website or online data system maintained by the Company pursuant to this Section 7.2(d) (which, for the avoidance of doubt, shall contain the information and materials set forth in Section 7.2(a) and may participate in the conference calls describe in Section 7.2(b), subject to their prior execution of a customary written confidentiality agreement with the Company in form and substance reasonably acceptable to the Company.

Section 7.3 United States Real Property Holding Corporation. Upon the request of any Stockholder, the Company shall, if legally able to do so, execute and deliver to such Stockholder a certification in accordance with Treasury Regulations Sections 1.897-2(h) and 1.1445-2(c)(3) certifying that no interest in the Company is a "United States real property interest" within the meaning of the Code.

ARTICLE VIII

REGISTRATION RIGHTS

Prior to the consummation of an initial public offering, the parties hereto shall enter into a registration rights agreement that shall contain (a) customary demand registration rights in favor of the Major Stockholders, pursuant to which, among other things, the Major Stockholders holding twenty percent (20%) or more of the outstanding equity securities of the Company Offeror shall be entitled to two (2) long-form registrations and an unlimited number of short-form demand registrations (subject to agreed minimum thresholds on expected proceeds) and (b) customary "piggyback" registration rights in favor of the Major Stockholders and the Significant Stockholders except in the case of an initial public offering and other customary exceptions and, without cutbacks (other than customary proportional cutbacks). Each Stockholder will be subject to customary lock-ups in connection with underwritten offerings.

ARTICLE IX

MISCELLANEOUS

Section 9.1 Notices. All notices, requests, demands, document deliveries, and other communications hereunder shall be deemed given if in writing and delivered, if sent by email, courier, or by registered or certified mail (return receipt requested) to the following addresses and email addresses (or at such other addresses and email addresses as shall be specified by like notice):

(a) If to the Company, to:

Hi-Crush Inc.
1330 Post Oak Blvd., Suite 600
Houston, Texas 77056
Attn: Mark C. Skolos
Tel: (713) 980-6200
Email: mskolos@hicrush.com

with a copy to:
Latham & Watkins LLP
885 Third Avenue
New York, NY 10022
Attn: Keith A. Simon
Annemarie V. Reilly
Tel: (212) 906-1372
Fax: (212) 751-4864
Email: keith.simon@lw.com
annemarie.reilly@lw.com

(b) If to the Consenting Noteholders, to:

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019-6064
Attn: Brian Hermann
Sarah Stasny
Email: bhermann@paulweiss.com
sstasny@paulweiss.com

(c) If to the New Secured Convertible Noteholders, to:

Wilmington Savings Fund Society, FSB

[_____]

(d) if to any Stockholder, at its address as it appears on the record books of the Company.

Section 9.2 Successors and Assigns; Third Party Beneficiaries. This Agreement shall inure to the benefit of and be binding upon successors and permitted assigns of the parties hereto. This Agreement is not assignable except in connection with a transfer of Shares in accordance with this Agreement. No Person other than the parties hereto and their successors and permitted assigns is intended to be a beneficiary of this Agreement.

Section 9.3 Amendment and Waiver.

(a) No failure or delay on the part of any party hereto in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The remedies provided for herein are cumulative and are not exclusive of any remedies that may be available to the parties hereto at law, in equity or otherwise.

(b) The terms and provisions of this Agreement may not be modified, supplemented, amended or waived, except pursuant to a writing signed by the Company and the holders of a majority of the then-issued and outstanding Common Stock; provided, however, that any such modification, supplement, amendment or waiver that disproportionately and materially adversely affects the rights or obligations of any Stockholder or Stockholders under this Agreement as compared to any other Stockholder or Stockholders shall require the prior written consent of such Stockholder or holders of a majority of the then issued and outstanding Common Stock of such similarly-situated Stockholders so affected by such modification, supplement, amendment or waiver; provided further, that any modification, supplement, amendment or waiver that materially adversely affects the rights or obligations of any Stockholder or Stockholders under Section 3.1, Section 3.2, Section 3.3, Section 7.2 or this Section 9.3 shall require the prior written consent of such Stockholders so affected by such modification, supplement, amendment or waiver; provided further, that any amendment to the definition of Major Stockholder or Significant Stockholder or any amendment of the rights of the Major Stockholders or the

Significant Stockholders shall require the prior written consent of at least a majority of the Major Stockholders or the Significant Stockholders, as applicable, as of such time. Any such modification, supplement, amendment, waiver or consent provided in accordance with this Section 9.3(b) shall be binding upon the Company and all of the Stockholders.

