

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM 8-K

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

Date of report (Date of earliest event reported): April 6, 2026

ATLAS ENERGY SOLUTIONS INC.

(Exact Name of Registrant as Specified in Charter)

Delaware  
(State or other jurisdiction of incorporation)

001-41828  
(Commission File Number)

93-2154509  
(I.R.S. Employer Identification No.)

5918 W. Courtyard Drive, Suite 500  
Austin, Texas 78730  
(Address of Principal Executive Offices) (Zip Code)

(512) 220-1200  
(Registrant's Telephone Number, Including Area Code)

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

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

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.01 per share	AESI	NYSE NYSE Texas, Inc.

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

Emerging growth company

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

## Item 1.01. Entry Into or Amendment of a Material Definitive Agreement

### *Indenture*

On April 9, 2026, Atlas Energy Solutions Inc. (the “Company”), issued \$450 million aggregate principal amount of its 0.50% Convertible Senior Notes due 2031 (the “Notes”), which included the exercise in full of the Initial Purchasers’ (as defined below) option to purchase up to an additional \$60 million principal amount of Notes. The Notes were issued pursuant to, and are governed by, an indenture (the “Indenture”), dated as of April 9, 2026, between the Company and U.S. Bank Trust Company, National Association, as trustee (the “Trustee”).

The Notes are the Company’s senior, unsecured obligations and are (i) senior in right of payment to the Company’s indebtedness that is expressly subordinated in right of payment to the Notes; (ii) equal in right of payment to any of the Company’s unsecured indebtedness that is not so subordinated; (iii) effectively junior to the Company’s secured indebtedness, to the extent of the value of the assets securing that indebtedness; and (iv) structurally junior to all indebtedness and other liabilities (including trade payables) of the Company’s subsidiaries.

The Company will pay interest on the Notes at an annual rate of 0.50%, payable semi-annually in arrears on April 15 and October 15 of each year, beginning on October 15, 2026. The Notes will mature on April 15, 2031, unless earlier converted, redeemed or repurchased. Before January 15, 2031, noteholders will have the right to convert their Notes only in certain circumstances and during specified periods. From and after January 15, 2031, noteholders may convert their Notes at any time at their election until the close of business on the second scheduled trading day immediately before the maturity date. The Company will settle conversions by paying or delivering, as applicable, cash, shares of the Company’s Common Stock, par value \$0.01 (the “Common Stock”), or a combination of cash and the Company’s Common Stock, at its election. The initial conversion rate is 68.9275 shares of Common Stock per \$1,000 principal amount of Notes, which represents an initial conversion price of approximately \$14.51 per share of Common Stock and a premium of approximately 30% over the last reported sale price of \$11.16 per share of the Company’s Common Stock on the New York Stock Exchange on April 6, 2026. The conversion rate and conversion price will be subject to adjustment upon the occurrence of certain events.

The Notes are redeemable, in whole or in part (subject to certain limitations described below), at the Company’s option at any time, and from time to time, on or after April 20, 2029 and prior to the 41<sup>st</sup> scheduled trading day immediately before the maturity date, at a cash redemption price equal to the principal amount of the Notes to be redeemed, plus accrued and unpaid interest to, but excluding, the redemption date, but only if the last reported sale price per share of the Common Stock has been at least 130% of the conversion price then in effect for at least 20 trading days (whether or not consecutive), including the trading day immediately preceding the date on which the Company provides notice of redemption, during any 30 consecutive trading day period ending on, and including, the trading day immediately preceding the date on which the Company provides notice of redemption. However, the Company may not redeem less than all of the outstanding Notes unless at least \$100.0 million aggregate principal amount of Notes are outstanding and not subject to redemption as of, and after giving effect to, delivery of the relevant notice of redemption. If a fundamental change (as defined in the Indenture) occurs, then, subject to limited exceptions, noteholders may require the Company to repurchase the Note at a cash repurchase price equal to the principal amount of the Notes to be repurchased, plus accrued and unpaid interest to, but excluding any repurchase date. In addition, if the effective date of a “make-whole fundamental change” (as defined in the Indenture) occurs prior to the maturity date of the Notes or if the Company gives a notice of redemption with respect to any or all of the Notes, the Company will, in certain circumstances, increase the conversion rate for a holder who elects to convert its Notes in connection with such make-whole fundamental change or convert its Notes called for redemption (or deemed called for redemption) in connection with such notice of redemption, as the case may be.

The Notes have customary provisions relating to the occurrence of “Events of Default” (as defined in the Indenture), which include the following: (i) a default in any payment of interest on, or payment of principal of, the Notes when due and payable (which, in the case of a default in the payment of interests on the Notes, will be subject to a 30-day cure period); (ii) a default in the Company’s obligation to convert a Note upon the exercise of the conversion right with respect thereto, if such default continues for five business days; (iii) the Company’s failure to send certain notices under the Indenture within specified periods of time; (iv) the Company’s failure to comply with certain covenants in the Indenture relating to the Company’s ability to consolidate with or merge with or into, or sell, convey, transfer or lease all or substantially all of the assets of the Company and its subsidiaries, taken as a whole, to another person (other than to one or more of the Company’s direct or indirect wholly owned subsidiaries); (v) a default by the Company in its other obligations or agreements under the Indenture or the Notes if such default is not cured or waived within 60 days after notice is given in accordance with the Indenture; (vi) certain defaults by the Company or any of its significant subsidiaries with respect to indebtedness for borrowed money of at least \$50,000,000; and (vii) certain events of bankruptcy, insolvency and reorganization with respect to the Company or any of its significant subsidiaries.

---

If an Event of Default involving bankruptcy, insolvency and reorganization with respect to the Company occurs, then the principal amount of, and all accrued and unpaid interest on, all of the Notes then outstanding will immediately become due and payable without any further action or notice by any person. If any other Event of Default occurs and is continuing, then the Trustee, by notice to the Company, or noteholders of at least 25% of the aggregate principal amount of Notes then outstanding, by notice to the Company and the Trustee, may declare the principal amount of, and all accrued and unpaid interest on, all of the Notes then outstanding to become due and payable immediately. Notwithstanding anything to the contrary described above, the Company may elect that the sole remedy for any Event of Default relating to certain failures by the Company to comply with certain reporting covenants in the Indenture consists, for the first 365 days after the occurrence of such Event of Default, exclusively of the right of the noteholders to receive additional interest on the Notes. If the Company has made such an election, then on the 366th day after such Event of Default (if such Event of Default is not cured or validly waived in accordance with the Indenture prior to such 366th day), such additional interest will cease to accrue and the Notes will be subject to acceleration. In the event the Company does not make such an election, or the Company has made such election but does not pay the additional interest when due, the Notes will be immediately subject to acceleration.

The above description of the Indenture and the Notes is a summary and is not complete. A copy of the Indenture and the form of the certificate representing the Notes are filed as Exhibit 4.1 and 4.2, respectively, to this Current Report on Form 8-K, and the above summary is qualified by reference to the terms of the Indenture and the Note set forth in such exhibits.

#### ***Capped Call Transactions***

On April 6, 2026, concurrently with the pricing of the Notes, and on April 7, 2026, in connection with the exercise in full by the Initial Purchasers of their option to purchase additional Notes, the Company entered into privately negotiated capped call transactions (the “Capped Call Transactions”) with an affiliate of one of the Initial Purchasers and certain other financial institutions (the “Option Counterparties”). The Capped Call Transactions initially cover, subject to anti-dilution adjustments substantially similar to those applicable to the Notes, the number of shares of the Company’s Common Stock that initially underlie the Notes, and are expected generally to reduce potential dilution to the Company’s Common Stock upon any conversion of Notes and/or offset any potential cash payments the Company is required to make in excess of the principal amount of converted Notes, as the case may be, with such reduction and/or offset subject to a cap. The cap price of the Capped Call Transactions is initially \$22.32 per share (subject to adjustment under the terms of the Capped Call Transactions), which represents a premium of 100% over the last reported sale price of \$11.16 per share of the Company’s Common Stock on April 6, 2026. The cost of the Capped Call Transactions was approximately \$50 million.

The Capped Call Transactions are separate transactions, each entered into between the Company and the applicable Option Counterparty, and are not part of the terms of the Notes and will not change any holder’s rights under the Notes or the Indenture. Holders of the Notes will not have any rights with respect to the Capped Call Transactions.

The above description of the Capped Call Transactions is a summary and is not complete. A copy of the form of confirmation for the Capped Call Transactions is filed as Exhibit 10.1 to this Current Report on Form 8-K, and the above summary is qualified by reference to the terms of the form of confirmation set forth in such exhibit.

#### ***Fifth Amendment to ABL Credit Agreement***

On April 9, 2026, Atlas Sand Company, LLC (“Atlas LLC”) and certain subsidiaries of the Company entered into that certain Fifth Amendment to Loan, Security and Guaranty Agreement (the “Fifth ABL Amendment”), among Atlas LLC, as the borrower, the subsidiary guarantors party thereto, the lenders party thereto and Bank of America, N.A., as administrative agent. The Fifth ABL Amendment amends that certain Loan, Security and Guaranty Agreement, dated as of February 22, 2023, as amended, to, among other things, permit the issuance of the Notes and the Capped Call Transactions.

---

The above description of the Fifth ABL Amendment is a summary and is not complete. A copy of the Fifth ABL Amendment is filed as Exhibit 10.2 to this Current Report on Form 8-K, and the above summary is qualified by reference to the terms of the Fifth ABL Amendment set forth in such exhibit.

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

The information contained in Item 1.01 of this Current Report on Form 8-K relating to the Indenture under the heading “Indenture” and the Fifth ABL Amendment under the heading “Fifth Amendment to ABL Credit Agreement” is incorporated into this Item 2.03 by reference.

### **Item 3.02. Unregistered Sales of Equity Securities.**

The disclosure set forth in Item 1.01 above under the caption “Indenture” is incorporated by reference into this Item 3.02. The Notes were issued to the Initial Purchasers in reliance upon Section 4(a)(2) of the Securities Act of 1933, as amended (the “Securities Act”), in transactions not involving any public offering. The Notes were resold by the Initial Purchasers to persons whom the Initial Purchasers reasonably believe are qualified institutional buyers pursuant to Rule 144A under the Securities Act. Any shares of the Company’s Common Stock that may be issued upon conversion of the Notes will be issued in reliance upon Section 3(a)(9) of the Securities Act as involving an exchange by the Company exclusively with its security holders. Initially, a maximum of 40,322,565 shares of the Company’s Common Stock may be issued upon conversion of the Notes, based on the initial maximum conversion rate of 89.6057 shares of Common Stock per \$1,000 principal amount of Notes, which is subject to customary anti-dilution adjustment provisions.

### **Item 8.01. Other Events.**

On April 7, 2026, the Company issued a press release announcing the pricing of the Notes. A copy of the press release is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

#### ***Purchase Agreement***

On April 6, 2026, the Company entered into a purchase agreement (the “Purchase Agreement”) with J.P. Morgan Securities LLC, Barclays Capital Inc. and BofA Securities, Inc. (the “Representatives”), as representatives of the several initial purchasers named therein (the “Initial Purchasers”), in connection with the offering of the Notes (the “Notes Offering”).

The Notes were issued and sold to the Initial Purchasers pursuant to an exemption from the registration requirements of the Securities Act in reliance upon Section 4(a)(2) of the Securities Act. The Initial Purchasers resold the Notes only to persons reasonably believed to be qualified institutional buyers in accordance with Rule 144A under the Securities Act. The Notes have not been, and will not be, registered under the Securities Act, or any state securities laws, and, unless so registered, may not be offered or sold in the United States except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act and applicable state securities laws. The Notes Offering closed on April 9, 2026.

The Purchase Agreement contains customary representations, warranties and agreements by the Company and customary conditions to closing, obligations of the parties and termination provisions. Additionally, the Company has agreed to indemnify the Initial Purchasers against certain liabilities, including liabilities under the Securities Act, or to contribute to payments the Initial Purchasers may be required to make because of any of those liabilities.

### **Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits.

<b>Exhibit Number</b>	<b>Description of Exhibit</b>
<a href="#">4.1</a>	Indenture, dated as of April 9, 2026, between Atlas Energy Solutions Inc. and U.S. Bank Trust Company, National Association, as trustee.
<a href="#">4.2</a>	Form of 0.50% Convertible Senior Note due 2031 (included in Exhibit A to Exhibit 4.1).
<a href="#">10.1</a>	Form of Capped Call Confirmation.
<a href="#">10.2</a>	Fifth Amendment to Loan, Security and Guaranty Agreement, dated as of April 9, 2026, by and among Atlas Sand Company, LLC, as borrower, certain of its subsidiaries as guarantors, the financial institutions party thereto as lenders and Bank of America, N.A., as agent for the lenders.
<a href="#">99.1</a>	Press Release, dated April 7, 2026.
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

**SIGNATURES**

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

**ATLAS ENERGY SOLUTIONS INC.**

Date: April 9, 2026

By: /s/ John Turner  
Name: John Turner  
Title: President and Chief Executive Officer

---

ATLAS ENERGY SOLUTIONS INC.

AND

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,

as Trustee

INDENTURE

Dated as of April 9, 2026

0.50% Convertible Senior Notes due 2031

---

## TABLE OF CONTENTS

PAGE

### ARTICLE 1 Definitions

Section 1.01.	<i>Definitions</i>	1
Section 1.02.	<i>References to Interest</i>	15

### ARTICLE 2 Issue, Description, Execution, Registration and Exchange of Notes

Section 2.01.	<i>Designation and Amount</i>	15
Section 2.02.	<i>Form of Notes</i>	15
Section 2.03.	<i>Date and Denomination of Notes; Payments of Interest and Defaulted Amounts</i>	16
Section 2.04.	<i>Execution, Authentication and Delivery of Notes</i>	18
Section 2.05.	<i>Exchange and Registration of Transfer of Notes; Restrictions on Transfer; Depositary</i>	19
Section 2.06.	<i>Mutilated, Destroyed, Lost or Stolen Notes</i>	26
Section 2.07.	<i>Temporary Notes</i>	27
Section 2.08.	<i>Cancellation of Notes Paid, Converted, Etc</i>	27
Section 2.09.	<i>CUSIP Numbers</i>	28
Section 2.10.	<i>Additional Notes; Repurchases</i>	28

### ARTICLE 3 Satisfaction and Discharge

Section 3.01.	<i>Satisfaction and Discharge</i>	29
---------------	-----------------------------------	----

### ARTICLE 4 Particular Covenants of the Company

Section 4.01.	<i>Payment of Principal and Interest</i>	29
Section 4.02.	<i>Maintenance of Office or Agency</i>	29
Section 4.03.	<i>Appointments to Fill Vacancies in Trustee's Office</i>	30
Section 4.04.	<i>Provisions as to Paying Agent</i>	30
Section 4.05.	<i>Existence</i>	31
Section 4.06.	<i>Rule 144A Information Requirement and Annual Reports</i>	32
Section 4.07.	<i>Stay, Extension and Usury Laws</i>	35
Section 4.08.	<i>Compliance Certificate; Statements as to Defaults</i>	35

### ARTICLE 5 Lists of Holders and Reports by the Company and the Trustee

Section 5.01.	<i>Lists of Holders</i>	35
Section 5.02.	<i>Preservation and Disclosure of Lists</i>	35

ARTICLE 6  
Defaults and Remedies

Section 6.01.	<i>Events of Default</i>	36
Section 6.02.	<i>Acceleration; Rescission and Annulment</i>	37
Section 6.03.	<i>Additional Interest</i>	39
Section 6.04.	<i>Payments of Notes on Default; Suit Therefor</i>	40
Section 6.05.	<i>Application of Monies Collected by Trustee</i>	41
Section 6.06.	<i>Proceedings by Holders</i>	42
Section 6.07.	<i>Proceedings by Trustee</i>	43
Section 6.08.	<i>Remedies Cumulative and Continuing</i>	44
Section 6.09.	<i>Direction of Proceedings and Waiver of Defaults by Majority of Holders</i>	44
Section 6.10.	<i>Notice of Defaults</i>	45
Section 6.11.	<i>Undertaking to Pay Costs</i>	45

ARTICLE 7  
Concerning the Trustee

Section 7.01.	<i>Duties and Responsibilities of Trustee</i>	45
Section 7.02.	<i>Rights of the Trustee</i>	47
Section 7.03.	<i>No Responsibility for Recitals, Etc</i>	49
Section 7.04.	<i>Trustee, Paying Agents, Conversion Agents, Bid Solicitation Agent or Note Registrar May Own Notes</i>	49
Section 7.05.	<i>Monies and Shares of Common Stock to Be Held in Trust</i>	49
Section 7.06.	<i>Compensation and Expenses of Trustee</i>	50
Section 7.07.	<i>Officer's Certificate as Evidence</i>	50
Section 7.08.	<i>Eligibility of Trustee</i>	51
Section 7.09.	<i>Resignation or Removal of Trustee</i>	51
Section 7.10.	<i>Acceptance by Successor Trustee</i>	52
Section 7.11.	<i>Succession by Merger, Etc</i>	52

ARTICLE 8  
Concerning the Holders

Section 8.01.	<i>Action by Holders</i>	53
Section 8.02.	<i>Proof of Execution by Holders</i>	53
Section 8.03.	<i>Who Are Deemed Absolute Owners</i>	54
Section 8.04.	<i>Company-Owned Notes Disregarded</i>	54
Section 8.05.	<i>Revocation of Consents; Future Holders Bound</i>	54

ARTICLE 9  
Holders' Meetings

Section 9.01.	<i>Purpose of Meetings</i>	55
Section 9.02.	<i>Call of Meetings by Trustee or the Company</i>	55
Section 9.03.	<i>Call of Meetings by Company or Holders</i>	55
Section 9.04.	<i>Qualifications for Voting</i>	56
Section 9.05.	<i>Regulations</i>	56
Section 9.06.	<i>Voting</i>	56
Section 9.07.	<i>No Delay of Rights by Meeting</i>	57

ARTICLE 10  
Supplemental Indentures

Section 10.01.	<i>Supplemental Indentures Without Consent of Holders</i>	57
Section 10.02.	<i>Supplemental Indentures with Consent of Holders</i>	58
Section 10.03.	<i>Effect of Supplemental Indentures</i>	59
Section 10.04.	<i>Notation on Notes</i>	60
Section 10.05.	<i>Evidence of Compliance of Supplemental Indenture to Be Furnished Trustee</i>	60

ARTICLE 11  
Consolidation, Merger, Sale, Conveyance and Lease

Section 11.01.	<i>Company May Consolidate, Etc. on Certain Terms</i>	60
Section 11.02.	<i>Successor Corporation to Be Substituted</i>	61
Section 11.03.	<i>Opinion of Counsel to Be Given to Trustee</i>	61

ARTICLE 12  
Immunity of Incorporators, Stockholders, Officers and Directors

Section 12.01.	<i>Indenture and Notes Solely Corporate Obligations</i>	62
----------------	---	----

ARTICLE 13  
[Intentionally Omitted]