Section 9.4 Counterparts. This Agreement may be executed in any number of counterparts, and by the parties hereto in separate counterparts each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

Section 9.5 Specific Performance. The parties hereto intend that each of the parties have the right to seek damages or specific performance in the event that any other party hereto fails to perform such party's obligations hereunder. Therefore, if any party shall institute any action or proceeding to enforce the provisions hereof, any party against whom such action or proceeding is brought hereby waives any claim or defense therein that the plaintiff party has an adequate remedy at law.

Section 9.6 Headings. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

Section 9.7 Organizational Documents. In the event that any provisions of this Agreement conflict or are inconsistent with the provisions of the Company's Charter Documents, the provisions of this Agreement shall control, and each of the parties to this Agreement covenants and agrees to vote its Shares and to take any other action reasonably requested by the Company or any Stockholder to amend the applicable Charter Document of the Company, as the case may be and to the maximum extent permitted by applicable law, so as to avoid or eliminate any conflict with the provisions hereof.

Section 9.8 Governing Law; Consent to Jurisdiction. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAW THEREOF. The parties hereto irrevocably submit to the exclusive jurisdiction of any state or federal court sitting in the State of Delaware over any suit, action or proceeding arising out of or relating to this Agreement or the affairs of the Company. To the fullest extent they may effectively do so under applicable law, the parties hereto irrevocably waive and agree not to assert, by way of motion, as a defense or otherwise, any claim that they are not subject to the jurisdiction of any such court, any objection that they may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

Section 9.9 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE,

AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 9.10 Severability. If any one or more of the provisions contained herein, or the application thereof in any circumstance, is held invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions hereof shall not be in any way impaired, unless the provisions held invalid, illegal or unenforceable shall substantially impair the benefits of the remaining provisions hereof.

Section 9.11 Rules of Construction. Unless the context otherwise requires, references to sections or subsections refer to sections or subsections of this Agreement.

Section 9.12 Entire Agreement. This Agreement, together with the exhibits hereto, is intended by the parties as a final expression of their agreement and intended to be a complete and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein and therein. There are no restrictions, promises, representations, warranties or undertakings, other than those set forth or referred to herein or therein. This Agreement, together with the exhibits hereto, supersede all prior agreements and understandings among the parties with respect to such subject matter.

Section 9.13 Term of Agreement. This Agreement shall become effective upon the execution hereof and shall terminate upon the earlier of (a) the QIPO Effective Date, (b) the closing of a Sale Transaction in accordance with the terms herein or (c) the complete liquidation or dissolution of the Company, provided that any equity securities of a Subsidiary of the Company that are distributed in connection with such liquidation shall be held with substantially the same rights and protections with respect thereto as are set forth in this Agreement with respect to the Common Stock.

Section 9.14 Further Assurances. Each of the parties shall, and shall cause their respective Affiliates to, execute such documents and perform such further acts as may be reasonably required or desirable to carry out or to perform the provisions of this agreement.

Section 9.15 Confidential Information. Each Stockholder shall, and shall cause its Authorized Recipients to, hold in strict confidence and not disclose any Confidential Information of the Company, any other Stockholder, or any of their respective subsidiaries or Affiliates that is provided or made available to, or otherwise known by or in the possession of, such Stockholder; provided, however, that the foregoing provision shall not apply to information which: (i) is or becomes generally known to the public (other than as a result of the breach of this Section 9.15 by such Stockholder or any of its Authorized Recipients); or (ii) is or becomes available to such Stockholder or one or more of its Authorized Recipients on a non-confidential basis from a source other than the Company

or its subsidiaries or any other Stockholder or their Authorized Recipients, or other Person known by such Stockholder to otherwise be restricted by law, contract or fiduciary duty from disclosing such Confidential Information. As used in this Agreement, the term "Confidential Information" means information, whether oral or written, that is not generally known to the public and that is used, developed or obtained by the Company or any of its subsidiaries or any Stockholder, or any of their respective Affiliates, in connection with their respective businesses, including processes, ideas, inventions (whether patentable or not), know-how, formulae, schematics, trade secrets, trademarks, copyrights, patents, designs and all other intellectual property and proprietary information, books, records, financial statements, customer and prospect lists, details regarding products and services, marketing plans, techniques, strategies and information, sales information and all other technical, business, financial, customer and product development plans, forecasts, budgets, projections, analyses, compilations, strategies and information, previously, presently, or subsequently disclosed to any Stockholder or of its Authorized Recipients. For purposes of this Section 9.15, Confidential Information may be disclosed by any Stockholder (A) to any of its Affiliates, directors, officers, managers, shareholders, members, partners, employees, counsel, agents and authorized representatives who are, in each case, subject to a written confidentiality agreement pursuant to which such recipient of Confidential Information agrees to be bound by customary confidentiality undertakings or is otherwise bound by a duty of confidentiality (collectively, "Authorized Recipients"), and such Stockholder shall remain liable for any breach by such Authorized Recipients with this Section 9.15; provided, however, that for the purposes of the definition of the term "Authorized Recipient", the term "Affiliate" shall be deemed to exclude any business which is a Competitor to the Company and its members, directors, senior advisors, principals, officers or employees, whether (in the case of an entity) now in existence or formed hereafter; and, notwithstanding the foregoing, (B)(x) to a bona fide proposed Third Party Purchaser, provided a transfer of Common Stock to such proposed Third Party Purchaser would not result in a Prohibited Transfer, solely with respect to Confidential Information that relates to the Company and its subsidiaries (and not any other Stockholder) under a written confidentiality agreement pursuant to which such recipient of Confidential Information agrees to be bound by customary confidentiality undertakings; or (y) when compelled by governmental rule or regulation, or compelled by legal process or judicial or governmental order (including any subpoena, discovery or information request), provided, however, that with respect to clause (B)(y), such Stockholder (and/or its or their Authorized Recipients) shall provide the Company or other Stockholder (as the case may be) with prompt written notice thereof (including the circumstances relating to such obligation) and the Confidential Information to be disclosed as far in advance of its disclosure as reasonably practicable so that the Company or other Stockholder (as the case may be) may seek an appropriate protective order or other appropriate remedy, use reasonable efforts to ensure that any Confidential Information so disclosed is accorded confidential treatment, or waive compliance by such Stockholder. For purposes of clause (B)(y) of the preceding sentence, a Stockholder and its Authorized Recipients shall be entitled to rely conclusively on an opinion of its (or their) nationally recognized outside counsel that such Stockholder (and/or its or their Authorized Recipients) is (or are) compelled by governmental rule or regulation, legal process or court order to disclose any such Confidential Information.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the undersigned have executed, or have caused to be executed, this Stockholders Agreement on the date first written above.

COMPANY:

HI-CRUSH INC.

By: _____
Name:
Title:

STOCKHOLDER COUNTERPART

SIGNATURE PAGE TO THE
STOCKHOLDERS AGREEMENT BY AND AMONG HI-CRUSH INC., AND THE
STOCKHOLDERS (AS DEFINED THEREIN)

Name of Stockholder:_____

By:_____

Signature:_____
Name:
Title:

Address of Stockholder:_____

_____

_____

Schedule I

Consenting Noteholders

1. Clearlake Capital Group
2. BlueMountain Capital Management, LLC
3. Whitebox Advisors LLC
4. PineBridge Investments
5. MSD Credit Opportunity Master Fund, L.P.