ARTICLE 14  
Conversion of Notes

Section 14.01.	<i>Conversion Privilege</i>	62
Section 14.02.	<i>Conversion Procedure; Settlement Upon Conversion</i>	66
Section 14.03.	<i>Increased Conversion Rate Applicable to Certain Notes Surrendered in Connection with Make-Whole Fundamental Changes or Redemption Notice</i>	72
Section 14.04.	<i>Adjustment of Conversion Rate</i>	75
Section 14.05.	<i>Adjustments of Prices</i>	85
Section 14.06.	<i>Shares to Be Fully Paid</i>	85
Section 14.07.	<i>Effect of Recapitalizations, Reclassifications and Changes of the Common Stock</i>	85
Section 14.08.	<i>Certain Covenants</i>	87
Section 14.09.	<i>Responsibility of Trustee</i>	88
Section 14.10.	<i>Reserved</i>	88
Section 14.11.	<i>Stockholder Rights Plans</i>	88
Section 14.12.	<i>Exchange in Lieu of Conversion</i>	89

ARTICLE 15  
Repurchase of Notes at Option of Holders

Section 15.01.	<i>[Intentionally Omitted]</i>	89
Section 15.02.	<i>Repurchase at Option of Holders Upon a Fundamental Change</i>	90
Section 15.03.	<i>Withdrawal of Fundamental Change Repurchase Notice</i>	93
Section 15.04.	<i>Deposit of Fundamental Change Repurchase Price</i>	94
Section 15.05.	<i>Covenant to Comply with Applicable Laws Upon Repurchase of Notes</i>	94

ARTICLE 16  
Optional Redemption

Section 16.01.	<i>Optional Redemption</i>	95
Section 16.02.	<i>Notice of Optional Redemption; Selection of Notes</i>	95
Section 16.03.	<i>Payment of Notes Called for Redemption</i>	97
Section 16.04.	<i>Restrictions on Redemption</i>	97

ARTICLE 17  
Miscellaneous Provisions

Section 17.01.	<i>Provisions Binding on Company's Successors</i>	97
Section 17.02.	<i>Official Acts by Successor Corporation</i>	97
Section 17.03.	<i>Addresses for Notices, Etc</i>	98
Section 17.04.	<i>Governing Law; Jurisdiction</i>	98
Section 17.05.	<i>Evidence of Compliance with Conditions Precedent; Certificates and Opinions of Counsel to Trustee</i>	99
Section 17.06.	<i>Legal Holidays</i>	99
Section 17.07.	<i>No Security Interest Created</i>	99
Section 17.08.	<i>Benefits of Indenture</i>	100
Section 17.09.	<i>Table of Contents, Headings, Etc</i>	100
Section 17.10.	<i>Authenticating Agent</i>	100
Section 17.11.	<i>Execution in Counterparts</i>	101
Section 17.12.	<i>Severability; Entire Agreement</i>	101
Section 17.13.	<i>Waiver of Jury Trial</i>	101
Section 17.14.	<i>Force Majeure</i>	101
Section 17.15.	<i>Calculations</i>	102
Section 17.16.	<i>USA PATRIOT Act</i>	102
Section 17.17.	<i>Tax Withholding</i>	102
Section 17.18.	<i>Electronic Signatures</i>	103

**EXHIBIT**

Exhibit A	Form of Note	A-1
-----------	--------------	-----

INDENTURE dated as of April 9, 2026 between ATLAS ENERGY SOLUTIONS INC., a Delaware corporation, as issuer (the “**Company**,” as more fully set forth in Section 1.01) and U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, as trustee (the “**Trustee**,” as more fully set forth in Section 1.01).

WITNESSETH:

WHEREAS, for its lawful corporate purposes, the Company has duly authorized the issuance of its 0.50% Convertible Senior Notes due 2031 (the “**Notes**”), initially in an aggregate principal amount not to exceed \$450,000,000, and in order to provide the terms and conditions upon which the Notes are to be authenticated, issued and delivered, the Company has duly authorized the execution and delivery of this Indenture; and

WHEREAS, the Form of Note, the certificate of authentication to be borne by each Note, the Form of Notice of Conversion, the Form of Fundamental Change Repurchase Notice and the Form of Assignment and Transfer to be borne by the Notes are to be substantially in the forms hereinafter provided; and

WHEREAS, all acts and things necessary to make the Notes, when executed by the Company and authenticated and delivered by the Trustee or a duly authorized authenticating agent, as provided in this Indenture, the valid, binding and legal obligations of the Company, and this Indenture the valid, binding and legal agreement of the Company and the Trustee, have been done and performed, and the execution of this Indenture and the issuance hereunder of the Notes have in all respects been duly authorized.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

That in order to declare the terms and conditions upon which the Notes are, and are to be, authenticated, issued and delivered, and in consideration of the premises and of the purchase and acceptance of the Notes by the Holders thereof, the Company covenants and agrees with the Trustee for the equal and proportionate benefit of the respective Holders from time to time of the Notes (except as otherwise provided below), as follows:

ARTICLE 1  
DEFINITIONS

Section 1.01. *Definitions.* The terms defined in this Section 1.01 (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture and of any indenture supplemental hereto shall have the respective meanings specified in this Section 1.01. The words “herein,” “hereof,” “hereunder” and words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision. The word “will” shall be construed to have the same meaning and effect as the word “shall.” The terms defined in this Article include the plural as well as the singular.

“**1% Provision**” shall have the meaning specified in Section 14.04(k).

“**Additional Interest**” means all amounts, if any, payable pursuant to Section 4.06(d), Section 4.06(e) and Section 6.03, as applicable.

“**Additional Shares**” shall have the meaning specified in Section 14.03(a).

“**Affiliate**” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “control,” when used with respect to any specified Person means the power to direct or cause the direction of the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing. Notwithstanding anything to the contrary herein, the determination of whether one Person is an “**Affiliate**” of another Person for purposes of this Indenture shall be made based on the facts at the time such determination is made or required to be made, as the case may be, hereunder.

“**Applicable Procedures**” means, with respect to a Depository, as to any matter at any time, the policies and procedures of such Depository, if any, that are applicable to such matter at such time.

“**Authorized Officers**” shall have the meaning specified in Section 17.19.

“**Bid Solicitation Agent**” means the Company or the Person appointed by the Company to solicit bids for the Trading Price of the Notes in accordance with Section 14.01(b)(i). The Company shall initially act as the Bid Solicitation Agent. The Company may, however, appoint another Person to act as Bid Solicitation Agent at any time without prior notice to Holders (but will provide notice thereof to the Trustee).

“**Board of Directors**” means the board of directors of the Company or a committee of such board duly authorized to act for it hereunder.

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

“**Business Combination Event**” shall have the meaning specified in Section 11.01.

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

“**Capital Stock**” means, for any entity, any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) stock issued by that entity; *provided* that debt securities that are convertible into or exchangeable for Capital Stock shall not constitute Capital Stock prior to their conversion or exchange, as the case may be.

“**Cash Settlement**” shall have the meaning specified in Section 14.02(a).

“**Certain Distributions Conversion Period End Date**” shall have the meaning specified in Section 14.01(b)(iii).

“**Certain Distributions Notification**” shall have the meaning specified in Section 14.01(b)(iii).

“**close of business**” means 5:00 p.m. (New York City time).

“**Combination Settlement**” shall have the meaning specified in Section 14.02(a).

“**Commission**” means the U.S. Securities and Exchange Commission.

“**Common Equity**” of any Person means Capital Stock of such Person that is generally entitled (a) to vote in the election of directors of such Person or (b) if such Person is not a corporation, to vote or otherwise participate in the selection of the governing body, partners, managers or others that will control the management or policies of such Person.

“**Common Stock**” means the common stock of the Company, par value \$0.01 per share, at the date of this Indenture, subject to Section 14.07.

“**Company**” shall have the meaning specified in the first paragraph of this Indenture, and subject to the provisions of Article 11, shall include its successors and assigns.

“**Company Order**” means a written order of the Company, signed on behalf of the Company by an Officer.

“**Conversion Agent**” shall have the meaning specified in Section 4.02.

“**Conversion Date**” shall have the meaning specified in Section 14.02(c).

“**Conversion Obligation**” shall have the meaning specified in Section 14.01(a).

“**Conversion Price**” means as of any time, \$1,000, *divided by* the Conversion Rate as of such time.

“**Conversion Rate**” shall have the meaning specified in Section 14.01(a).

“**Corporate Event**” shall have the meaning specified in Section 14.01(b)(iv).

“**Corporate Trust Office**” means the corporate trust office of the Trustee at which at any time its corporate trust business shall be administered, which office at the date hereof is located at U.S. Bank Trust Company, National Association, Corp Trust Services - Atlanta, 2 Concourse Parkway NE, Suite 800, Atlanta GA 30328, Attention: Atlas Energy Solutions Inc. Administrator, or such other address as the Trustee may designate from time to time by notice to the Holders and the Company, or the principal corporate trust office of any successor trustee (or such other address as such successor trustee may designate from time to time by notice to the Holders and the Company).

“**Custodian**” means the Trustee, as custodian for The Depository Trust Company, with respect to the Global Notes, or any successor entity thereto.

“**Daily Conversion Value**” means, for each of the 40 consecutive Trading Days during the Observation Period, 1/40th of the product of (a) the Conversion Rate on such Trading Day and (b) the Daily VWAP for such Trading Day.

“**Daily Measurement Value**” means the Specified Dollar Amount (if any), *divided by 40*.

“**Daily Settlement Amount**,” for each of the 40 consecutive Trading Days during the Observation Period, shall consist of:

- (a) cash in an amount equal to the lesser of (i) the Daily Measurement Value and (ii) the Daily Conversion Value on such Trading Day; and
- (b) if the Daily Conversion Value on such Trading Day exceeds the Daily Measurement Value, a number of shares of Common Stock equal to (i) the difference between the Daily Conversion Value on such Trading Day and the Daily Measurement Value, *divided by* (ii) the Daily VWAP for such Trading Day.

“**Daily VWAP**” means, for each of the 40 consecutive Trading Days during the relevant Observation Period, the per share volume-weighted average price as displayed under the heading “Bloomberg VWAP” on Bloomberg page “AESI <equity> AQR” (or its equivalent successor if such page is not available) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such Trading Day (or, if such volume-weighted average price is unavailable, the market value of one share of the Common Stock on such Trading Day determined, using a volume-weighted average method, by a nationally recognized independent investment banking firm retained for this purpose by the Company). The “**Daily VWAP**” shall be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours.

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

“**Default Settlement Method**” means, initially, Combination Settlement with a Specified Dollar Amount per \$1,000 principal amount of Notes of \$1,000; *provided* that the Company may, from time to time, change the Default Settlement Method by sending notice of the new Default Settlement Method to the Holders, the Trustee and the Conversion Agent (if other than the Trustee) prior to January 15, 2031, all in accordance with, and subject to, the last paragraph of Section 14.02(a)(iii).

“**Defaulted Amounts**” means any amounts on any Note (including, without limitation, the Redemption Price, the Fundamental Change Repurchase Price, principal and interest) that are payable but are not punctually paid or duly provided for.

“**Depository**” means, with respect to each Global Note, the Person specified in Section 2.05(c) as the Depository with respect to such Notes, until a successor shall have been appointed and become such pursuant to the applicable provisions of this Indenture, and thereafter, “**Depository**” shall mean or include such successor.

“**Distributed Property**” shall have the meaning specified in Section 14.04(c).

“**Effective Date**” shall have the meaning specified in Section 14.03(c), except that, as used in Section 14.04 and Section 14.05, “**Effective Date**” means the first date on which shares of the Common Stock trade on the applicable exchange or in the applicable market, regular way, reflecting the relevant share split or share combination, as applicable. For the avoidance of doubt, any alternative trading convention on the applicable exchange or market in respect of shares of the Common Stock under a separate ticker symbol or CUSIP number will not be considered “regular way” for this purpose.

“**Electronic Means**” shall have the meaning specified in Section 17.19.

“**Event of Default**” shall have the meaning specified in Section 6.01.

“**Ex-Dividend Date**” means the first date on which shares of the Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question, from the Company or, if applicable, from the seller of Common Stock on such exchange or market (in the form of due bills or otherwise) as determined by such exchange or market. For the avoidance of doubt, any alternative trading convention on the applicable exchange or market in respect of shares of the Common Stock under a separate ticker symbol or CUSIP number will not be considered “regular way” for this purpose.

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

“**Exchange Election**” shall have the meaning specified in Section 14.12.

“**Exempted Fundamental Change**” refers to any Fundamental Change with respect to which the Company does not offer to repurchase any Notes in accordance with Section 15.02(f).

“**Expiration Date**” shall have the meaning specified in Section 14.04(e).

“**Form of Assignment and Transfer**” means the “Form of Assignment and Transfer” attached as Attachment 3 to the Form of Note attached hereto as Exhibit A.

“**Form of Fundamental Change Repurchase Notice**” means the “Form of Fundamental Change Repurchase Notice” attached as Attachment 2 to the Form of Note attached hereto as Exhibit A.

“**Form of Note**” means the “Form of Note” attached hereto as Exhibit A.

“**Form of Notice of Conversion**” means the “Form of Notice of Conversion” attached as Attachment 1 to the Form of Note attached hereto as Exhibit A.

“**Fundamental Change**” shall be deemed to have occurred at the time after the Notes are originally issued if any of the following occurs:

(a) a “person” or “group” within the meaning of Section 13(d) of the Exchange Act, other than the Company, its Wholly Owned Subsidiaries and the employee benefit plans of the Company and its Wholly Owned Subsidiaries, has become and files a Schedule TO (or any successor schedule, form or report) or any schedule, form or report under the Exchange Act disclosing that such “person” or “group” has become the direct or indirect “beneficial owner,” as defined in Rule 13d-3 under the Exchange Act, of the Common Stock representing more than 50% of the voting power of the Common Stock; unless such beneficial ownership arises solely as a result of a revocable proxy delivered in response to a public proxy or consent solicitation made pursuant to the applicable rules and regulations under the Exchange Act and is not also then reportable on Schedule 13D or Schedule 13G (or any successor schedule) under the Exchange Act regardless of whether such a filing has actually been made; *provided*, that no “person” or “group” shall be deemed to be the beneficial owner of any securities tendered pursuant to a tender or exchange offer made by or on behalf of such “person” or “group” until such tendered securities are accepted for purchase or exchange under such offer;

(b) the consummation of (A) any recapitalization, reclassification or change of the Common Stock (other than changes resulting from a subdivision, combination or a change in par value) as a result of which the Common Stock would be converted into, or exchanged for, stock, other securities, other property or assets; (B) any share exchange, consolidation or merger of the Company pursuant to which the Common Stock will be converted into cash, securities or other property or assets; or (C) any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of the Company and its Subsidiaries, taken as a whole, to any Person other than one or more of the Company’s direct or indirect Wholly Owned Subsidiaries; *provided, however*, that a transaction described in clause (A) or (B) in which the holders of all classes of the Company’s Common Equity immediately prior to such transaction own, directly or indirectly, more than 50% of all classes of Common Equity of the continuing or surviving corporation or transferee or the parent thereof immediately after such transaction in substantially the same proportions (relative to each other) as such ownership immediately prior to such transaction shall not be a Fundamental Change pursuant to this clause (b);

(c) the stockholders of the Company approve any plan or proposal for the liquidation or dissolution of the Company; or

(d) the Common Stock (or other Common Equity underlying the Notes) ceases to be listed or quoted on any of The New York Stock Exchange, The Nasdaq Global Select Market or The Nasdaq Global Market (or any of their respective successors);

*provided, however,* that a transaction or transactions described in clause (a) or clause (b) above shall not constitute a Fundamental Change, if at least 90% of the consideration received or to be received by the holders of the Common Stock, excluding cash payments for fractional shares and cash payments made in respect of dissenters' appraisal rights, in connection with such transaction or transactions consists of Common Equity that are listed or quoted on any of The New York Stock Exchange, The Nasdaq Global Select Market or The Nasdaq Global Market (or any of their respective successors) or will be so listed or quoted when issued or exchanged in connection with such transaction or transactions and as a result of such transaction or transactions such consideration, excluding cash payments for fractional shares and cash payments made in respect of dissenters' appraisal rights, becomes Reference Property for the Notes (subject to the provisions of Section 14.02(a)). Any event, transaction or series of related transactions that constitute a Fundamental Change under both clause (a) and clause (b) above (determined without regard to the proviso in clause (b) above) shall be deemed to be a Fundamental Change solely under clause (b) above (subject to such *proviso*). If any transaction in which the Common Stock is replaced by the Common Equity of another entity occurs, following completion of any related Make-Whole Fundamental Change Period (or, in the case of a transaction that would have been a Fundamental Change or a Make-Whole Fundamental Change but for the proviso immediately following clause (d) of this definition, following the effective date of such transaction) references to the Company in this definition shall instead be references to such other entity.

“**Fundamental Change Company Notice**” shall have the meaning specified in Section 15.02(c).

“**Fundamental Change Repurchase Date**” shall have the meaning specified in Section 15.02(a).

“**Fundamental Change Repurchase Notice**” shall have the meaning specified in Section 15.02(b)(i).

“**Fundamental Change Repurchase Price**” shall have the meaning specified in Section 15.02(a).

“**Global Note**” shall have the meaning specified in Section 2.05(b).

“**Holder**,” as applied to any Note, means any Person in whose name at the time a particular Note is registered on the Note Register.

“**Indenture**” means this instrument as originally executed or, if amended or supplemented as herein provided, as so amended or supplemented.

“**Instructions**” shall have the meaning specified in Section 17.19.

“**Interest Payment Date**” means each April 15 and October 15 of each year, beginning on October 15, 2026.

“**Last Reported Sale Price**” of the Common Stock (or other security for which a closing sale price must be determined) on any date means the closing sale price per share (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on that date as reported in composite transactions for the principal U.S. national or regional securities exchange on which the Common Stock (or such other security) is traded. If the Common Stock (or such other security) is not listed for trading on a U.S. national or regional securities exchange on the relevant date, the “**Last Reported Sale Price**” shall be the last quoted bid price per share for the Common Stock (or such other security) in the over-the-counter market on the relevant date as reported by OTC Markets Group Inc. or a similar organization. If the Common Stock (or such other security) is not so quoted, the “**Last Reported Sale Price**” shall be the average of the mid-point of the last bid and ask prices per share for the Common Stock (or such other security) on the relevant date from each of at least three nationally recognized independent investment banking firms selected by the Company for this purpose. The “**Last Reported Sale Price**” shall be determined without regard to after-hours trading or any other trading outside of regular trading session hours.

“**Legend Removal Deadline Date**” shall have the meaning specified in Section 4.06(e).

“**Make-Whole Fundamental Change**” means any transaction or event that constitutes a Fundamental Change (as defined above and determined after giving effect to any exceptions to or exclusions from such definition, but without regard to the *proviso* in clause (b) of the definition thereof).

“**Make-Whole Fundamental Change Period**” shall have the meaning specified in Section 14.03(a).

“**Market Disruption Event**” means, for the purposes of determining amounts due upon conversion (a) a failure by the primary U.S. national or regional securities exchange or market on which the Common Stock is listed or admitted for trading to open for trading during its regular trading session or (b) the occurrence or existence prior to 1:00 p.m., New York City time, on any Scheduled Trading Day for the Common Stock for more than one half-hour period in the aggregate during regular trading hours of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant stock exchange or otherwise) in the Common Stock or in any options contracts or futures contracts traded on any U.S. exchange relating to the Common Stock.

“**Maturity Date**” means April 15, 2031.

“**Measurement Period**” shall have the meaning specified in Section 14.01(b)(i).

“**Note**” or “**Notes**” shall have the meaning specified in the first paragraph of the recitals of this Indenture.

“**Note Register**” shall have the meaning specified in Section 2.05(a).

“**Note Registrar**” shall have the meaning specified in Section 2.05(a).

“**Notice of Conversion**” shall have the meaning specified in Section 14.02(b).

“**Observation Period**” with respect to any Note surrendered for conversion means: (i) subject to clause (ii), if the relevant Conversion Date occurs prior to January 15, 2031, the 40 consecutive Trading Day period beginning on, and including, the second Trading Day immediately succeeding such Conversion Date; (ii) with respect to any Notes called for redemption (or deemed called for redemption pursuant to Section 14.01(b)(ii)), if the relevant Conversion Date occurs during a Redemption Period with respect to such Notes, the 40 consecutive Trading Days beginning on, and including, the 41st Scheduled Trading Day immediately preceding the relevant Redemption Date; and (iii) subject to clause (ii), if the relevant Conversion Date occurs on or after January 15, 2031, the 40 consecutive Trading Days beginning on, and including, the 41st Scheduled Trading Day immediately preceding the Maturity Date.

“**Offering Memorandum**” means the preliminary offering memorandum dated April 6, 2026, as supplemented by the related pricing term sheet dated April 6, 2026, relating to the offering and sale of the Notes.

“**Officer**” means, with respect to the Company, the President, the Chief Executive Officer, the Chief Financial Officer, the Treasurer, the Secretary, any assistant Treasurer, any assistant Secretary, any Executive or Senior Vice President or any Vice President (whether or not designated by a number or numbers or word or words added before or after the title “Vice President”).

“**Officer’s Certificate**,” when used with respect to the Company, means a certificate that is delivered to the Trustee and that is signed on behalf of the Company by an Officer of the Company that meets the requirements of Section 17.05.

“**open of business**” means 9:00 a.m. (New York City time).

“**Opinion of Counsel**” means an opinion in writing signed by legal counsel, who may be an employee of or counsel to the Company, that is delivered to the Trustee.

“**Optional Redemption**” shall have the meaning specified in Section 16.01.

“**outstanding**,” when used with reference to Notes, shall, subject to the provisions of Section 8.04, mean, as of any particular time, all Notes authenticated and delivered by the Trustee under this Indenture, except:

- (a) Notes theretofore canceled by the Trustee or accepted by the Trustee for cancellation;
- (b) Notes, or portions thereof, that have become due and payable and in respect of which monies in the necessary amount shall have been deposited in trust with the Trustee or with any Paying Agent (other than the Company) or shall have been set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent);
- (c) Notes that have been paid pursuant to Section 2.06 or Notes in lieu of which, or in substitution for which, other Notes shall have been authenticated and delivered pursuant to the terms of Section 2.06 unless proof satisfactory to the Trustee is presented that any such Notes are held by protected purchasers in due course;
- (d) Notes surrendered for purchase in accordance with Article 15 for which Paying Agent or tender agent holds money sufficient to pay the Fundamental Change Repurchase Price, in accordance with Section 15.04(b);
- (e) Notes converted pursuant to Article 14 and required to be cancelled pursuant to Section 2.08;
- (f) Notes redeemed pursuant to Article 16; and
- (g) Notes repurchased by the Company pursuant to the last sentence of Section 2.10 after the Company surrenders them to the Trustee for cancellation in accordance with Section 2.08.

“**Partial Redemption Limitation**” shall have the meaning specified in Section 16.02(d).

“**Paying Agent**” shall have the meaning specified in Section 4.02.

“**Person**” means an individual, a corporation, a limited liability company, an association, a partnership, a joint venture, a joint stock company, a trust, an unincorporated organization or a government or an agency or a political subdivision thereof.

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

“**Physical Settlement**” shall have the meaning specified in Section 14.02(a).

“**Predecessor Note**” of any particular Note means every previous Note evidencing all or a portion of the same debt as that evidenced by such particular Note; and, for the purposes of this definition, any Note authenticated and delivered under Section 2.06 in lieu of or in exchange for a mutilated, lost, destroyed or stolen Note shall be deemed to evidence the same debt as the mutilated, lost, destroyed or stolen Note that it replaces.

“**Qualified Successor Entity**” means, with respect to a Business Combination Event, a corporation; *provided, however*, that a limited liability company, limited partnership or other similar entity shall also constitute a Qualified Successor Entity with respect to such Business Combination Event if either (i) such Business Combination Event is an Exempted Fundamental Change; or (ii) both of the following conditions are satisfied: (1) either (x) such limited liability company, limited partnership or other similar entity, as applicable, is treated as a corporation or is a direct or indirect, wholly owned subsidiary of, and disregarded as an entity separate from, a corporation, in each case for U.S. federal income tax purposes; or (y) the Company has received an opinion of a nationally recognized tax counsel to the effect that such Business Combination Event will not be treated as an exchange under Section 1001 of the U.S. Internal Revenue Code of 1986, as amended, for Holders or beneficial owners of the Notes; and (2) such Business Combination Event constitutes a Share Exchange Event whose Reference Property consists solely of any combination of cash in U.S. dollars and shares of common stock or other corporate Common Equity of an entity that is (x) treated as a corporation for U.S. federal income tax purposes; (y) duly organized and existing under the laws of the United States of America, any State thereof or the District of Columbia; and (z) the direct or indirect parent of such limited liability company, limited partnership or similar entity (or such limited liability company, limited partnership or similar entity, if it is treated as a corporation for U.S. federal income tax purposes).

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

“**Redemption Date**” shall have the meaning specified in Section 16.02(a).

“**Redemption Notice**” shall have the meaning specified in Section 16.02(a).

“**Redemption Period**” means the period from, and including, the date of a Redemption Notice until the close of business on the second Scheduled Trading Day immediately preceding the related Redemption Date, or, if the Company defaults in the payment of the Redemption Price, until the Redemption Price has been paid or duly provided for.

“**Redemption Price**” means, for any Notes to be redeemed pursuant to Section 16.01, 100% of the principal amount of such Notes, *plus* accrued and unpaid interest, if any, to, but excluding, the Redemption Date (unless the Redemption Date falls after a Regular Record Date but on or prior to the immediately succeeding Interest Payment Date, in which case interest accrued to the Interest Payment Date will be paid to Holders of record of such Notes as of the close of business on such Regular Record Date, and the Redemption Price will be equal to 100% of the principal amount of such Notes).

“**Reference Property**” shall have the meaning specified in Section 14.07(a).

“**Regular Record Date**,” with respect to any Interest Payment Date, means the April 1 or October 1 (whether or not such day is a Business Day) immediately preceding the applicable April 15 or October 15 Interest Payment Date, respectively.

“**Reporting Event of Default**” shall have the meaning specified in Section 6.03.

“**Resale Restriction Termination Date**” shall have the meaning specified in Section 2.05(c).

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

“**Restricted Securities**” shall have the meaning specified in Section 2.05(c).

“**Restrictive Legend**” shall have the meaning specified in Section 2.05(c).

“**Rule 12b-25**” means Rule 12b-25 as promulgated under the Exchange Act.

“**Rule 144**” means Rule 144 as promulgated under the Securities Act.

“**Rule 144A**” means Rule 144A as promulgated under the Securities Act.

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

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

“**Settlement Amount**” shall have the meaning specified in Section 14.02(a)(iv).

“**Settlement Method**” means, with respect to any conversion of Notes, Physical Settlement, Cash Settlement or Combination Settlement, as elected (or deemed to have been elected) by the Company.

“**Settlement Method Election Deadline**” shall have the meaning specified in Section 14.02(a)(iii).

“**Settlement Notice**” shall have the meaning specified in Section 14.02(a)(iii).

“**Share Exchange Event**” shall have the meaning specified in Section 14.07(a).

“**Significant Subsidiary**” means a Subsidiary of the Company that meets the definition of “significant subsidiary” in Article 1, Rule 1-02(w) of Regulation S-X under the Exchange Act as in effect on the date of this Indenture; *provided* that, in the case of a Subsidiary of the Company that meets the criteria of clause (1)(iii) of such definition of “significant subsidiary” but not clause (1)(i) or (1)(ii) thereof, in each case, as such rule is in effect on the date of this Indenture, such Subsidiary shall not be deemed to be a Significant Subsidiary unless such Subsidiary’s income from continuing operations before income taxes, exclusive of amounts attributable to any non-controlling interests, for the last completed fiscal year prior to the date of such determination exceeds \$25,000,000. For the avoidance of doubt, to the extent any such Subsidiary would not be deemed to be a “significant subsidiary” under the relevant definition set forth in Article 1, Rule 1-02(w) of Regulation S-X under the Exchange Act (or any successor rule) as in effect on the relevant date of determination, such Subsidiary shall not be deemed to be a Significant Subsidiary under this Indenture irrespective of whether such Subsidiary would otherwise be deemed to be a Significant Subsidiary after giving effect to the *proviso* in the immediately preceding sentence.

“**Specified Dollar Amount**” means the maximum cash amount per \$1,000 principal amount of Notes to be received upon conversion as specified in the Settlement Notice (or deemed specified as provided in Section 14.02(a)(iii)) related to any converted Notes.

“**Spin-Off**” shall have the meaning specified in Section 14.04(c).

“**Stock Price**” shall have the meaning specified in Section 14.03(c).

“**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 or other interests (including partnership interests) entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers, general partners or trustees thereof is at the time owned or controlled, directly or indirectly, by (i) such Person; (ii) such Person and one or more Subsidiaries of such Person; or (iii) one or more Subsidiaries of such Person.

“**Successor Company**” shall have the meaning specified in Section 11.01(a).

“**Trading Day**”, except for purposes of determining amounts due upon conversion, means a day on which (i) trading in the Common Stock (or other security for which a closing sale price must be determined) generally occurs on The New York Stock Exchange or, if the Common Stock (or such other security) is not then listed on The New York Stock Exchange, on the principal other U.S. national or regional securities exchange on which the Common Stock (or such other security) is then listed or, if the Common Stock (or such other security) is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock (or such other security) is then traded and (ii) a Last Reported Sale Price for the Common Stock (or closing sale price for such other security) is available on such securities exchange or market; *provided* that if the Common Stock (or such other security) is not so listed or traded, “**Trading Day**” means a Business Day; and *provided further* that, for purposes of determining amounts due upon conversion only, “**Trading Day**” means a day on which (x) there is no Market Disruption Event and (y) trading in the Common Stock generally occurs on The New York Stock Exchange or, if the Common Stock is not then listed on The New York Stock Exchange, on the principal other U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock is then listed or admitted for trading, except that if the Common Stock is not so listed or admitted for trading, “**Trading Day**” means a Business Day.

“**Trading Price**” per \$1,000 principal amount of the Notes on any date of determination means the average of the secondary market bid quotations obtained by the Bid Solicitation Agent for \$1,000,000 principal amount of Notes at approximately 3:30 p.m., New York City time, on such determination date from three independent nationally recognized securities dealers the Company selects for this purpose; *provided* that if three such bids cannot reasonably be obtained by the Bid Solicitation Agent but two such bids are obtained, then the average of the two bids shall be used, and if only one such bid can reasonably be obtained by the Bid Solicitation Agent, that one bid shall be used. If the Bid Solicitation Agent cannot reasonably obtain at least one bid for \$1,000,000 principal amount of Notes from a nationally recognized securities dealer on any determination date, then the Trading Price per \$1,000 principal amount of Notes on such determination date shall be deemed to be less than 98% of the product of the Last Reported Sale Price of the Common Stock and the Conversion Rate. Any such determination will be conclusive absent manifest error.

“**Trading Price Condition**” shall have the meaning specified in Section 14.01(b)(i).

“**transfer**” shall have the meaning specified in Section 2.05(c).

“**Trigger Event**” shall have the meaning specified in Section 14.04(c).

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

“**Trustee**” means the Person named as the “**Trustee**” in the first paragraph of this Indenture until a successor trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “**Trustee**” shall mean or include each Person who is then a Trustee hereunder.

“**unit of Reference Property**” shall have the meaning specified in Section 14.07(a).

“**Valid Payment Date**” means any day other than a Saturday, a Sunday or a day on which banking institutions in the place of payment are authorized or required by law or executive order to close or be closed.

“**Valuation Period**” shall have the meaning specified in Section 14.04(c).

“**Wholly Owned Subsidiary**” means, with respect to any Person, any Subsidiary of such Person, except that, solely for purposes of this definition, the reference to “more than 50%” in the definition of “Subsidiary” shall be deemed replaced by a reference to “100%”.

Section 1.02. *References to Interest.* Unless the context otherwise requires, any reference to interest on, or in respect of, any Note in this Indenture shall be deemed to include Additional Interest if, in such context, Additional Interest is, was or would be payable pursuant to any of Section 4.06(d), Section 4.06(e) and Section 6.03. Unless the context otherwise requires, any express mention of Additional Interest in any provision hereof shall not be construed as excluding Additional Interest in those provisions hereof where such express mention is not made.

## ARTICLE 2

### ISSUE, DESCRIPTION, EXECUTION, REGISTRATION AND EXCHANGE OF NOTES

Section 2.01. *Designation and Amount.* The Notes shall be designated as the “0.50% Convertible Senior Notes due 2031.” The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is initially limited to \$450,000,000, subject to Section 2.10 and except for Notes authenticated and delivered upon registration or transfer of, or in exchange for, or in lieu of other Notes to the extent expressly permitted hereunder.

Section 2.02. *Form of Notes.* The Notes and the Trustee’s certificate of authentication to be borne by such Notes shall be substantially in the respective forms set forth in Exhibit A, the terms and provisions of which shall constitute, and are hereby expressly incorporated in and made a part of this Indenture. 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. In the case of any conflict between this Indenture and a Note, the provisions of this Indenture shall control and govern to the extent of such conflict.

Any Global Note may be endorsed with or have incorporated in the text thereof such legends or recitals or changes not inconsistent with the provisions of this Indenture as may be required by the Custodian or the Depository, or as may be required to comply with any applicable law or any regulation thereunder or with the rules and regulations of any securities exchange or automated quotation system upon which the Notes may be listed or traded or designated for issuance or to conform with any usage with respect thereto, or to indicate any special limitations or restrictions to which any particular Notes are subject.

Any of the Notes may have such letters, numbers or other marks of identification and such notations, legends or endorsements as the Officer executing the same may approve (execution thereof to be conclusive evidence of such approval) and as are not inconsistent with the provisions of this Indenture, or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any securities exchange or automated quotation system on which the Notes may be listed or designated for issuance, or to conform to usage or to indicate any special limitations or restrictions to which any particular Notes are subject.

Each Global Note shall represent such principal amount of the outstanding Notes as shall be specified therein and shall provide that it shall represent the aggregate principal amount of outstanding Notes from time to time endorsed thereon and that the aggregate principal amount of outstanding Notes represented thereby may from time to time be increased or reduced to reflect redemptions, repurchases, cancellations, conversions, transfers or exchanges permitted hereby. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the amount of outstanding Notes represented thereby shall be made by the Trustee or the Custodian, at the direction of the Trustee, in such manner and upon instructions given by the Holder of such Notes in accordance with this Indenture. Payment of principal (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable) of, and accrued and unpaid interest on, a Global Note shall be made to the Holder of such Note on the date of payment, unless a record date or other means of determining Holders eligible to receive payment is provided for herein.

Section 2.03. *Date and Denomination of Notes; Payments of Interest and Defaulted Amounts.* (a) The Notes shall be issuable in registered form without coupons in minimum denominations of \$1,000 principal amount and integral multiples in excess thereof. Each Note shall be dated the date of its authentication and shall bear interest from the date specified on the face of such Note. Accrued interest on the Notes shall be computed on the basis of a 360-day year composed of twelve 30-day months.

(b) The Person in whose name any Note (or its Predecessor Note) is registered on the Note Register at the close of business on any Regular Record Date with respect to any Interest Payment Date shall be entitled to receive the interest payable on such Interest Payment Date. The principal amount of any Note (x) in the case of any Physical Note, shall be payable at the office or agency of the Company maintained by the Company for such purposes in the United States of America, which shall initially be the Corporate Trust Office in the United States of America and (y) in the case of any Global Note, shall be payable by wire transfer of immediately available funds to the account of the Depository or its nominee. The Company shall pay, or cause the Paying Agent to pay, interest (i) on any Physical Notes (A) to Holders holding Physical Notes having an aggregate principal amount of \$5,000,000 or less, by check mailed to the Holders of these Notes at their address as it appears in the Note Register and (B) to Holders holding Physical Notes having an aggregate principal amount of more than \$5,000,000, either by check mailed to each Holder or, upon application by such a Holder to the Note Registrar not later than the relevant Regular Record Date, by wire transfer in immediately available funds to that Holder's U.S. dollar account within the contiguous United States of America if such Holder has provided the Trustee or Paying Agent (if other than the Trustee) with the requisite information necessary to make such wire transfer, which application shall remain in effect until the Holder notifies, in writing, the Note Registrar to the contrary or (ii) on any Global Note by wire transfer of immediately available funds to the account of the Depository or its nominee.

(c) Any Defaulted Amounts shall forthwith cease to be payable to the Holder on the relevant payment date but shall accrue interest per annum at the rate borne by the Notes, subject to the enforceability thereof under applicable law, from, and including, such relevant payment date, and such Defaulted Amounts together with such interest thereon shall be paid by the Company, at its election in each case, as provided in clause (i) or (ii) below:

(i) The Company may elect to make payment of any Defaulted Amounts to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered at the close of business on a special record date for the payment of such Defaulted Amounts, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of the Defaulted Amounts proposed to be paid on each Note and the date of the proposed payment (which shall be not less than 25 days after the receipt by the Trustee of such notice, unless the Trustee shall consent to an earlier date), and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount to be paid in respect of such Defaulted Amounts or shall make arrangements satisfactory to the Trustee for such deposit on or prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Amounts as in this clause provided. Thereupon the Company shall fix a special record date for the payment of such Defaulted Amounts which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment, and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Company shall promptly notify the Trustee of such special record date in writing and the Trustee, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Amounts and the special record date therefor to be delivered to each Holder not less than 10 days prior to such special record date. Notice of the proposed payment of such Defaulted Amounts and the special record date therefor having been so delivered, such Defaulted Amounts shall be paid to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered at the close of business on such special record date and shall no longer be payable pursuant to the following clause (ii) of this Section 2.03(c). The Trustee shall have no responsibility for the calculation of Defaulted Amounts.