Exhibit A-1

ACKNOWLEDGMENT AND AGREEMENT

The undersigned wishes to receive from **[insert name]** (the "Transferor") certain shares or certain options or other rights to purchase **[insert number]** shares, par value **$[insert number]** per share, of Common Stock (the "Shares") of Hi-Crush Inc., a Delaware corporation (the "Company");

The Shares are subject to the Stockholders Agreement, dated [insert date of Stockholders Agreement] (the "Agreement"), among the Company and the other parties listed on the signature pages thereto;

The undersigned has been given a copy of the Agreement and afforded ample opportunity to read and to have counsel review it, and the undersigned is thoroughly familiar with its terms;

Pursuant to the terms of the Agreement, the Transferor is prohibited from transferring such Shares and the Company is prohibited from registering the transfer of the Shares unless and until a transfer is made in accordance with the terms and conditions of the Agreement and the recipient of such Shares acknowledges the terms and conditions of the Agreement and agrees to be bound thereby; and

The undersigned wishes to receive such Shares and have the Company register the transfer of such Shares.

In consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce the Transferor to transfer such Shares to the undersigned and the Company to register such transfer, the undersigned does hereby acknowledge and agree that (i) he/she has been given a copy of the Agreement and afforded ample opportunity to read and to have counsel review it, and the undersigned is thoroughly familiar with its terms, (ii) the Shares are subject to the terms and conditions set forth in the Agreement, and (iii) the undersigned does hereby agree fully to be bound thereby as Stockholder (as therein defined).

This _____ day of _____, 20__.

Exhibit A-2

ACKNOWLEDGMENT AND AGREEMENT

The undersigned wishes to receive from Hi-Crush Inc., a Delaware corporation (the "Company"), **[insert number]** shares, par value $**[insert number]** per share, of Common Stock, or certain newly issued options, warrants or other rights to purchase **[insert number]** shares of Common Stock (the "Shares"), of the Company;

The Shares are subject to the Stockholders Agreement, dated [insert date of Stockholders Agreement] (the "Agreement"), among the Company and the other parties listed on the signature pages thereto;

The undersigned has been given a copy of the Agreement and afforded ample opportunity to read and to have counsel review it, and the undersigned is thoroughly familiar with its terms;

Pursuant to the terms of the Agreement, the Company is prohibited from issuing the Shares unless and until a transfer is made in accordance with the terms and conditions of the Agreement and the recipient of such Shares acknowledges the terms and conditions of the Agreement and agrees to be bound thereby; and

The undersigned wishes to receive such Shares.

In consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce the Company to issue such Shares, the undersigned does hereby acknowledge and agree that (i) he/she has been given a copy of the Agreement and afforded ample opportunity to read and to have counsel review it, and the undersigned is thoroughly familiar with its terms, (ii) the Shares are subject to terms and conditions set forth in the Agreement, and (iii) the undersigned does hereby agree fully to be bound thereby as a "Stockholder" (as therein defined).

This _____ day of _____, 20__.

Exhibit F

Retained Causes of Action

PLEASE TAKE FURTHER NOTICE that certain documents, or portions thereof, contained in this Exhibit F and the Plan Supplement remain subject to continuing negotiations among the Debtors and interested parties with respect thereto. The Debtors reserve all rights, subject to the terms and conditions set forth in the Plan and the Restructuring Support Agreement, to amend, revise, or supplement the Plan Supplement, and any of the documents and designations contained herein, at any time before the Effective Date of the Plan, or any such other date as may be provided for by the Plan or by order of the Bankruptcy Court.

Exhibit F

Retained Causes of Action

Pursuant to the Debtors' *Joint Plan of Reorganization for Hi-Crush Inc. and its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code* (as may be amended or modified, the "**Plan**"),[1] the Debtors previously disclosed their intention to retain Causes of Action in Article X.F of the Plan, as set forth below:

1. Maintenance of Causes of Action

Except as otherwise provided in Article X of the Plan (including, without limitation, and for the avoidance of doubt, the Releases contained in Article X.B and Exculpation contained in Article X.E of the Plan) or elsewhere in the Plan or the Confirmation Order, after the Effective Date, the Reorganized Debtors shall retain all rights to commence, prosecute, pursue, litigate or settle, as appropriate, any and all Retained Causes of Action (including those not identified in the Plan Supplement), whether existing as of the Petition Date or thereafter arising, in any court or other tribunal including, without limitation, in an adversary proceeding Filed in the Chapter 11 Cases. The Reorganized Debtors, as the successors-in-interest to the Debtors and the Estates, may, and shall have the exclusive right to, enforce, sue on, settle, compromise, transfer or assign (or decline to do any of the foregoing) any or all of such Retained Causes of Action without notice to or approval from the Bankruptcy Court.