(ii) The Company may make payment of any Defaulted Amounts in any other lawful manner not inconsistent with the requirements of any securities exchange or automated quotation system on which the Notes may be listed or designated for issuance, and upon such notice as may be required by such exchange or automated quotation system, if, after written notice given by the Company to the Trustee of the proposed payment pursuant to this clause, such manner of payment shall be deemed practicable by the Trustee.

Section 2.04. *Execution, Authentication and Delivery of Notes.* The Notes shall be signed in the name and on behalf of the Company by the manual, facsimile or other electronic signature of any of its Officers.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Notes executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Notes, and the Trustee in accordance with such Company Order shall authenticate and deliver such Notes, without any further action by the Company hereunder; *provided, however*, that the Trustee shall be entitled to receive an Officer's Certificate and an Opinion of Counsel of the Company with respect to the issuance, authentication and delivery of the Notes.

Only such Notes as shall bear thereon a certificate of authentication substantially in the form set forth on the Form of Note attached as Exhibit A hereto, executed manually by an authorized signatory of the Trustee (or an authenticating agent appointed by the Trustee as provided by Section 17.10), shall be entitled to the benefits of this Indenture or be valid or obligatory for any purpose. Such certificate by the Trustee (or such an authenticating agent) upon any Note executed by the Company shall be conclusive evidence that the Note so authenticated has been duly authenticated and delivered hereunder and that the Holder is entitled to the benefits of this Indenture.

In case any Officer of the Company who shall have signed any of the Notes shall cease to be such Officer before the Notes so signed shall have been authenticated and delivered by the Trustee, or disposed of by the Company, such Notes nevertheless may be authenticated and delivered or disposed of as though the person who signed such Notes had not ceased to be such Officer of the Company; and any Note may be signed on behalf of the Company by such persons as, at the actual date of the execution of such Note, shall be the Officers of the Company, although at the date of the execution of this Indenture any such person was not such an Officer.

Section 2.05. *Exchange and Registration of Transfer of Notes; Restrictions on Transfer; Depositary.* (a) The Company shall cause to be kept at the Corporate Trust Office a register (the register maintained in such office or in any other office or agency of the Company designated pursuant to Section 4.02, the “**Note Register**”) in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Notes and of transfers of Notes. Such register shall be in written form or in any form capable of being converted into written form within a reasonable period of time. The Trustee is hereby initially appointed the “**Note Registrar**” for the purpose of registering Notes and transfers of Notes as herein provided. The Company may appoint one or more co-Note Registrars in accordance with Section 4.02.

Upon surrender for registration of transfer of any Note to the Note Registrar or any co-Note Registrar, and satisfaction (as determined by the Company) of the requirements for such transfer set forth in this Section 2.05, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Notes of any authorized denominations and of a like aggregate principal amount and bearing such legends as may be required by this Indenture.

Notes may be exchanged for other Notes of any authorized denominations and of a like aggregate principal amount, upon surrender of the Notes to be exchanged at any such office or agency maintained by the Company pursuant to Section 4.02. Whenever any Notes are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Notes that the Holder making the exchange is entitled to receive, bearing registration numbers not contemporaneously outstanding.

All Notes presented or surrendered for registration of transfer or for exchange, repurchase or conversion shall (if so required by the Company, the Trustee, the Note Registrar or any co-Note Registrar) be duly endorsed, or be accompanied by a written instrument or instruments of transfer in form satisfactory to the Note Registrar and duly executed, by the Holder thereof or its attorney-in-fact duly authorized in writing.

No service charge shall be imposed by the Company, the Trustee, the Note Registrar, any co-Note Registrar or the Paying Agent for any exchange or registration of transfer of Notes, but the Company may require a Holder to pay a sum sufficient to cover any documentary, stamp or similar issue or transfer tax required in connection therewith as a result of the name of the Holder of new Notes issued upon such exchange or registration of transfer being different from the name of the Holder of the old Notes surrendered for exchange or registration of transfer.

None of the Company, the Trustee, the Note Registrar or any co-Note Registrar shall be required to exchange or register a transfer of (i) any Notes surrendered for conversion or, if a portion of any Note is surrendered for conversion, such portion thereof surrendered for conversion, (ii) any Notes, or a portion of any Note, surrendered for repurchase (and not withdrawn) in accordance with Article 15 or (iii) any Notes selected for redemption in accordance with Article 16, except the unredeemed portion of any Note being redeemed in part.

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

(b) So long as the Notes are eligible for book-entry settlement with the Depository, unless otherwise required by law, subject to the fourth paragraph from the end of Section 2.05(c) all Notes shall be represented by one or more Notes in global form (each, a “**Global Note**”) registered in the name of the Depository or the nominee of the Depository. The transfer and exchange of beneficial interests in a Global Note shall be effected in accordance with this Indenture (including the restrictions on transfer set forth herein) and the Applicable Procedures.

(c) Every Note that bears or is required under this Section 2.05(c) to bear the legend set forth in this Section 2.05(c) (together with any Common Stock issued upon conversion of the Notes that is required to bear the legend set forth in Section 2.05(d), collectively, the “**Restricted Securities**”) shall be subject to the restrictions on transfer set forth in this Section 2.05(c) (including the legend set forth below), unless such restrictions on transfer shall be eliminated or otherwise waived by written consent of the Company, and the Holder of each such Restricted Security, by such Holder’s acceptance thereof, agrees to be bound by all such restrictions on transfer. As used in this Section 2.05(c) and Section 2.05(d), the term “**transfer**” encompasses any sale, pledge, transfer or other disposition whatsoever of any Restricted Security.

Until the date (the “**Resale Restriction Termination Date**”) that is the later of (1) the date that is one year after the last date of original issuance of the Notes, or such shorter period of time as permitted by Rule 144 or any successor provision thereto, and (2) such later date, if any, as may be required by applicable law, any certificate evidencing such Note (and all securities issued in exchange therefor or substitution thereof, other than Common Stock, if any, issued upon conversion thereof, which shall bear the legend set forth in Section 2.05(d), if applicable) shall bear a legend in substantially the following form (the “**Restrictive Legend**”) (unless such Notes have been transferred pursuant to a registration statement that has become or been declared effective under the Securities Act and that continues to be effective at the time of such transfer, or sold pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act, or unless otherwise agreed by the Company in writing, with notice thereof to the Trustee):

THIS SECURITY AND THE COMMON STOCK, IF ANY, ISSUABLE UPON CONVERSION OF THIS SECURITY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “**SECURITIES ACT**”), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER:

(1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS A “QUALIFIED INSTITUTIONAL BUYER” (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT, AND

(2) AGREES FOR THE BENEFIT OF ATLAS ENERGY SOLUTIONS INC. (THE “COMPANY”) THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS THE LATER OF (X) ONE YEAR AFTER THE LAST DATE OF ORIGINAL ISSUANCE HEREOF OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THERETO AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW, EXCEPT:

(A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, OR

(B) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT AND IS EFFECTIVE AT THE TIME OF SUCH TRANSFER, OR

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

(D) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT OR ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH CLAUSE (2)(D) ABOVE, THE COMPANY AND THE TRUSTEE RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

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

No transfer of any Note prior to the Resale Restriction Termination Date will be registered by the Note Registrar unless the applicable box on the Form of Assignment and Transfer has been checked.

Any Note (or security issued in exchange or substitution therefor) (i) as to which such restrictions on transfer shall have expired in accordance with their terms, (ii) that has been transferred pursuant to a registration statement that has become effective or been declared effective under the Securities Act and that continues to be effective at the time of such transfer or (iii) that has been sold pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act, may, upon surrender of such Note for exchange to the Note Registrar in accordance with the provisions of this Section 2.05, be exchanged for a new Note or Notes, of like tenor and aggregate principal amount, which shall not bear the Restrictive Legend required by this Section 2.05(c) and shall not be assigned (or deemed assigned) a restricted CUSIP number. The Restrictive Legend set forth above and affixed on any Note will be deemed, in accordance with the terms of the certificate representing such Note, to be removed therefrom upon the Company's delivery to the Trustee of an Officer's Certificate to such effect; at such time, such Note will be deemed to be assigned an unrestricted CUSIP number as provided in the certificate representing such Note, it being understood that the Depository of any Global Note may require a mandatory exchange or other process to cause such Global Note to be identified by an unrestricted CUSIP number in the facilities of such Depository. Without limiting the generality of any other provision of this Indenture, the Trustee will be entitled to receive an instruction letter, together with the documents contemplated under Section 17.05 hereof, from the Company before taking any action with respect to effecting any such mandatory exchange or other process. The Company reserves the right to require the delivery of such legal opinions, certifications or other evidence as may reasonably be required in order to determine that any proposed transfer of any Note is being made in compliance with the Securities Act and applicable state securities laws.

The Company shall be entitled to instruct the Custodian in writing to so surrender any Global Note as to which any of the conditions set forth in clause (i) through (iii) of the first sentence of the immediately preceding paragraph have been satisfied, and, upon such instruction, the Custodian shall so surrender such Global Note for exchange; and any new Global Note so exchanged therefor shall not bear the Restrictive Legend specified in this Section 2.05(c) and shall not be assigned (or deemed assigned) a restricted CUSIP number.

Notwithstanding any other provisions of this Indenture (other than the provisions set forth in this Section 2.05(c)), a Global Note may not be transferred as a whole or in part except (i) 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 and (ii) for exchange of a Global Note or a portion thereof for one or more Physical Notes in accordance with the second immediately succeeding paragraph to each Person that the Depository identifies as a beneficial owner of the related Global Note.

The Depository shall be a clearing agency registered under the Exchange Act. The Company initially appoints The Depository Trust Company to act as Depository with respect to each Global Note. Initially, each Global Note shall be issued to the Depository, registered in the name of Cede & Co., as the nominee of the Depository, and deposited with the Trustee as custodian for Cede & Co.

If (i) the Depository notifies the Company at any time that the Depository is unwilling or unable to continue as depository for the Global Notes and a successor depository is not appointed within 90 days, (ii) the Depository ceases to be registered as a clearing agency under the Exchange Act and a successor depository is not appointed within 90 days or (iii) an Event of Default with respect to the Notes has occurred and is continuing and a beneficial owner of any Note, identified as such by the Depository, requests that its beneficial interest therein be issued as a Physical Note, the Company shall execute, and the Trustee, upon receipt of an Officer's Certificate and a Company Order for the authentication and delivery of Notes, shall authenticate and deliver (x) in the case of clause (iii), a Physical Note to such beneficial owner in a principal amount equal to the principal amount of such Note corresponding to such beneficial owner's beneficial interest and (y) in the case of clause (i) or (ii), Physical Notes to each beneficial owner of the related Global Notes (or a portion thereof) in an aggregate principal amount equal to the aggregate principal amount of such Global Notes in exchange for such Global Notes, and upon delivery of the Global Notes to the Trustee such Global Notes shall be canceled.

Physical Notes issued in exchange for all or a part of the Global Note pursuant to this Section 2.05(c) shall be registered in such names and in such authorized denominations as the Depository, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Trustee. Upon execution and authentication, the Trustee shall deliver such Physical Notes to the Persons in whose names such Physical Notes are so registered.

At such time as all interests in a Global Note have been converted, canceled, repurchased, redeemed or transferred, such Global Note shall be, upon receipt thereof, canceled by the Trustee in accordance with standing procedures and existing instructions between the Depository and the Custodian. At any time prior to such cancellation, if any interest in a Global Note is exchanged for Physical Notes, converted, canceled, repurchased, redeemed or transferred to a transferee who receives Physical Notes therefor or any Physical Note is exchanged or transferred for part of such Global Note, the principal amount of such Global Note shall, in accordance with the standing procedures and instructions existing between the Depository and the Custodian, be appropriately reduced or increased, as the case may be, and an endorsement shall be made on such Global Note, by the Trustee or the Custodian, at the direction of the Trustee, to reflect such reduction or increase.

None of the Company, the Trustee, the Paying Agent, the Conversion Agent or any agent of the Company or the Trustee shall have any responsibility or liability for the payment of amounts to owners of beneficial interest in a Global Note, for any aspect of the records relating to or payments made on account of beneficial ownership interests of a Global Note or maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

Neither the Company nor the Trustee, Paying Agent, Note Registrar or Conversion Agent (nor the Company's or their agents) shall have any responsibility or liability for any act or omission of the Depository. All notices and communications to be given to the Holders and all payments to be made to Holders in respect of the Notes shall be given or made only to, or upon the order of, the registered Holder(s) (which shall be the Depository or its nominee in the case of a Global Note).

The rights of beneficial owners in any Global Note shall be exercised only through the Depository subject to the Applicable Procedures of the Depository. The Trustee may rely and shall be fully protected in relying upon information furnished by the Depository with respect to its members, participants and any beneficial owners.

(d) Until the Resale Restriction Termination Date, any stock certificate representing Common Stock issued upon conversion of a Note shall bear a legend in substantially the following form (unless such Common Stock has been transferred pursuant to a registration statement that has become or been declared effective under the Securities Act and that continues to be effective at the time of such transfer, or pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act, or such Common Stock has been issued upon conversion of a Note that has been transferred pursuant to a registration statement that has become or been declared effective under the Securities Act and that continues to be effective at the time of such transfer, or pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act, or unless otherwise agreed by the Company with written notice thereof to the Trustee and any transfer agent for the Common Stock):

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "**SECURITIES ACT**"), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER:

(1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS A "QUALIFIED INSTITUTIONAL BUYER" (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT, AND

(2) AGREES FOR THE BENEFIT OF ATLAS ENERGY SOLUTIONS INC. (THE “COMPANY”) THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS THE LATER OF (X) ONE YEAR AFTER THE LAST ORIGINAL ISSUE DATE OF THE SERIES OF NOTES UPON THE CONVERSION OF WHICH THIS SECURITY WAS ISSUED OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THERE TO AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW, EXCEPT:

- (A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, OR
- (B) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT AND IS EFFECTIVE AT THE TIME OF SUCH TRANSFER, OR
- (C) TO A PERSON THAT YOU REASONABLY BELIEVE TO BE A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, OR
- (D) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT OR ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH CLAUSE (2)(D) ABOVE, THE COMPANY AND THE TRANSFER AGENT FOR THE COMPANY’S COMMON STOCK RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

Any such Common Stock (i) as to which such restrictions on transfer shall have expired in accordance with their terms, (ii) that has been transferred pursuant to a registration statement that has become or been declared effective under the Securities Act and that continues to be effective at the time of such transfer or (iii) that has been sold pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act, may, upon surrender of the certificates representing such shares of Common Stock for exchange in accordance with the procedures of the transfer agent for the Common Stock, be exchanged for a new certificate or certificates for a like aggregate number of shares of Common Stock, which shall not bear the restrictive legend required by this Section 2.05(d).

(e) Any Note that is owned by the Company or any Affiliate of the Company (or any Person who was an Affiliate of the Company at any time during the three months immediately preceding) may not be resold by the Company or such Affiliate (or such Person, as the case may be) unless registered under the Securities Act or resold pursuant to an exemption from the registration requirements of the Securities Act in a transaction that results in such Note no longer being a “restricted security” (as defined under Rule 144).

(f) Notwithstanding anything contained herein to the contrary, neither the Trustee nor the Note Registrar shall be responsible for ascertaining whether any transfer complies with the registration provisions of, or exemptions from, the Securities Act, applicable state securities laws or other applicable law, or for monitoring any Holder’s compliance with the provisions of this Section 2.05 or for verifying any Holder’s representations made in accordance with this Section 2.05. Neither the Trustee nor the Note Registrar shall have any responsibility for any actions taken or not taken by the Depository.

Section 2.06. *Mutilated, Destroyed, Lost or Stolen Notes.* In case any Note shall become mutilated or be destroyed, lost or stolen, the Company in its discretion may execute, and upon receipt of a Company Order, the Trustee or an authenticating agent appointed by the Trustee shall authenticate and deliver, a new Note, bearing a registration number not contemporaneously outstanding, in exchange and substitution for the mutilated Note, or in lieu of and in substitution for the Note so destroyed, lost or stolen. In every case the applicant for a substituted Note shall furnish to the Company, to the Trustee and, if applicable, to such authenticating agent such security or indemnity as may be required by them to save each of them harmless from any loss, liability, cost or expense caused by or connected with such substitution, and, in every case of destruction, loss or theft, the applicant shall also furnish to the Company, to the Trustee and, if applicable, to such authenticating agent evidence to their satisfaction of the destruction, loss or theft of such Note and of the ownership thereof.

The Trustee or such authenticating agent may authenticate any such substituted Note and deliver the same upon the receipt of such security or indemnity as the Trustee, the Company and, if applicable, such authenticating agent may require. No service charge shall be imposed by the Company, the Trustee, the Note Registrar, any co-Note Registrar or the Paying Agent upon the issuance of any substitute Note, but the Company may require a Holder to pay a sum sufficient to cover any documentary, stamp or similar issue or transfer tax required in connection therewith as a result of the name of the Holder of the new substitute Note being different from the name of the Holder of the old Note that became mutilated or was destroyed, lost or stolen. In case any Note that has matured or is about to mature or has been surrendered for required repurchase or is about to be converted in accordance with Article 14 shall become mutilated or be destroyed, lost or stolen, the Company may, in its sole discretion, instead of issuing a substitute Note, pay or authorize the payment of or convert or authorize the conversion of the same (without surrender thereof except in the case of a mutilated Note), as the case may be, if the applicant for such payment or conversion shall furnish to the Company, to the Trustee and, if applicable, to such authenticating agent such security or indemnity as may be required by them to save each of them harmless from any loss, liability, cost or expense caused by or connected with such substitution, and, in every case of destruction, loss or theft, evidence satisfactory to the Company, the Trustee and, if applicable, any Paying Agent or Conversion Agent of the destruction, loss or theft of such Note and of the ownership thereof.

Every substitute Note issued pursuant to the provisions of this Section 2.06 by virtue of the fact that any Note is destroyed, lost or stolen shall constitute an additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Note shall be found at any time, and shall be entitled to all the benefits of (but shall be subject to all the limitations set forth in) this Indenture equally and proportionately with any and all other Notes duly issued hereunder. To the extent permitted by law, all Notes shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the replacement, payment, redemption, conversion or repurchase of mutilated, destroyed, lost or stolen Notes and shall preclude any and all other rights or remedies notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement, payment, redemption, conversion or repurchase of negotiable instruments or other securities without their surrender.