2. Preservation of All Causes of Action Not Expressly Settled or Released

Except as otherwise expressly provided in the Plan, the Debtors expressly reserve all Causes of Action and Retained Causes of Action for later adjudication by the Debtors or the Reorganized Debtors (including, without limitation, Causes of Action and Retained Causes of Action not specifically identified or of which the Debtors may presently be unaware or which may arise or exist by reason of additional facts or circumstances unknown to the Debtors at this time or facts or circumstances that may change or be different from those the Debtors now believe to exist) and, therefore, no preclusion doctrine, including, without limitation, the doctrines of *res judicata*, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel (judicial, equitable or otherwise) or laches shall apply to such Causes of Action or Retained Causes of Action upon or after the Confirmation or Consummation of the Plan based on the Disclosure Statement, the Plan or the Confirmation Order, except in each case where such Causes of Action or Retained Causes of Action have been expressly waived, relinquished, released, compromised or settled in the Plan (including, without limitation, and for the avoidance of doubt, the Releases contained in Article X.B of the Plan and Exculpation contained in Article X.E of the Plan) or any other Final Order (including, without limitation, the Confirmation Order). In addition, the Debtors and the Reorganized Debtors expressly reserve the right to pursue or adopt any claims alleged in any lawsuit in which any of the Debtors are a plaintiff, defendant or an interested party, against any Person or Entity, including, without limitation, the plaintiffs or co-defendants in such lawsuits.

[1] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Plan.

Notwithstanding and without limiting the generality of Article X.F of the Plan, the specific types of Causes of Action detailed below are expressly preserved by the Debtors and/or the Reorganized Debtors.

In addition, the Debtors prepared and filed with the Court a Creditor Matrix [Docket No. 4]. In addition to the below, to the extent not released pursuant to the Plan, the Debtors expressly retain all claims and Causes of Action against any entity listed in the Creditor Matrix, regardless of whether such entity is set forth below, to the extent such entity or entities owe or may in the future owe money to the Debtors or the Reorganized Debtors.

The below includes entities that are party to or that the Debtors believe may become party to litigation, arbitration or any other type of adversarial proceeding or dispute resolution proceeding, whether formal or informal, judicial or non-judicial. Unless otherwise released by the Plan, the Debtors expressly reserve all Causes of Action against or related to all entities that are party to or that may in the future become party to litigation, arbitration, or any other type of adversarial proceeding or dispute resolution proceeding, whether formal or informal, judicial or non-judicial, including, without limitation, dealers, creditors, customers, employees, utilities, suppliers, vendors, insurers, sureties, factors, lenders, bondholders, lessors or any other parties, regardless of whether such entity is included below.

1. Retained Causes of Action and potential counterclaims that may be asserted against lien claimants in connection with lien disposition, including, without limitation, Retained Causes of Action and counterclaims related to rights of setoff and contractual breaches.

2. Retained Causes of Action and potential counterclaims that may be asserted against customers related to payment shortfalls, past due payments, and contractual breaches, including without limitation, Retained Causes of Action related to rights of setoff and contractual breaches.

3. Retained Causes of Action and potential counterclaims and defenses that may be asserted against Governmental Units related to, among other things, tax refunds and attributes, and tax audits including, without limitation, Retained Causes of Action related to rights of setoff.