Section 2.07. *Temporary Notes.* Pending the preparation of Physical Notes to be issued as provided in Section 2.05(c), the Company may execute and the Trustee or an authenticating agent appointed by the Trustee shall, upon receipt of a Company Order, authenticate and deliver temporary Notes (printed or lithographed). Temporary Notes shall be issuable in any authorized denomination, and substantially in the form of the Physical Notes but with such omissions, insertions and variations as may be appropriate for temporary Notes, all as may be determined by the Company. Every such temporary Note shall be executed by the Company and authenticated by the Trustee or such authenticating agent upon the same conditions and in substantially the same manner, and with the same effect, as the Physical Notes. Without unreasonable delay, the Company shall execute and deliver to the Trustee or such authenticating agent Physical Notes (other than any Global Note) and thereupon any or all temporary Notes (other than any Global Note) may be surrendered in exchange therefor, at each office or agency maintained by the Company pursuant to Section 4.02 and the Trustee or such authenticating agent shall, upon receipt of a Company Order, authenticate and deliver in exchange for such temporary Notes an equal aggregate principal amount of Physical Notes. Such exchange shall be made by the Company at its own expense and without any charge therefor. Until so exchanged, the temporary Notes shall in all respects be entitled to the same benefits and subject to the same limitations under this Indenture as Physical Notes authenticated and delivered hereunder.

Section 2.08. *Cancellation of Notes Paid, Converted, Etc.* The Company shall cause all Notes surrendered for the purpose of payment at maturity, registration of transfer or exchange or conversion, if surrendered to the Company or any Person that the Company controls, to be surrendered to the Trustee for cancellation and they will no longer be considered outstanding under this Indenture upon their payment at maturity, registration of transfer or exchange or conversion. All Notes delivered to the Trustee shall be canceled promptly by it in accordance with its customary procedures. Except for any Notes surrendered for registration of transfer or exchange, or as otherwise expressly permitted by any of the provisions of this Indenture, no Notes shall be authenticated in exchange for any Notes surrendered to the Trustee for cancellation. The Trustee shall dispose of canceled Notes in accordance with its customary procedures. After such cancellation, the Trustee shall deliver a certificate of such cancellation to the Company, at the Company's written request in a Company Order.

Section 2.09. *CUSIP Numbers.* The Company in issuing the Notes may use CUSIP numbers (if then generally in use), and, if so, the Trustee shall use CUSIP numbers in all notices issued to Holders as a convenience to such Holders; *provided* that the Trustee shall have no liability for any defect in the CUSIP numbers as they appear on any Note, notice or elsewhere and that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or on such notice and that reliance may be placed only on the other identification numbers printed on the Notes. The Company shall promptly notify the Trustee in writing of any change in the CUSIP numbers.

Section 2.10. *Additional Notes; Repurchases.* The Company may, without the consent of, or notice to, the Holders and notwithstanding Section 2.01, issue additional Notes hereunder with the same terms as the Notes initially issued hereunder (other than differences in the issue date, the issue price, interest accrued prior to the issue date of such additional Notes and, if applicable, restrictions on transfer in respect of such additional Notes) in an unlimited aggregate principal amount; *provided* that if any such additional Notes are not fungible with the Notes initially issued hereunder for U.S. federal income tax or securities law purposes, such additional Notes shall have a separate CUSIP number or no CUSIP number. Prior to the issuance of any such additional Notes, the Company shall deliver to the Trustee a Company Order, an Officer's Certificate and an Opinion of Counsel, such Officer's Certificate and Opinion of Counsel to cover such matters, in addition to those required by Section 17.05, as the Trustee shall reasonably request. In addition, the Company may, to the extent permitted by law and without notice to or the consent of Holders, and directly or indirectly (regardless of whether such Notes are surrendered to the Company), repurchase Notes in the open market or otherwise, whether by the Company or its Subsidiaries or through a private or public tender or exchange offer or through counterparties to private agreements, including by cash-settled swaps or other derivatives. The Company may, at its option and to the extent permitted by applicable law, reissue, resell or surrender to the Trustee for cancellation in accordance with Section 2.08 any Notes that the Company may repurchase, in the case of a reissuance or resale, so long as such Notes do not constitute "restricted securities" (as defined under Rule 144) upon such reissuance or resale; *provided* that, if any such Notes are not fungible with the Notes initially issued hereunder for U.S. federal income tax law purposes, such reissued or resold Notes shall have a separate CUSIP number or no CUSIP number. Any Notes that the Company may repurchase shall be considered outstanding for all purposes under this Indenture (for the avoidance of doubt, other than, at any time when such Notes are held by the Company, any of the Company's Subsidiaries or Affiliates or any Subsidiary of any of the Company's Affiliates, for the purpose of determining whether Holders of the requisite aggregate principal amount of Notes have concurred in any direction, consent, waiver or other action under this Indenture) unless and until such time the Company surrenders them to the Trustee for cancellation in accordance with Section 2.08 and, upon receipt of a written order from the Company, the Trustee shall cancel all Notes so surrendered.

ARTICLE 3  
SATISFACTION AND DISCHARGE

Section 3.01. *Satisfaction and Discharge.* This Indenture and the Notes shall upon request of the Company contained in an Officer's Certificate cease to be of further effect, and the Trustee, at the expense of the Company, shall execute such instruments reasonably requested by the Company acknowledging satisfaction and discharge of this Indenture and the Notes, when (a) (i) all Notes theretofore authenticated and delivered (other than Notes which have been destroyed, lost or stolen and which have been replaced, paid or converted as provided in Section 2.06) have been delivered to the Trustee for cancellation; or (ii) after the Notes have (x) become due and payable, whether on the Maturity Date, on any Redemption Date, on any Fundamental Change Repurchase Date or otherwise and/or (y) been converted (and the related consideration due upon conversion has been determined), the Company has irrevocably deposited with the Trustee cash and/or has delivered to Holders shares of Common Stock (in the case of Common Stock, solely to satisfy the Company's Conversion Obligation), as applicable, sufficient, without consideration of reinvestment, to pay all of the outstanding Notes and all other sums due and payable under this Indenture by the Company; and (b) the Company has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture and the Notes have been complied with. Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 7.06 shall survive.

ARTICLE 4  
PARTICULAR COVENANTS OF THE COMPANY

Section 4.01. *Payment of Principal and Interest.* The Company covenants and agrees that it will cause to be paid the principal (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable) of, the Settlement Amounts owed upon conversion on, and accrued and unpaid interest on, each of the Notes at the places, at the respective times and in the manner provided herein and in the Notes.

Section 4.02. *Maintenance of Office or Agency.* The Company will maintain in the United States of America an office or agency where the Notes may be surrendered for registration of transfer or exchange or for presentation for payment or repurchase ("**Paying Agent**") or for conversion ("**Conversion Agent**") and where notices and demands to or upon the Company in respect of the Notes and this Indenture may be made. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company 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 at the Corporate Trust Office.

The Company may also from time to time designate as a Paying Agent 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* that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in the United States of America for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency. The terms “**Paying Agent**” and “**Conversion Agent**” include any such additional or other offices or agencies, as applicable.

The Company hereby initially designates the Trustee as the Paying Agent, Note Registrar, Custodian and Conversion Agent and the Corporate Trust Office as a place where Notes may be surrendered for registration of transfer or exchange or for presentation for payment or repurchase (if applicable) or for conversion and where notices and demands to or upon the Company in respect of the Notes and this Indenture may be made; *provided*, that the Trustee shall not be considered an agent of the Company for service of legal process.

Section 4.03. *Appointments to Fill Vacancies in Trustee’s Office.* The Company, whenever necessary to avoid or fill a vacancy in the office of Trustee, will appoint, in the manner provided in Section 7.09, a Trustee, so that there shall at all times be a Trustee hereunder.

Section 4.04. *Provisions as to Paying Agent.* (a) If the Company shall appoint a Paying Agent other than the Trustee, the Company will cause such Paying Agent to execute and deliver to the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provisions of this Section 4.04:

- (i) that it will hold all sums held by it as such agent for the payment of the principal (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable) of, and accrued and unpaid interest on, the Notes in trust for the benefit of the Holders of the Notes;
- (ii) that it will give the Trustee prompt written notice of any failure by the Company to make any payment of the principal (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable) of, and accrued and unpaid interest on, the Notes when the same shall be due and payable; and
- (iii) that at any time during the continuance of an Event of Default, upon request of the Trustee, it will forthwith pay to the Trustee all sums so held in trust;

*provided*, that a Paying Agent appointed as contemplated under Section 15.02(g) shall not be required to deliver any such instrument.

The Company shall, on or before each due date of the principal (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable) of, or accrued and unpaid interest on, the Notes, deposit with the Paying Agent a sum sufficient to pay such principal (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable) or accrued and unpaid interest, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee in writing of any failure to take such action; *provided* that if such deposit is made on the due date, such deposit must be received by the Paying Agent by 11:00 a.m., New York City time, on such date.

(b) If the Company shall act as its own Paying Agent, it will, on or before each due date of the principal (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable) of, and accrued and unpaid interest on, the Notes, set aside, segregate and hold in trust for the benefit of the Holders of the Notes a sum sufficient to pay such principal (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable) and accrued and unpaid interest so becoming due and will promptly notify the Trustee in writing of any failure to take such action and of any failure by the Company to make any payment of the principal (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable) of, or accrued and unpaid interest on, the Notes when the same shall become due and payable.

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

(d) Subject to applicable law, any money deposited with the Trustee, the Conversion Agent or any Paying Agent, or any money and shares of Common Stock then held by the Company, in trust for the payment of the principal (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable) of, accrued and unpaid interest on and the consideration due upon conversion of any Note and remaining unclaimed for two years after such principal (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable), interest or consideration due upon conversion has become due and payable shall be paid to the Company on request of the Company contained in an Officer's Certificate, or (if then held by the Company) shall be discharged from such trust; and the Holder of such Note shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee, the Conversion Agent or such Paying Agent with respect to such trust money, and all liability of the Company as trustee with respect to such trust money and shares of Common Stock, shall thereupon cease.

Section 4.05. *Existence.* Subject to Article 11, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence.

Section 4.06. *Rule 144A Information Requirement and Annual Reports.* (a) At any time the Company is not subject to Section 13 or 15(d) of the Exchange Act, the Company shall, so long as any of the Notes or any shares of Common Stock issuable upon conversion thereof shall, at such time, constitute “restricted securities” within the meaning of Rule 144(a)(3) under the Securities Act, promptly provide to the Trustee and, upon written request, any Holder, beneficial owner or prospective purchaser of such Notes or any shares of Common Stock issuable upon conversion of such Notes, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act to facilitate the resale of such Notes or shares of Common Stock pursuant to Rule 144A.

(b) The Company shall file with the Trustee, within 15 days after the same are required to be filed with the Commission, copies of any annual or quarterly reports (on Forms 10-K or 10-Q or any successor forms) that the Company is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act (after giving effect to any grace period provided by Rule 12b-25 under the Exchange Act (or any successor thereto), which grace period, for the avoidance of doubt, shall be deemed applicable whether or not the Company checks the box in the relevant Rule 12b-25 filing indicating that the Company expects to file such report within the applicable Rule 12b-25 grace period). Notwithstanding the foregoing, the Company shall in no event be required to file with, or otherwise provide or disclose to, the Trustee or any Holder any information for which the Company is requesting (assuming such request has not been denied), or has received, confidential treatment from the Commission, or any correspondence with the Commission. Any such document or report that the Company files with the Commission via the Commission’s EDGAR system (or any successor thereto) shall be deemed to be filed with the Trustee for purposes of this Section 4.06(b) at the time such documents are filed via the EDGAR system (or any successor thereto); provided that the Trustee shall have no obligation to monitor or confirm, on a continuous basis or otherwise, whether such documents or reports have been filed via the EDGAR system.

(c) Delivery of the reports and documents described in subsection (a) and (b) above to the Trustee is for informational purposes only, and the Trustee’s receipt of such shall not constitute constructive or actual knowledge or 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 conclusively rely on an Officer’s Certificate).

(d) If, at any time during the six-month period beginning on, and including, the date that is six months after the last date of original issuance of the Notes, the Company fails to timely file any document or report that it is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act, as applicable (other than current reports on Form 8-K and after giving effect to all applicable grace periods thereunder, including any grace period provided by Rule 12b-25 (or any successor rule), which grace period, for the avoidance of doubt, shall be deemed applicable whether or not the Company checks the box in the relevant Rule 12b-25 filing indicating the Company expects to file such report within the applicable Rule 12b-25 grace period), or the Notes are not otherwise freely tradable pursuant to Rule 144 by Holders other than the Company's Affiliates or Holders that were the Company's Affiliates at any time during the three months immediately preceding (as a result of restrictions pursuant to U.S. securities laws or the terms of this Indenture or the Notes), the Company shall pay Additional Interest on the Notes. Such Additional Interest shall accrue on the Notes at the rate of (i) 0.25% per annum of the principal amount of the Notes outstanding for each day during the first 90 calendar days of such period for which the Company's failure to file has occurred and is continuing or the Notes are not otherwise freely tradable pursuant to Rule 144 by Holders other than the Company's Affiliates (or Holders that were the Company's Affiliates at any time during the three months immediately preceding) and (ii) 0.50% per annum of the principal amount of the Notes outstanding for each day after the 90th day of such period for which the Company's failure to file has occurred and is continuing or the Notes are not otherwise freely tradable pursuant to Rule 144 by Holders other than the Company's Affiliates (or Holders that were the Company's Affiliates at any time during the three months immediately preceding). As used in this Section 4.06(d), documents or reports that the Company is required to "file" with the Commission pursuant to Section 13 or 15(d) of the Exchange Act does not include documents or reports that the Company furnishes to the Commission pursuant to Section 13 or 15(d) of the Exchange Act. For purposes of this Section 4.06(d), "restrictions pursuant to U.S. securities laws or the terms of this Indenture or the Notes" shall not include, for the avoidance of doubt, the assignment of a restricted CUSIP number or the existence of a Restrictive Legend on the Notes in compliance with the Indenture, in either case, during the six-month period described in this Section 4.06(d).

(e) If, and for so long as, the Restrictive Legend on the Notes specified in Section 2.05(c) has not been removed, the Notes are assigned a restricted CUSIP number or the Notes are not otherwise freely tradable pursuant to Rule 144 by Holders other than the Company's Affiliates or Holders that were the Company's Affiliates at any time during the three months immediately preceding (without restrictions pursuant to U.S. securities laws or the terms of this Indenture or the Notes) as of the 380th day after the last date of original issuance of the Notes (the "**Legend Removal Deadline Date**"), the Company shall pay Additional Interest on the Notes at a rate equal to (i) 0.25% per annum of the principal amount of Notes outstanding for each day during the period beginning on, and including, the Legend Removal Deadline Date and ending on the earlier of (x) the 90th day immediately following the Legend Removal Deadline Date and (y) the date on which the Restrictive Legend on the Notes has been removed in accordance with Section 2.05(c), the Notes are assigned an unrestricted CUSIP number and the Notes are freely tradable pursuant to Rule 144 by Holders other than the Company's Affiliates (or Holders that were the Company's Affiliates at any time during the three months immediately preceding) without restrictions pursuant to U.S. securities laws or the terms of this Indenture or the Notes and (ii) 0.50% per annum of the principal amount of Notes outstanding for each day during the period beginning on, and including, the 91st day immediately following the Legend Removal Deadline Date and ending on the date on which the Restrictive Legend on the Notes has been removed in accordance with Section 2.05(c), the Notes are assigned an unrestricted CUSIP number and the Notes are freely tradable pursuant to Rule 144 by Holders other than the Company's Affiliates (or Holders that were the Company's Affiliates at any time during the three months immediately preceding) without restrictions pursuant to U.S. securities laws or the terms of this Indenture or the Notes; *provided* that no Additional Interest shall accrue or be owed pursuant to this Section 4.06(e) until the fifth Business Day following written notification to the Company by any Holder or beneficial owner of the Notes requesting that the Company comply with its obligations described in this Section 4.06(e) (which notice may be given at any time after the 330th day after the last date of original issuance of the Notes), it being understood and agreed that in no event shall Additional Interest accrue or be owed pursuant to this Section 4.06(e) for any period prior to the 380th day after the last date of original issuance of the Notes. The Restrictive Legend on the Notes shall be deemed removed upon the Company's delivery to the Trustee of an Officer's Certificate to that effect pursuant to the terms of this Indenture as provided in Section 2.05(c), and, at such time, the Notes will, pursuant to, and subject to the provisions of, such Section, be deemed assigned an unrestricted CUSIP number. However, for the avoidance of doubt, Global Notes will continue to bear Additional Interest pursuant to this paragraph until such time as they are identified by an unrestricted CUSIP number in the facilities of the Depository therefor, as a result of completion of such Depository's mandatory exchange process or otherwise.

(f) Additional Interest will be payable in arrears on each Interest Payment Date following accrual in the same manner as regular interest on the Notes; *provided* that if Additional Interest begins to accrue pursuant to Section 4.06(d) or Section 4.06(e) after the close of business on a Regular Record Date and prior to the open of business on the corresponding Interest Payment Date, the Additional Interest that accrues during such period shall be due on the Interest Payment Date next succeeding such corresponding Interest Payment Date, and no interest shall accrue in respect of such delay.

(g) Subject to the immediately succeeding sentence, the Additional Interest that is payable in accordance with Section 4.06(d) or Section 4.06(e) shall be in addition to, and not in lieu of, any Additional Interest that may be payable as a result of the Company's election pursuant to Section 6.03. However, in no event shall any Additional Interest that may accrue as a result of the Company's failure to timely file any document or report that it is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act, as applicable, after giving effect to all applicable grace periods thereunder and other than current reports on Form 8-K, as described in Section 4.06(d), together with any Additional Interest payable at the Company's election as the remedy for an Event of Default relating to the Company's failure to comply with its obligations as set forth in Section 4.06(b), accrue at a rate in excess of 0.50% per annum pursuant to this Indenture, regardless of the number of events or circumstances giving rise to the requirement to pay such Additional Interest.

(h) If Additional Interest is payable by the Company pursuant to Section 4.06(d) or Section 4.06(e), the Company shall deliver to the Trustee an Officer's Certificate to that effect stating (i) the amount of such Additional Interest that is payable and (ii) the date on which such Additional Interest is payable. Unless and until a Responsible Officer of the Trustee receives at the Corporate Trust Office such a certificate, the Trustee may assume without inquiry that no such Additional Interest is payable.

Section 4.07. *Stay, Extension and Usury Laws.* The Company covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law or other law that would prohibit or forgive the Company from paying all or any portion of the principal of or interest on the Notes as contemplated herein, wherever enacted, now or at any time hereafter in force, or that may affect the covenants or the performance of this Indenture; and the Company (to the extent it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

Section 4.08. *Compliance Certificate; Statements as to Defaults.* The Company shall deliver to the Trustee within 120 days after the end of each fiscal year of the Company (beginning with the fiscal year ending on December 31, 2026) an Officer's Certificate stating whether the signers thereof have knowledge of any Default under this Indenture that occurred during the previous year and, if so, specifying each such Default and the nature thereof.

In addition, the Company shall deliver to the Trustee within 30 days after an officer of the Company becomes aware of the occurrence of any Event of Default or Default, an Officer's Certificate setting forth the details of such Event of Default or Default, its status and the action that the Company is taking or proposing to take in respect thereof; *provided* that the Company is not required to deliver such Officer's Certificate if such Event of Default or Default has been cured.

## ARTICLE 5

### LISTS OF HOLDERS AND REPORTS BY THE COMPANY AND THE TRUSTEE

Section 5.01. *Lists of Holders.* The Company covenants and agrees that it will furnish or cause to be furnished to the Trustee, semi-annually, no later than April 1 and October 1 in each year beginning with October 1, 2026, and at such other times as the Trustee may request in writing, within 15 days after receipt by the Company of any such request (or such lesser time as the Trustee may reasonably request in order to enable it to timely provide any notice to be provided by it hereunder), a list in such form as the Trustee may reasonably require of the names and addresses of the Holders as of a date not more than 15 days (or such other date as the Trustee may reasonably request in order to so provide any such notices) prior to the time such information is furnished, except that no such list need be furnished so long as the Trustee is acting as Note Registrar.

Section 5.02. *Preservation and Disclosure of Lists.* The Trustee shall preserve, in as current a form as is reasonably practicable, all information as to the names and addresses of the Holders contained in the most recent list furnished to it as provided in Section 5.01 or maintained by the Trustee in its capacity as Note Registrar, if so acting. The Trustee may destroy any list furnished to it as provided in Section 5.01 upon receipt of a new list so furnished.

ARTICLE 6  
DEFAULTS AND REMEDIES

Section 6.01. *Events of Default.* Each of the following events shall be an “**Event of Default**” with respect to the Notes:

- (a) default in any payment of interest on any Note when due and payable, and the default continues for a period of 30 days;
- (b) default in the payment of principal of any Note when due and payable on the Maturity Date, upon Optional Redemption, upon any required repurchase, upon declaration of acceleration or otherwise;
- (c) failure by the Company to comply with its obligation to convert the Notes in accordance with this Indenture upon exercise of a Holder’s conversion right, and such failure continues for five Business Days;
- (d) failure by the Company to issue (i) a Fundamental Change Company Notice in accordance with Section 15.02(c) or notice of a Make-Whole Fundamental Change in accordance with Section 14.03, in either case when due, and such failure continues for five Business Days, (ii) notice of a specified corporate event in accordance with Section 14.01(b)(iv) when due, and such failure continues for five Business Days or (iii) notice of a specified corporate event in accordance with Section 14.01(b)(iii) when due;
- (e) failure by the Company to comply with its obligations under Article 11;
- (f) failure by the Company for 60 days after written notice from the Trustee or the Holders of at least 25% in principal amount of the Notes then outstanding has been received by the Company to comply with any of its other agreements contained in the Notes or this Indenture;
- (g) default by the Company or any Significant Subsidiary of the Company with respect to any mortgage, agreement or other instrument under which there may be outstanding, or by which there may be secured or evidenced, any indebtedness for money borrowed in excess of \$50,000,000 (or its foreign currency equivalent) in the aggregate of the Company and/or any such Significant Subsidiary, whether such indebtedness now exists or shall hereafter be created (i) resulting in such indebtedness becoming or being declared due and payable prior to its stated maturity or (ii) constituting a failure to pay the principal of any such debt when due and payable at its stated maturity, upon required repurchase, upon declaration of acceleration or otherwise, in each case, after the expiration of any applicable grace period, in each case of the events described in clause (i) or (ii) of this Section 6.01(g), as applicable, if such acceleration shall not have been rescinded or annulled or such failure to pay or default shall not have been cured or waived, or such indebtedness shall not have been paid or discharged, as the case may be, within 30 days after written notice to the Company by the Trustee or to the Company and the Trustee by Holders of at least 25% in aggregate principal amount of Notes then outstanding in accordance with this Indenture;

(h) the Company or any Significant Subsidiary shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to the Company or any such Significant Subsidiary or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company or any such Significant Subsidiary or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall publicly admit in writing that it generally is not paying, or is unable to pay, its debts as they become due; or

(i) an involuntary case or other proceeding shall be commenced against the Company or any Significant Subsidiary seeking liquidation, reorganization or other relief with respect to the Company or such Significant Subsidiary or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company or such Significant Subsidiary or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of 60 consecutive days.

Section 6.02. *Acceleration; Rescission and Annulment.* If one or more Events of Default shall have occurred and be continuing (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body), then, and in each and every such case (other than an Event of Default specified in Section 6.01(h) or Section 6.01(i) with respect to the Company), unless the principal of all of the Notes shall have already become due and payable, either the Trustee or the Holders of at least 25% in aggregate principal amount of the Notes then outstanding determined in accordance with Section 8.04, by notice in writing to the Company (and to the Trustee if given by Holders), may declare 100% of the principal of, and accrued and unpaid interest, if any, on, all the Notes then outstanding to be due and payable immediately, and upon any such declaration the same shall become and shall automatically be immediately due and payable, anything contained in this Indenture or in the Notes to the contrary notwithstanding. If an Event of Default specified in Section 6.01(h) or Section 6.01(i) with respect to the Company occurs and is continuing, 100% of the principal of, and accrued and unpaid interest, if any, on, all Notes shall become and shall automatically be immediately due and payable.

The immediately preceding paragraph, however, is subject to the conditions that if, at any time after the principal of the Notes shall have been so declared due and payable, and before any judgment or decree for the payment of the monies due shall have been obtained or entered as hereinafter provided, the Company shall pay or shall deposit with the Trustee a sum sufficient to pay installments of accrued and unpaid interest upon all Notes and the principal of any and all Notes that shall have become due otherwise than by acceleration (with interest on overdue installments of accrued and unpaid interest to the extent that payment of such interest is enforceable under applicable law, and on such principal at the rate borne by the Notes at such time) and amounts due to the Trustee pursuant to Section 7.06, and if (1) rescission would not conflict with any judgment or decree of a court of competent jurisdiction and (2) any and all existing Events of Default under this Indenture, other than any continuing Events of Default relating to the nonpayment of the principal of and accrued and unpaid interest, if any, on Notes that shall have become due solely by such acceleration, shall have been cured or waived pursuant to Section 6.09, then and in every such case (except as provided in the immediately succeeding sentence) the Holders of a majority in aggregate principal amount of the Notes then outstanding, by written notice to the Company and to the Trustee, may waive all Defaults or Events of Default with respect to the Notes and rescind and annul such declaration and its consequences and such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver or rescission and annulment shall extend to or shall affect any subsequent Default or Event of Default, or shall impair any right consequent thereon. Notwithstanding anything to the contrary herein, no such waiver or rescission and annulment shall extend to or shall affect any continuing Default or Event of Default resulting from (i) the nonpayment of the principal (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable) of, or accrued and unpaid interest on, any Notes, (ii) a failure to repurchase any Notes when required or (iii) a failure to pay or deliver, as the case may be, the consideration due upon conversion of the Notes.

For the avoidance of doubt, and without limiting the manner in which any Default or Event of Default can be cured: (i) a failure by the Company to send a notice in accordance with this Indenture, and any related Default (or Event of Default) shall be deemed cured and shall cease to continue upon delivery of such notice to the applicable recipient; (ii) if the Company fails to make any payment of principal of or interest on the Notes (or delivery of any other consideration in respect thereof) when due, such Default (or Event of Default) shall be deemed cured and shall cease to continue upon the making of such payment or delivery, as applicable, together with any accrued interest thereon, if applicable; and (iii) a Reporting Event of Default shall be deemed cured and shall cease to continue at such time as the Company files the applicable report or reports that gave rise to such Reporting Event of Default (it being understood that any report that the Company files with the Commission through the EDGAR system (or any successor thereto) shall be deemed to be filed with the Trustee at the time such report is so filed via the EDGAR system (or such successor)); *provided* that, for the avoidance of doubt, (x) the cure of any Event of Default shall not invalidate any acceleration of the Notes on account of such Event of Default that was properly effected prior to such time as such Event of Default was cured and (y) the cure of any Reporting Event of Default shall not affect the Company's obligation to pay any Additional Interest that accrues prior to the time of such cure. In addition, if an Event of Default is cured or waived before any related notice of acceleration is delivered, such Event of Default shall be deemed cured and the Notes shall not be subject to acceleration on account of such Event of Default.

Section 6.03. *Additional Interest.* Notwithstanding anything in this Indenture or in the Notes to the contrary, to the extent the Company elects, the sole remedy for an Event of Default relating to the Company's failure to comply with its obligations as set forth in Section 4.06(b) (any such Event of Default, a "**Reporting Event of Default**") shall, for the first 365 days after the occurrence of such an Event of Default, consist exclusively of the right to receive Additional Interest on the Notes at a rate equal to: (i) 0.25% per annum of the principal amount of the Notes outstanding for each day during the period beginning on, and including, the date on which such Event of Default first occurs and ending on the earlier of (x) the date on which such Event of Default is cured or validly waived in accordance with this Article 6 and (y) the 180th day immediately following the date on which such Event of Default first occurs and (ii) if such Event of Default has not been cured or validly waived prior to the 181st day immediately following the date on which such Event of Default first occurs, 0.50% per annum of the principal amount of Notes outstanding for each day during the period beginning on, and including, the 181st day immediately following the date on which such Event of Default first occurs and ending on the earlier of (x) the date on which the Event of Default is cured or validly waived in accordance with this Article 6 and (y) the 365th day immediately following the date on which such Event of Default first occurs. Additional Interest payable pursuant to this Section 6.03 shall be in addition to, not in lieu of, any Additional Interest payable pursuant to Section 4.06(d) or Section 4.06(e), subject to the second immediately succeeding paragraph. If the Company so elects, such Additional Interest shall be payable in the same manner and on the same dates as the stated interest payable on the Notes and shall accrue on all outstanding Notes from, and including, the date on which the Event of Default relating to the Company's failure to comply with its obligations as set forth in Section 4.06(b) first occurs to, and including, the 365th day thereafter (or such earlier date on which such Event of Default is cured or validly waived in accordance with this Article 6). On the 366th day after such Event of Default (if the Event of Default relating to the Company's failure to comply with its obligations as set forth in Section 4.06(b) is not cured or validly waived in accordance with this Article 6 prior to such 366th day), such Additional Interest shall cease to accrue and the Notes shall be immediately subject to acceleration as provided in Section 6.02. The provisions of this paragraph will not affect the rights of Holders of Notes in the event of the occurrence of any Event of Default other than the Company's failure to comply with its obligations as set forth in Section 4.06(b). In the event the Company does not elect to pay Additional Interest following an Event of Default in accordance with this Section 6.03 or the Company has elected to make such payment but does not pay the Additional Interest when due, the Notes shall be immediately subject to acceleration as provided in Section 6.02.

In order to elect to pay Additional Interest as the sole remedy during the first 365 days after the occurrence of any Reporting Event of Default, the Company must notify all Holders of the Notes, the Trustee and the Paying Agent (if other than the Trustee) in an Officer's Certificate (consistent with Section 4.06(h)) of such election on or before the open of business on the date on which such Reporting Event of Default first occurs. Upon the failure to timely give such notice, the Notes shall be immediately subject to acceleration as provided in Section 6.02.

In no event shall Additional Interest payable at the Company's election as the remedy for an Event of Default relating to the Company's failure to comply with its obligations as set forth in Section 4.06(b), together with any Additional Interest that may accrue as a result of the Company's failure to timely file any document or report that it is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act, as applicable, after giving effect to all applicable grace periods thereunder and other than current reports on Form 8-K, pursuant to Section 4.06(d), accrue at a rate in excess of 0.50% per annum pursuant to this Indenture, regardless of the number of events or circumstances giving rise to the requirement to pay such Additional Interest.

The Company shall send written notice to the Holder of each Note and the Trustee of the commencement and termination of any period on which Additional Interest accrues on such Note under any provision of this Indenture.

Section 6.04. *Payments of Notes on Default; Suit Therefor.* If an Event of Default described in clause (a) or (b) of Section 6.01 shall have occurred, the Company shall, upon demand of the Trustee, pay to the Trustee, for the benefit of the Holders of the Notes, the whole amount then due and payable on the Notes for principal and interest, if any, with interest on any overdue principal and interest, if any, at the rate borne by the Notes at such time, and, in addition thereto, such further amount as shall be sufficient to cover any amounts due to the Trustee under Section 7.06. If the Company shall fail to pay such amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, may prosecute such proceeding to judgment or final decree and may enforce the same against the Company or any other obligor upon the Notes and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company or any other obligor upon the Notes, wherever situated.

In the event there shall be pending proceedings for the bankruptcy or for the reorganization of the Company or any other obligor on the Notes under Title 11 of the United States Code, or any other applicable law, or in case a receiver, assignee or trustee in bankruptcy or reorganization, liquidator, sequestrator or similar official shall have been appointed for or taken possession of the Company, the property of the Company, or in the event of any other judicial proceedings relative to the Company, or to the creditors or property of the Company, the Trustee, irrespective of whether the principal of the Notes shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand pursuant to the provisions of this Section 6.04, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount of principal and accrued and unpaid interest, if any, in respect of the Notes, and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents and to take such other actions as it may deem necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and of the Holders allowed in such judicial proceedings relative to the Company, its creditors, or its property, and to collect and receive any monies or other property payable or deliverable on any such claims, and to distribute the same after the deduction of any amounts due to the Trustee under Section 7.06; and any receiver, assignee or trustee in bankruptcy or reorganization, liquidator, custodian or similar official is hereby authorized by each of the Holders to make such payments to the Trustee, as administrative expenses, and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due it for reasonable compensation, expenses, advances and disbursements, including agents and counsel fees, and including any other amounts due to the Trustee under Section 7.06, incurred by it up to the date of such distribution. To the extent that such payment of reasonable compensation, expenses, advances and disbursements out of the estate in any such proceedings shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, monies, securities and other property that the Holders of the Notes may be entitled to receive in such proceedings, whether in liquidation or under any plan of reorganization or arrangement or otherwise.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting such Holder 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.

All rights of action and of asserting claims under this Indenture, or under any of the Notes, may be enforced by the Trustee without the possession of any of the Notes, or the production thereof at any trial or other proceeding relative thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders of the Notes.

In any proceedings brought by the Trustee (and in any proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party) the Trustee shall be held to represent all the Holders of the Notes, and it shall not be necessary to make any Holders of the Notes parties to any such proceedings.

In case the Trustee shall have proceeded to enforce any right under this Indenture and such proceedings shall have been discontinued or abandoned because of any waiver pursuant to Section 6.09 or any rescission and annulment pursuant to Section 6.02 or for any other reason or shall have been determined adversely to the Trustee, then and in every such case the Company, the Holders and the Trustee shall, subject to any determination in such proceeding, be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Company, the Holders and the Trustee shall continue as though no such proceeding had been instituted.

Section 6.05. *Application of Monies Collected by Trustee.* Any monies or property collected by the Trustee pursuant to this Article 6 with respect to the Notes shall be applied in the following order, at the date or dates fixed by the Trustee for the distribution of such monies or property, upon presentation of the several Notes, and stamping thereon the payment, if only partially paid, and upon surrender thereof, if fully paid:

**First**, to the payment of all amounts due the Trustee, including its agents and counsel, under Section 7.06;

**Second**, in case the principal of the outstanding Notes shall not have become due and be unpaid, to the payment of interest on, and any cash due upon conversion of, the Notes in default in the order of the date due of the payments of such interest and cash due upon conversion, as the case may be, with interest (to the extent that such interest has been collected by the Trustee) upon such overdue payments at the rate borne by the Notes at such time, such payments to be made ratably to the Persons entitled thereto;

**Third**, in case the principal of the outstanding Notes shall have become due, by declaration or otherwise, and be unpaid, to the payment of the whole amount (including, if applicable, the payment of the Redemption Price, the Fundamental Change Repurchase Price and any cash due upon conversion) then owing and unpaid upon the Notes for principal and interest, if any, with interest on the overdue principal and, to the extent that such interest has been collected by the Trustee, upon overdue installments of interest at the rate borne by the Notes at such time, and in case such monies shall be insufficient to pay in full the whole amounts so due and unpaid upon the Notes, then to the payment of such principal (including, if applicable, the Redemption Price, the Fundamental Change Repurchase Price and any cash due upon conversion) and interest without preference or priority of principal over interest, or of interest over principal or of any installment of interest over any other installment of interest, or of any Note over any other Note, ratably to the aggregate of such principal (including, if applicable, the Redemption Price, the Fundamental Change Repurchase Price and any cash due upon conversion) and accrued and unpaid interest; and

**Fourth**, to the payment of the remainder, if any, to the Company.

Section 6.06. *Proceedings by Holders.* Except to enforce the right to receive payment of principal (including, if applicable, the Redemption Price and the Fundamental Change Repurchase Price) or interest when due, or the right to receive payment or delivery of the consideration due upon conversion, no Holder of any Note shall have any right by virtue of or by availing of any provision of this Indenture to institute any suit, action or proceeding in equity or at law upon or under or with respect to this Indenture, or for the appointment of a receiver, trustee, liquidator, custodian or other similar official, or for any other remedy hereunder, unless:

(a) such Holder previously shall have given to the Trustee written notice of an Event of Default and of the continuance thereof, as herein provided;

(b) Holders of at least 25% in aggregate principal amount of the Notes then outstanding shall have made written request upon the Trustee to institute such action, suit or proceeding in its own name as Trustee hereunder;

(c) such Holders shall have offered and, if requested, provided to the Trustee such security or indemnity satisfactory to Trustee against any loss, liability or expense to be incurred therein or thereby;

(d) the Trustee for 60 days after its receipt of such notice, request and offer of such security or indemnity, shall have neglected or refused to institute any such action, suit or proceeding; and

(e) no direction that, in the opinion of the Trustee, is inconsistent with such written request shall have been given to the Trustee by the Holders of a majority of the aggregate principal amount of the Notes then outstanding within such 60-day period pursuant to Section 6.09,

it being understood and intended, and being expressly covenanted by the taker and Holder of every Note with every other taker and Holder and the Trustee that no one or more Holders shall have any right in any manner whatsoever by virtue of or by availing of any provision of this Indenture to affect, disturb or prejudice the rights of any other Holder, or to obtain or seek to obtain priority over or preference to any other such Holder, or to enforce any right under this Indenture, except in the manner herein provided and for the equal, ratable and common benefit of all Holders (except as otherwise provided herein) (it being understood that the Trustee does not have an affirmative duty to ascertain whether or not any such use by a Holder prejudices the rights of any other Holders or obtains preference or priority over such other Holders). For the protection and enforcement of this Section 6.06, each and every Holder and the Trustee shall be entitled to such relief as can be given either at law or in equity.

Notwithstanding any other provision of this Indenture and any provision of any Note, each Holder shall have the contractual right to receive payment or delivery, as the case may be, of (x) the principal (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable) of, (y) accrued and unpaid interest, if any, on, and (z) the consideration due upon conversion of, such Note, on or after the respective due dates expressed or provided for in such Note or in this Indenture, or to institute suit for the enforcement of any such payment or delivery, as the case may be.