4. Retained Causes of Action, defenses, and potential counterclaims, among other things that may be asserted in the following cases, proceedings, and/or threatened cases and proceedings:

    - *CIG Odessa v. D&I Silica LLC et al.* AAA Arbitration Case No. 01-20-0000-7464;

    - *Cisco Logistics LLC v. FB Indus. Inc. and FB Indus. USA Inc.*, Dist. Ct. of Eastland County, Tex., Case No. CV2045726;

    - *Gulf Coast Bank and Trust Co. v. Hi-Crush LMS LLC*, Civ. Dist. Ct. for the Parish of Orleans, LA, Case No. 202004158;

- *National Chassis, LLC v. Pronghorn Logistics, LLC and Hi-Crush, Inc.*, 127th Judicial Dist. Ct. of Harris County, Tex., Case No. 202034412;
- *Robert Harris et. Al. v. Hi-Crush Inc., et al.*, Jud. Dist. Ct. of Harris County, Tex.;
- *Wooster Motor Ways, Inc. v. Hi-Crush, Inc.*, Wayne County Common Pleas Ct., Civ. Div., Case No. 2020 CVC-H000198;
- Certain proceedings before the Texas Commission on Human Rights and the Equal Employment Opportunity Commission; and
- Potential litigation between the Debtors and CST Storage.

5. Retained Causes of Action, defenses, and potential counterclaims, among other things, that may be asserted in the following state court cases and any other cases that may be brought in the future by the Wisconsin Tort Claimants:[2]

- *Michael Sylla, et al. v. Hi-Crush Whitehall, LLC, et al.*, Trempealeau (Wis.) County Case No. 19-CV-63;
- *Darrell Bork, et al. v. Hi-Crush Whitehall, LLC, et al.*, Trempealeau (Wis.) County Case No. 19-CV-64;
- *Cory Berg, et al. v. Hi-Crush Blair, LLC, et al.*, Trempealeau (Wis.) County Case No. 19-CV-65; and
- *Leland and Mary Drangstveit v. Hi-Crush Blair, LLC, et al.*, Trempealeau (Wis.) County Case No. 19-CV-66.

[*Remainder of Page Left Intentionally Blank*]

[2] "**Wisconsin Tort Claimants**" means the following persons represented by Fitzpatrick, Skemp & Butler, LLC: (A) (i) Cory Berg, Julie Berg, and Danielle Holstad; (ii) Greg Bluem and Lorraine Bluem; (iii) Dianna Brown; (iv) Michael Johnson and Paula Knutson; (v) Patrick Mathson and Deborah Clare; (vi) Randy Rose, Cara Rose, and S.S. (a minor child, by her natural parent and guardian Cara Rose); (vii) James Syverson and Kimberly Syverson; (B) (i) Darrell Bork, Mary Jo Bork, Dakotah Bork, and Colton Bork; (ii) Robert Guza, Lisa Guza, Emily Guza, and Kaitie Guza; (iii) Todd Lulig, Amy Kulig, and H.K. (a minor child by her natural parents and guardians Todd and Amy Kulig); (iv) Broney Manka; (v) Jared Manka; and (vi) John Manka and Mary Manka; (C) Leland Drangstveit and Mary Drangstveit; (D) (i) Michael J. Sylla, Stacy L. Sylla, Chase Sylla, and M.S. (a minor child by her natural parents and guardians Michael and Stacy Sylla); (ii) William J. Sylla, Angela Sylla, W.S. and Z.S. (minor children by their natural parents and guardians William and Angela Sylla); and (iii) Ann Sylla and (E) the following additional claimants with as yet unfiled claims: Kate Connell, Scott Dykstra, Glenn Willers and Beth Willers.

Exhibit G

Schedule of Rejected Executory Contracts and Unexpired Leases

PLEASE TAKE FURTHER NOTICE that certain documents, or portions thereof, contained in this Exhibit G and the Plan Supplement remain subject to continuing negotiations among the Debtors and interested parties with respect thereto. The Debtors reserve all rights, subject to the terms and conditions set forth in the Plan and the Restructuring Support Agreement, to amend, revise, or supplement the Plan Supplement, and any of the documents and designations contained herein, at any time before the Effective Date of the Plan, or any such other date as may be provided for by the Plan or by order of the Bankruptcy Court.