Section 6.07. *Proceedings by Trustee.* In case of an Event of Default, the Trustee may in its discretion proceed to protect and enforce the rights vested in it by this Indenture by such appropriate judicial proceedings as are necessary to protect and enforce any of such rights, either by suit in equity or by action at law or by proceeding in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in this Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other legal or equitable right vested in the Trustee by this Indenture or by law. The Trustee may maintain a proceeding even if it does not possess the Notes or does not produce the Notes in the proceeding.

Section 6.08. *Remedies Cumulative and Continuing.* Except as provided in the last paragraph of Section 2.06, all powers and remedies given by this Article 6 to the Trustee or to the Holders shall, to the extent permitted by law, be deemed cumulative and not exclusive of any thereof or of any other powers and remedies available to the Trustee or the Holders of the Notes, by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements contained in this Indenture, and no delay or omission of the Trustee or of any Holder of any of the Notes to exercise any right or power accruing upon any Default or Event of Default shall impair any such right or power, or shall be construed to be a waiver of any such Default or Event of Default or any acquiescence therein; and, subject to the provisions of Section 6.06, every power and remedy given by this Article 6 or by law to the Trustee or to the Holders may be exercised from time to time, and as often as shall be deemed expedient, by the Trustee or by the Holders.

Section 6.09. *Direction of Proceedings and Waiver of Defaults by Majority of Holders.* The Holders of a majority of the aggregate principal amount of the Notes at the time outstanding determined in accordance with Section 8.04 shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee with respect to the Notes; *provided, however,* that (a) such direction shall not be in conflict with any rule of law or with this Indenture, and (b) the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction. The Trustee may refuse to follow any direction that it determines is unduly prejudicial to the rights of any other Holder or that would involve the Trustee in personal liability (it being understood that the Trustee does not have an affirmative duty to determine whether any direction is prejudicial to any Holder). Prior to taking any action under this Indenture, the Trustee shall be entitled to security or indemnification satisfactory to it against any loss, liability or expense caused by taking or not taking such action. The Holders of a majority in aggregate principal amount of the Notes at the time outstanding determined in accordance with Section 8.04 may on behalf of the Holders of all of the Notes (x) waive any past Default or Event of Default hereunder and its consequences except (i) a default in the payment of accrued and unpaid interest, if any, on, or the principal (including any Redemption Price and any Fundamental Change Repurchase Price) of, the Notes when due that has not been cured pursuant to the provisions of Section 6.01, (ii) a failure by the Company to pay or deliver, as the case may be, the consideration due upon conversion of the Notes or (iii) a default in respect of a covenant or provision hereof which under Article 10 cannot be modified or amended without the consent of each Holder of an outstanding Note affected; and (y) rescind any resulting acceleration of the Notes and its consequences if (i) such rescission would not conflict with any judgment or decree of a court of competent jurisdiction and (ii) all existing Events of Default (other than nonpayment of the principal of, and interest on, the Notes that have become due solely by such acceleration) have been cured or waived. Upon any such waiver the Company, the Trustee and the Holders of the Notes shall be restored to their former positions and rights hereunder; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon. Whenever any Default or Event of Default hereunder shall have been waived as permitted by this Section 6.09, said Default or Event of Default shall for all purposes of the Notes and this Indenture be deemed to have been cured and to be not continuing; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon.

Section 6.10. *Notice of Defaults.* The Trustee shall, after the occurrence and continuance of a Default of which a Responsible Officer has received written notice thereof as specified in Section 7.02(h), deliver to all Holders notice of such Default within 90 days after such Responsible Officer receives such notice, unless such Defaults shall have been cured or waived before the giving of such notice; *provided* that, except in the case of a Default in the payment of the principal of (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable), or accrued and unpaid interest on, any of the Notes or a Default in the payment or delivery of the consideration due upon conversion, the Trustee shall be protected in withholding such notice if and so long as a Responsible Officer of the Trustee in good faith determines that the withholding of such notice is in the interests of the Holders.

Section 6.11. *Undertaking to Pay Costs.* All parties to this Indenture agree, and each Holder of any Note by its acceptance thereof shall be deemed to have agreed, that any court may, in its discretion, require, 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, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; *provided* that the provisions of this Section 6.11 (to the extent permitted by law) shall not apply to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in principal amount of the Notes at the time outstanding determined in accordance with Section 8.04, or to any suit instituted by any Holder for the enforcement of the payment of the principal of (including, but not limited to, the Redemption Price and the Fundamental Change Repurchase Price, if applicable) or accrued and unpaid interest, if any, on any Note on or after the due date expressed or provided for in such Note or to any suit for the enforcement of the right to convert any Note, or receive the consideration due upon conversion, in accordance with the provisions of Article 14.

ARTICLE 7  
CONCERNING THE TRUSTEE

Section 7.01. *Duties and Responsibilities of Trustee.* The Trustee, prior to the occurrence of an Event of Default of which a Responsible Officer of the Trustee has received written notice as specified in Section 7.02(h) and after the curing or waiver of all Events of Default that may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. If an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs under the same circumstances; *provided* that the Trustee will be under no obligation to exercise any of the rights or powers under this Indenture at the request or direction of any of the Holders unless such Holders have offered to the Trustee indemnity or security satisfactory to Trustee against any loss, liability or expense that might be incurred by it in compliance with such request or direction.

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

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

(i) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Indenture, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of gross negligence or willful misconduct on the part of the Trustee, the Trustee may conclusively rely, without investigation, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture, but need not verify the contents thereof; however, in the case of any such certificates or opinions that by any provisions hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform on their face to the requirements of this Indenture (but need not confirm or investigate the accuracy of any mathematical calculations or other facts stated therein);

(b) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer or Officers of the Trustee, unless it shall be proved that the Trustee was grossly negligent in ascertaining the pertinent facts;

(c) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of not less than a majority of the aggregate principal amount of the Notes at the time outstanding determined as provided in Section 8.04 relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture;

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

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

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

(g) in the absence of written investment direction from the Company, all cash received by the Trustee shall be placed in a non-interest bearing trust account, and in no event shall the Trustee be liable for the selection of investments or for investment losses incurred thereon or for losses incurred as a result of the liquidation of any such investment prior to its maturity date or the failure of the party directing such investments prior to its maturity date or the failure of the party directing such investment to provide timely written investment direction, and the Trustee shall have no obligation to invest or reinvest any amounts held hereunder in the absence of such written investment direction from the Company; and

(h) in the event that the Trustee is also acting as Custodian, Note Registrar, Paying Agent, Conversion Agent or transfer agent hereunder, the rights and protections afforded to the Trustee pursuant to this Article 7 shall also be afforded to such Custodian, Note Registrar, Paying Agent, Conversion Agent or transfer agent.

None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers.

Section 7.02. *Rights of the Trustee.* Except as otherwise provided in Section 7.01:

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

(b) Any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced by an Officer's Certificate (unless other evidence in respect thereof be herein specifically prescribed); and any Board Resolution may be evidenced to the Trustee by a copy thereof certified by the Secretary or an Assistant Secretary of the Company. Before the Trustee acts or refrains from acting, it may require an Officer's Certificate or an Opinion of Counsel or both. 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 consult with counsel and require an Opinion of Counsel and any advice of such counsel or Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or omitted by it hereunder in good faith and in reliance on such advice or Opinion of Counsel.

(d) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, judgment, 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 in its reasonable judgment to make such further inquiry or investigation, it shall be entitled, at a reasonable time on any Business Day after reasonable notice, to examine the books, records and premises of the Company, personally or by agent or attorney at the expense of the Company and shall incur no liability of any kind by reason of such inquiry or investigation.

(e) The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, custodians, nominees or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent, custodian, nominee or attorney appointed by it with due care hereunder, and the permissive rights of the Trustee enumerated herein shall not be construed as duties.

(f) The Trustee shall not be required to give any bond or surety in respect of the execution of the trusts and powers under this Indenture.

(g) The Trustee may request that the Company deliver an Officer's Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture, which Officer's Certificate may be signed by any Person authorized to sign an Officer's Certificate, including any Person specified as so authorized in any such certificate previously delivered and not superseded.

(h) The Trustee shall not be deemed to have notice or knowledge of any Default or Event of Default, unless written notice of any event which is in fact such a Default or Event of Default (and stating the occurrence of a Default or Event of Default) is actually received by the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Notes and this Indenture and states that it is a notice of Default or Event of Default.

(i) Reserved.

(j) Reserved.

(k) Neither the Trustee nor any of its directors, officers, employees, agents or affiliates shall be responsible for nor have any duty to monitor the performance or any action of the Company, or any of their respective directors, members, officers, agents, affiliates or employee, nor shall it have any liability in connection with the malfeasance or nonfeasance by such party. The Trustee shall not be responsible for any inaccuracy in the information obtained from the Company or for any inaccuracy or omission in the records which may result from such information or any failure by the Trustee to perform its duties as set forth herein as a result of any inaccuracy or incompleteness.

(l) In no event shall the Trustee be responsible or liable for punitive, special, indirect, incidental or any consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(m) Neither the Trustee nor any agent shall have any responsibility or liability for any actions taken or not taken by the Depository.

Section 7.03. *No Responsibility for Recitals, Etc.* The recitals contained herein and in the Notes (except in the Trustee's certificate of authentication) shall be taken as the statements of the Company, and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Notes or other transaction documents relating to the Notes and this Indenture. The Trustee shall not be accountable for the use or application by the Company of any Notes or the proceeds of any Notes authenticated and delivered by the Trustee in conformity with the provisions of this Indenture or for any money paid to the Company or upon the Company's direction under any provision of this Indenture.

Section 7.04. *Trustee, Paying Agents, Conversion Agents, Bid Solicitation Agent or Note Registrar May Own Notes.* The Trustee, any Paying Agent, any Conversion Agent, Bid Solicitation Agent or Note Registrar (in each case, if other than an Affiliate of the Company), in its individual or any other capacity, may become the owner or pledgee of Notes with the same rights it would have if it were not the Trustee, Paying Agent, Conversion Agent, Bid Solicitation Agent or Note Registrar.

Section 7.05. *Monies and Shares of Common Stock to Be Held in Trust.* All monies and shares of Common Stock, if any, received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received. Money and shares of Common Stock, if any, held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as may be agreed from time to time by the Company and the Trustee.

Section 7.06. *Compensation and Expenses of Trustee.* The Company covenants and agrees to pay to the Trustee from time to time, and the Trustee shall be entitled to, compensation for all services rendered by it hereunder in any capacity (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) as mutually agreed to in writing between the Trustee and the Company, and the Company will pay or reimburse the Trustee upon its request for all expenses, disbursements and advances incurred or made by the Trustee in accordance with any of the provisions of this Indenture in any capacity thereunder (including the compensation and the reasonable expenses and disbursements of its agents and counsel and of all Persons not regularly in its employ and including costs in connection with enforcement of its right to indemnity hereunder) except any such expense, disbursement or advance as shall have been caused by its gross negligence or willful misconduct as determined by a final order of a court of competent jurisdiction. The Company also covenants to indemnify, defend and protect the Trustee (in its individual and trustee capacities) in any capacity under this Indenture and any other document or transaction entered into in connection herewith and its agents and any authenticating agent for, and to hold them harmless against, any loss, claim, action, suit, cost, damage, liability or expense (including taxes (other than taxes based upon, measured or determined by the income of the Trustee), reasonable attorneys' fees and court costs) of any kind and nature whatsoever incurred without gross negligence or willful misconduct on the part of the Trustee, its officers, directors or employees, as the case may be, as determined by a final order of a court of competent jurisdiction, and arising out of or in connection with the acceptance or administration of this Indenture or in any other capacity hereunder (whether such claims arise by or against the Company or a third person), including the reasonable costs and expenses of defending themselves against any claim of liability in the premises or enforcing the Company's obligations hereunder, including under this Section 7.06. The Trustee shall notify the Company promptly of any claim for which it may seek indemnity of which it has received written notice. Failure by the Trustee to so notify the Company shall not relieve the Company of its obligations hereunder. The Company shall defend the claim and the Trustee may have separate counsel and the Company shall pay the fees and expenses of such counsel. The obligations of the Company under this Section 7.06 to compensate or indemnify the Trustee and to pay or reimburse the Trustee for expenses, disbursements and advances shall be secured by a senior claim to which the Notes are hereby made subordinate on all money or property held or collected by the Trustee, except, subject to the effect of Section 6.05, funds held in trust herewith for the benefit of the Holders of particular Notes. The Trustee's right to receive payment of any amounts due under this Section 7.06 shall not be subordinate to any other liability or indebtedness of the Company. The obligation of the Company under this Section 7.06 shall survive the satisfaction and discharge of this Indenture, the payment or conversion of the Notes and the earlier resignation or removal of the Trustee. The Company need not pay for any settlement made without its consent, which consent shall not be unreasonably withheld. The indemnification provided in this Section 7.06 shall extend to the officers, directors, agents and employees of the Trustee.

Without prejudice to any other rights available to the Trustee under applicable law, when the Trustee and its agents and any authenticating agent incur expenses or render services after an Event of Default specified in Section 6.01(h) or Section 6.01(i) occurs, the expenses and the compensation for the services are intended to constitute administrative expenses for the purpose of priority under any bankruptcy, insolvency or similar laws.

Section 7.07. *Officer's Certificate as Evidence.* Except as otherwise provided in Section 7.01, whenever in the administration of the provisions of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of gross negligence or willful misconduct on the part of the Trustee as determined by a final order of a court of competent jurisdiction, be deemed to be conclusively proved and established by an Officer's Certificate delivered to the Trustee, and such Officer's Certificate, in the absence of gross negligence or willful misconduct on the part of the Trustee as determined by a final order of a court of competent jurisdiction, shall be full warrant to the Trustee for any action taken or omitted by it under the provisions of this Indenture upon the faith thereof.

Section 7.08. *Eligibility of Trustee.* There shall at all times be a Trustee hereunder which shall be a Person that is eligible to act as such and has a combined capital and surplus of at least \$50,000,000. If such Person publishes reports of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

Section 7.09. *Resignation or Removal of Trustee.* (a) The Trustee may at any time resign by giving written notice of such resignation to the Company. Upon receiving such notice of resignation, the Company shall promptly notify all Holders and appoint a successor trustee by written instrument, in duplicate, one copy of which instrument shall be delivered to the resigning Trustee and one copy to the successor trustee. If no successor trustee shall have been so appointed and have accepted appointment within 30 days after the giving of such notice of resignation to the Company, the resigning Trustee may, upon ten Business Days' notice to the Company and the Holders, and at the expense of the Company, petition any court of competent jurisdiction for the appointment of a successor trustee, or any Holder who has been a bona fide holder of a Note or Notes for at least six months (or since the date of this Indenture) may, subject to the provisions of Section 6.11, on behalf of himself or herself and all others similarly situated, petition any such court for the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

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

(i) the Trustee shall cease to be eligible in accordance with the provisions of Section 7.08 and shall fail to resign after written request therefor by the Company or by any such Holder, or

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

then, in either case, the Company may by a Board Resolution remove the Trustee and appoint a successor trustee by written instrument, in duplicate, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee, or, subject to the provisions of Section 6.11, any Holder who has been a bona fide holder of a Note or Notes for at least six months (or since the date of this Indenture) may, on behalf of himself or herself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee.

(c) The Holders of a majority in aggregate principal amount of the Notes at the time outstanding, as determined in accordance with Section 8.04, may, at any time upon 30 days' prior written notice, remove the Trustee and nominate a successor trustee that shall be deemed appointed as successor trustee unless within ten days after notice to the Company of such nomination the Company objects thereto, in which case the Trustee so removed or any Holder, upon the terms and conditions and otherwise as in Section 7.09(a) provided, may petition any court of competent jurisdiction for an appointment of a successor trustee.

(d) Any resignation or removal of the Trustee and appointment of a successor trustee pursuant to any of the provisions of this Section 7.09 shall become effective upon acceptance of appointment by the successor trustee as provided in Section 7.10.

Section 7.10. *Acceptance by Successor Trustee.* Any successor trustee appointed as provided in Section 7.09 shall execute, acknowledge and deliver to the Company and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder, with like effect as if originally named as Trustee herein; but, nevertheless, on the written request of the Company or of the successor trustee, the trustee ceasing to act shall, upon payment of any amounts then due it pursuant to the provisions of Section 7.06, execute and deliver an instrument transferring to such successor trustee all the rights and powers of the trustee so ceasing to act. Upon request of any such successor trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a senior lien to which the Notes are hereby made subordinate on all money or property held or collected by such trustee as such, except for funds held in trust for the benefit of Holders of particular Notes, to secure any amounts then due it pursuant to the provisions of Section 7.06.

No successor trustee shall accept appointment as provided in this Section 7.10 unless at the time of such acceptance such successor trustee shall be eligible under the provisions of Section 7.08.

Upon acceptance of appointment by a successor trustee as provided in this Section 7.10, each of the Company and the successor trustee, at the written direction and at the expense of the Company shall deliver or cause to be delivered notice of the succession of such trustee hereunder to the Holders. If the Company fails to deliver such notice within ten days after acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be delivered at the expense of the Company.

Section 7.11. *Succession by Merger, Etc.* Any corporation or other entity into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation or other entity resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation or other entity succeeding to all or substantially all of the corporate trust business of the Trustee (including the administration of this Indenture), shall be the successor to the Trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto; *provided* that in the case of any corporation or other entity succeeding to all or substantially all of the corporate trust business of the Trustee such corporation or other entity shall be eligible under the provisions of Section 7.08.

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

ARTICLE 8  
CONCERNING THE HOLDERS

Section 8.01. *Action by Holders.* Whenever in this Indenture it is provided that the Holders of a specified percentage of the aggregate principal amount of the Notes may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action, the Holders of such specified percentage have joined therein may be evidenced (a) by any instrument or any number of instruments of similar tenor executed by Holders in person or by agent or proxy appointed in writing, or (b) by the record of the Holders voting in favor thereof at any meeting of Holders duly called and held in accordance with the provisions of Article 9, or (c) by a combination of such instrument or instruments and any such record of such a meeting of Holders. Whenever the Company solicits the taking of any action by the Holders of the Notes, the Company may, but shall not be required to, fix in advance of such solicitation, a date as the record date for determining Holders entitled to take such action. The record date, if one is selected, shall be not more than fifteen days prior to the date of commencement of solicitation of such action.

Section 8.02. *Proof of Execution by Holders.* Subject to the provisions of Section 7.01, Section 7.02 and Section 9.05, proof of the execution of any instrument by a Holder or its agent or proxy shall be sufficient if made in accordance with such reasonable rules and regulations as may be prescribed by the Trustee or in such manner as shall be satisfactory to the Trustee. The holding of Notes shall be proved by the Note Register or by a certificate of the Note Registrar. The record of any Holders' meeting shall be proved in the manner provided in Section 9.06.