Hi-Crush Inc.
Contract Rejections for 9/11 Plan Supplement

Debtor	Creditor	Creditor Address	Contract Type	Description/ Title	Contract Date
D & I Silica, LLC	A.F. GELHAR, Co. Inc.	P.O Box 126, Fairwater, Wisconsin	Road Upgrade and Maintenance Agreement	Road Upgrade and Maintenance Agreement and all related amendments	6/17/2014
D & I Silica, LLC	A.F. GELHAR, Co. Inc.	P.O Box 126, Fairwater, Wisconsin	Agreement to Assume Responsibilities under Highway Agreement	Agreement to Assume Responsibilities under Highway Agreement and all related amendments	5/5/2014
D & I Silica, LLC	A.F. GELHAR, Co. Inc.	P.O Box 126, Fairwater, Wisconsin	Amended and Restated Supply Agreement	Amended and Restated Supply Agreement and all related amendments	8/14/2017
Hi-Crush Inc.	CAMDEN DEVELOPMENT, INC.,	1200 Post Oak Blvd, Houston, TX, 77056	Apartment Lease	CORPORATE APARTMENT RENTAL - 1200 POST OAK BLVD #704	4/23/2019
Hi-Crush Inc.	CINTAS CORPORATION	6800 CINTAS BLVD, CINCINNATI, OH, 45262	Equipment Lease - Safety Equipment	National First Aid and Safety Agreement	6/1/2019
D & I Silica, LLC	CINTAS CORPORATION	6801 CINTAS BLVD, CINCINNATI, OH, 45262	Specialty Apparel Rental Service Agreement	STANDARD UNIFORM RENTAL SERVICE AGREEMENT	3/21/2017
Hi-Crush Inc.	ENDECO ENGINEERS, INC.	9475 LINWOOD AVENUE, SHREVEPORT, LA, 71106	License Agreement	LICENSE AGREEMENT	1/23/2020
Pronghorn Logistics, LLC	Enterprise FM Trust	2341 Highway 85 North, Watford City, ND 58854	Equipment Lease - Vehicle	Master Equity Lease Agreement and Related Schedules	12/20/2017
Pronghorn Logistics, LLC	Enterprise FM Trust	2341 Highway 85 North, Watford City, ND 58854	Equipment Lease - Vehicle	Maintenance Management and Fleet Rental Agreement	12/20/2017
Pronghorn Logistics, LLC	Enterprise FM Trust	2341 Highway 85 North, Watford City, ND 58854	Equipment Lease - Vehicle	Maintenance Agreement	12/20/2017
Hi-Crush Inc.	Financial Pacific Leasing, Inc.	3455 S 344th Way, Federal Way, WA 98001	Equipment Finance Agreement	Financial Pacific Leasing Inc - Jan 2020	1/15/2020
Pronghorn Logistics, LLC	Regents Capital Corporation	3200 Bristol Street - Suite 400, Costa Mesa, CA 92626	Equipment Finance Agreement	Regents Capital Corp - EFA 153551	2/7/2020
Pronghorn Logistics, LLC	Regents Capital Corporation	3200 Bristol Street - Suite 400, Costa Mesa, CA 92626	Equipment Finance Agreement	Regents Capital Corp - EFA 153550	2/7/2020
Hi-Crush Last Mile Solutions LLC	Stearns Bank National Association	500 13th St. PO Box 750, Albany, MN 56307	Equipment Finance Agreement	Stearns Bank - 2203854-002	10/17/2019

Hi-Crush Last Mile Solutions LLC	Stearns Bank National Association	500 13th St. PO Box 750, Albany, MN 56307	Equipment Finance Agreement	Stearns Bank - 2203854-003	11/14/2019
Hi-Crush Last Mile Solutions LLC	Stearns Bank National Association	500 13th St. PO Box 750, Albany, MN 56307	Equipment Finance Agreement	Stearns Bank - 3005043-004	12/23/2019
Hi-Crush Last Mile Solutions LLC	Stearns Bank National Association	500 13th St. PO Box 750, Albany, MN 56307	Equipment Finance Agreement	Stearns Bank - 2203851-001	10/14/2019