Section 8.03. *Who Are Deemed Absolute Owners.* The Company, the Trustee, any authenticating agent, any Paying Agent, any Conversion Agent and any Note Registrar may deem the Person in whose name a Note shall be registered upon the Note Register to be, and may treat it as, the absolute owner of such Note (whether or not such Note shall be overdue and notwithstanding any notation of ownership or other writing thereon made by any Person other than the Company or any Note Registrar) for the purpose of receiving payment of or on account of the principal (including any Redemption Price and any Fundamental Change Repurchase Price) of and (subject to Section 2.03) accrued and unpaid interest on such Note, for conversion of such Note and for all other purposes; and neither the Company nor the Trustee nor any Paying Agent nor any Conversion Agent nor any Note Registrar shall be affected by any notice to the contrary. All such payments or deliveries so made to any Holder for the time being, or upon its order, shall be valid, and, to the extent of the sums or shares of Common Stock so paid or delivered, effectual to satisfy and discharge the liability for monies payable or shares deliverable upon any such Note.

Section 8.04. *Company-Owned Notes Disregarded.* In determining whether the Holders of the requisite aggregate principal amount of Notes have concurred in any direction, consent, waiver or other action under this Indenture, Notes that are owned by the Company, by any Subsidiary thereof or by any Affiliate of the Company or any Subsidiary thereof shall be disregarded and deemed not to be outstanding for the purpose of any such determination; *provided* that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, consent, waiver or other action only Notes that a Responsible Officer actually knows are so owned shall be so disregarded. Notes so owned that have been pledged in good faith may be regarded as outstanding for the purposes of this Section 8.04 if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to so act with respect to such Notes and that the pledgee is not the Company, a Subsidiary thereof or an Affiliate of the Company or a Subsidiary thereof. Upon request of the Trustee, the Company shall furnish to the Trustee promptly an Officer's Certificate listing and identifying all Notes, if any, known by the Company to be owned or held by or for the account of any of the above described Persons; and, subject to Section 7.01, the Trustee shall be entitled to accept such Officer's Certificate as conclusive evidence of the facts therein set forth and of the fact that all Notes not listed therein are outstanding for the purpose of any such determination.

Section 8.05. *Revocation of Consents; Future Holders Bound.* At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 8.01, of the taking of any action by the Holders of the percentage of the aggregate principal amount of the Notes specified in this Indenture in connection with such action, any Holder of a Note that is shown by the evidence to be included in the Notes the Holders of which have consented to such action may, by filing written notice with the Trustee at the Corporate Trust Office and upon proof of holding as provided in Section 8.02, revoke such action so far as concerns such Note. Except as aforesaid, any such action taken by the Holder of any Note shall be conclusive and binding upon such Holder and upon all future Holders and owners of such Note and of any Notes issued in exchange or substitution therefor or upon registration of transfer thereof, irrespective of whether any notation in regard thereto is made upon such Note or any Note issued in exchange or substitution therefor or upon registration of transfer thereof.

ARTICLE 9  
HOLDERS' MEETINGS

Section 9.01. *Purpose of Meetings.* A meeting of Holders may be called at any time and from time to time pursuant to the provisions of this Article 9 for any of the following purposes:

- (a) to give any notice to the Company or to the Trustee or to give any directions to the Trustee permitted under this Indenture, or to consent to the waiving of any Default or Event of Default hereunder (in each case, as permitted under this Indenture) and its consequences, or to take any other action authorized to be taken by Holders pursuant to any of the provisions of Article 6;
- (b) to remove the Trustee and nominate a successor trustee pursuant to the provisions of Article 7;
- (c) to consent to the execution of an indenture or indentures supplemental hereto pursuant to the provisions of Section 10.02; or
- (d) to take any other action authorized to be taken by or on behalf of the Holders of any specified aggregate principal amount of the Notes under any other provision of this Indenture or under applicable law.

Section 9.02. *Call of Meetings by Trustee or the Company.* The Trustee or the Company may at any time call a meeting of Holders to take any action specified in Section 9.01, to be held at such time and at such place the party who called the meeting shall determine. Notice of every meeting of the Holders, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting and the establishment of any record date pursuant to Section 8.01, shall be delivered to Holders of such Notes. Such notice shall also be delivered to the Company. Such notices shall be delivered not less than 20 nor more than 90 days prior to the date fixed for the meeting.

Any meeting of Holders shall be valid without notice if the Holders of all Notes then outstanding are present in person or by proxy or if notice is waived before or after the meeting by the Holders of all Notes then outstanding, and if the Company and the Trustee are either present by duly authorized representatives or have, before or after the meeting, waived notice.

Section 9.03. *Call of Meetings by Company or Holders.* In case at any time the Company, pursuant to a Board Resolution, or the Holders of at least 10% of the aggregate principal amount of the Notes then outstanding, shall have requested the Trustee to call a meeting of Holders, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have delivered the notice of such meeting within 20 days after receipt of such request, then the Company or such Holders may determine the time and the place for such meeting and may call such meeting to take any action authorized in Section 9.01, by delivering notice thereof as provided in Section 9.02.

Section 9.04. *Qualifications for Voting.* To be entitled to vote at any meeting of Holders a Person shall (a) be a Holder of one or more Notes on the record date pertaining to such meeting or (b) be a Person appointed by an instrument in writing as proxy by a Holder of one or more Notes on the record date pertaining to such meeting. The only Persons who shall be entitled to be present or to speak at any meeting of Holders shall be the Persons entitled to vote at such meeting and their counsel and any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

Section 9.05. *Regulations.* Notwithstanding any other provisions of this Indenture, the Trustee or the Company may make such reasonable regulations as it may deem advisable for any meeting of Holders, in regard to proof of the holding of Notes and of the appointment of proxies, and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall think fit.

The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by Holders as provided in Section 9.03, in which case the Company or the Holders calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the Holders of a majority in aggregate principal amount of the Notes represented at the meeting and entitled to vote at the meeting.

Subject to the provisions of Section 8.04, at any meeting of Holders each Holder or proxyholder shall be entitled to one vote for each \$1,000 principal amount of Notes held or represented by him or her; *provided, however*, that no vote shall be cast or counted at any meeting in respect of any Note challenged as not outstanding and ruled by the chairman of the meeting to be not outstanding. The chairman of the meeting shall have no right to vote other than by virtue of Notes held by it or instruments in writing as aforesaid duly designating it as the proxy to vote on behalf of other Holders. Any meeting of Holders duly called pursuant to the provisions of Section 9.02 or Section 9.03 may be adjourned from time to time by the Holders of a majority of the aggregate principal amount of Notes represented at the meeting, whether or not constituting a quorum, and the meeting may be held as so adjourned without further notice.

Section 9.06. *Voting.* The vote upon any resolution submitted to any meeting of Holders shall be by written ballot on which shall be subscribed the signatures of the Holders or of their representatives by proxy and the outstanding aggregate principal amount of the Notes held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record in duplicate of the proceedings of each meeting of Holders shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more Persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was delivered as provided in Section 9.02. The record shall show the aggregate principal amount of the Notes voting in favor of or against any resolution. The record shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one of the duplicates shall be delivered to the Company and the other to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting.

Any record so signed and verified shall be conclusive evidence of the matters therein stated.

Section 9.07. *No Delay of Rights by Meeting.* Nothing contained in this Article 9 shall be deemed or construed to authorize or permit, by reason of any call of a meeting of Holders or any rights expressly or impliedly conferred hereunder to make such call, any hindrance or delay in the exercise of any right or rights conferred upon or reserved to the Trustee or to the Holders under any of the provisions of this Indenture or of the Notes.

ARTICLE 10  
SUPPLEMENTAL INDENTURES

Section 10.01. *Supplemental Indentures Without Consent of Holders.* The Company (when authorized by the resolutions of the Board of Directors) and the Trustee, at the Company's expense, may from time to time and at any time amend or supplement this Indenture or the Notes for one or more of the following purposes:

- (a) to cure any ambiguity, omission, defect or inconsistency;
- (b) to provide for the assumption by a Successor Company of the obligations of the Company under this Indenture pursuant to Article 11;
- (c) to add guarantees with respect to the Notes;
- (d) to secure the Notes;
- (e) to add to the covenants or Events of Default of the Company for the benefit of the Holders or surrender any right or power conferred upon the Company;
- (f) to make any change that does not adversely affect the rights of any Holder under this Indenture or the Notes;
- (g) in connection with any Share Exchange Event, to provide that the Notes are convertible into Reference Property, subject to the provisions of Section 14.02, and make such related changes to the terms of the Notes to the extent expressly required by Section 14.07;

(h) comply with any requirement of the Commission in connection with the qualification of this Indenture under the Trust Indenture Act to the extent this Indenture is qualified thereunder;

(i) provide for the issuance of additional Notes as permitted under this Indenture;

(j) provide for the appointment of a successor Trustee, Note Registrar, Paying Agent, Bid Solicitation Agent or Conversion Agent;

(k) comply with the rules of any applicable securities depository in a manner that does not adversely affect the rights of any Holder under the Indenture or the Notes in any material respect;

(l) irrevocably elect or eliminate one of the Settlement Methods and/or irrevocably elect a Specified Dollar Amount;

(m) increase the Conversion Rate as provided in this Indenture; or

(n) to conform the provisions of this Indenture or the Notes to the "Description of notes" section of the Offering Memorandum.

Upon the written request of the Company, the Trustee is hereby authorized to join with the Company in the execution of any such supplemental indenture and to make any further appropriate agreements and stipulations that may be therein contained, but the Trustee shall not be obligated to, but may in its discretion, enter into any supplemental indenture that affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Any supplemental indenture authorized by the provisions of this Section 10.01 may be executed by the Company and the Trustee without the consent of the Holders of any of the Notes at the time outstanding, notwithstanding any of the provisions of Section 10.02.

Section 10.02. *Supplemental Indentures with Consent of Holders.* With the consent (evidenced as provided in Article 8) of the Holders of at least a majority of the aggregate principal amount of the Notes then outstanding (determined in accordance with Article 8 and including, without limitation, consents obtained in connection with a repurchase of, or tender or exchange offer for, Notes), the Company and the Trustee, at the Company's expense, may from time to time and at any time enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture, any supplemental indenture or the Notes or of modifying in any manner the rights of the Holders; *provided, however,* that, without the consent of each Holder of an outstanding Note affected, no such supplemental indenture shall:

- (a) reduce the principal amount of Notes whose Holders must consent to an amendment;
- (b) reduce the rate of or extend the stated time for payment of interest on any Note;
- (c) reduce the principal of or extend the Maturity Date of any Note;
- (d) make any change that adversely affects the conversion rights of any Notes other than as permitted or required by this Indenture;
- (e) reduce the Redemption Price or the Fundamental Change Repurchase Price of any Note or amend or modify in any manner adverse to the Holders the Company's obligation to make such payments, whether through an amendment or waiver of provisions in the covenants, definitions or otherwise;
- (f) make any Note payable in a currency, or at a place of payment, other than that stated in the Note;
- (g) change the ranking of the Notes;
- (h) amend the contractual right of any Holder to institute suit for the enforcement of its right to receive payment or delivery, as the case may be, of the principal (including the Fundamental Change Repurchase Price or Redemption Price, if applicable) of, accrued and unpaid interest, if any, on, and the consideration due upon conversion of, its Notes, on or after the respective due dates expressed or provided for in the Notes or this Indenture; or
- (i) make any change in this Article 10 that requires each Holder's consent or in the waiver provisions in Section 6.02 or Section 6.09.

Upon the written request of the Company, and upon the filing with the Trustee of evidence of the consent of Holders as aforesaid and subject to Section 10.05, the Trustee shall join with the Company in the execution of such supplemental indenture unless such supplemental indenture affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such supplemental indenture.

Holdings do not need under this Section 10.02 to approve the particular form of any proposed supplemental indenture. It shall be sufficient if such Holders approve the substance thereof. After any such supplemental indenture becomes effective, the Company shall deliver to the Holders (with a copy to the Trustee) a notice briefly describing such supplemental indenture. However, the failure to give such notice to all the Holders, or any defect in the notice, will not impair or affect the validity of the supplemental indenture.

Section 10.03. *Effect of Supplemental Indentures.* Upon the execution of any supplemental indenture pursuant to the provisions of this Article 10, this Indenture shall be and be deemed to be modified and amended in accordance therewith and the respective rights, limitation of rights, obligations, duties and immunities under this Indenture of the Trustee, the Company and the Holders shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments and all the terms and conditions of any such supplemental indenture shall be and be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

Section 10.04. *Notation on Notes.* Notes authenticated and delivered after the execution of any supplemental indenture pursuant to the provisions of this Article 10 may, at the Company's request and expense, bear a notation as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Notes so modified as to conform to any modification of this Indenture contained in any such supplemental indenture may, at the Company's expense, be prepared and executed by the Company, authenticated, upon receipt of a Company Order, by the Trustee (or an authenticating agent duly appointed by the Trustee pursuant to Section 17.10) and delivered in exchange for the Notes then outstanding, upon surrender of such Notes then outstanding.

Section 10.05. *Evidence of Compliance of Supplemental Indenture to Be Furnished Trustee.* In addition to the documents required by Section 17.05, the Trustee shall receive an Officer's Certificate and an Opinion of Counsel as conclusive evidence that any supplemental indenture executed pursuant hereto complies with the requirements of this Article 10 and is permitted or authorized by this Indenture and such Opinion of Counsel shall include a customary legal opinion stating that such supplemental indenture is the valid and binding obligation of the Company, subject to customary exceptions and qualifications.

ARTICLE 11  
CONSOLIDATION, MERGER, SALE, CONVEYANCE AND LEASE

Section 11.01. *Company May Consolidate, Etc. on Certain Terms.* Subject to the provisions of Section 11.02, the Company shall not consolidate with, merge with or into, or sell, convey, transfer or lease all or substantially all of the consolidated assets of the Company and the Company's Subsidiaries, taken as a whole, to another Person (a "**Business Combination Event**") (other than any such sale, conveyance, transfer or lease to one or more of the Company's direct or indirect Wholly Owned Subsidiaries), unless:

(a) the resulting, surviving or transferee Person (the "**Successor Company**"), if not the Company, shall be a Qualified Successor Entity organized and existing under the laws of the United States of America, any State thereof or the District of Columbia, and the Successor Company (if not the Company) shall expressly assume, by supplemental indenture, all of the obligations of the Company under the Notes and this Indenture;

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

(c) if the Company is not the Successor Company, the Successor Company shall have delivered to the Trustee an Officer's Certificate and Opinion of Counsel, each stating that such Business Combination Event complies with this Indenture and that such supplemental indenture is authorized or permitted by this Indenture and an Opinion of Counsel stating that the supplemental indenture is the valid and binding obligation of the Successor Company, subject to customary exceptions and qualifications.

Section 11.02. *Successor Corporation to Be Substituted.* In case of any Business Combination Event and upon the assumption by the Successor Company, by supplemental indenture, executed and delivered to the Trustee and satisfactory in form to the Trustee, of the due and punctual payment of the principal of and accrued and unpaid interest on all of the Notes, the due and punctual delivery and/or payment, as the case may be, of any consideration due upon conversion of the Notes and the due and punctual performance of all of the covenants and conditions of this Indenture to be performed by the Company, such Successor Company (if not the Company) shall succeed to and, except in the case of a lease of all or substantially all of the consolidated assets of the Company and the Company's Subsidiaries, taken as a whole, shall be substituted for the Company, with the same effect as if it had been named herein as the party of the first part, and may thereafter exercise every right and power of the Company under this Indenture and the Company shall be discharged from its obligations under the Notes and this Indenture (except in the case of a lease of all or substantially all of the consolidated assets of the Company and the Company's Subsidiaries, taken as a whole). Such Successor Company thereupon may cause to be signed, and may issue either in its own name or in the name of the Company any or all of the Notes issuable hereunder which theretofore shall not have been signed by the Company and delivered to the Trustee; and, upon the order of such Successor Company instead of the Company and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall deliver, or cause to be authenticated and delivered, any Notes that previously shall have been signed and delivered by the Officers of the Company to the Trustee for authentication, and any Notes that such Successor Company thereafter shall cause to be signed and delivered to the Trustee for that purpose. All the Notes so issued shall in all respects have the same legal rank and benefit under this Indenture as the Notes theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Notes had been issued at the date of the execution hereof. In the event of any Business Combination Event (but not in the case of a lease), upon compliance with this Article 11 the Person named as the "Company" in the first paragraph of this Indenture (or any successor that shall thereafter have become such in the manner prescribed in this Article 11) may be dissolved, wound up and liquidated at any time thereafter and, except in the case of a lease, such Person shall be released from its liabilities as obligor and maker of the Notes and from its obligations under this Indenture and the Notes.

In case of any Business Combination Event, such changes in phraseology and form (but not in substance) may be made in the Notes thereafter to be issued as may be appropriate.

Section 11.03. *Opinion of Counsel to Be Given to Trustee.* If a supplemental indenture is required pursuant to this Article 11, no Business Combination Event shall be effective unless the Trustee shall receive an Officer's Certificate and an Opinion of Counsel as conclusive evidence that such Business Combination Event and any such assumption complies with the provisions of this Article 11.

ARTICLE 12  
IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS

Section 12.01. *Indenture and Notes Solely Corporate Obligations.* No recourse for the payment of the principal of or accrued and unpaid interest on, or the payment or delivery of consideration due upon conversion of, any Note, nor for any claim based thereon or otherwise in respect thereof, and no recourse under or upon any obligation, covenant or agreement of the Company in this Indenture or in any supplemental indenture or in any Note, nor because of the creation of any indebtedness represented thereby, shall be had against any incorporator, stockholder, employee, agent, Officer or director or Subsidiary, as such, past, present or future, of the Company or of any successor company, either directly or through the Company or any successor company, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that all such liability is hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issue of the Notes.

ARTICLE 13  
[INTENTIONALLY OMITTED]

ARTICLE 14  
CONVERSION OF NOTES

Section 14.01. *Conversion Privilege.* (a) Subject to and upon compliance with the provisions of this Article 14, each Holder of a Note shall have the right, at such Holder's option, to convert all or any portion (if the portion to be converted is \$1,000 principal amount or an integral multiple thereof) of such Note (i) subject to satisfaction of the conditions described in Section 14.01(b), at any time prior to the close of business on the Business Day immediately preceding January 15, 2031 under the circumstances and during the periods set forth in Section 14.01(b), and (ii) regardless of the conditions described in Section 14.01(b), on or after January 15, 2031 and prior to the close of business on the second Scheduled Trading Day immediately preceding the Maturity Date, in each case, at an initial conversion rate of 68.9275 shares of Common Stock (subject to adjustment as provided in this Article 14, the "**Conversion Rate**") per \$1,000 principal amount of Notes (subject to, and in accordance with, the settlement provisions of Section 14.02, the "**Conversion Obligation**").

(b) (i) Prior to the close of business on the Business Day immediately preceding January 15, 2031, a Holder may surrender all or any portion of its Notes for conversion at any time during the five Business Day period immediately after any ten consecutive Trading Day period (the “**Measurement Period**”) in which the Trading Price per \$1,000 principal amount of Notes, as determined following a request by a Holder of Notes in accordance with this subsection (b)(i), for each Trading Day of the Measurement Period was less than 98% of the product of the Last Reported Sale Price of the Common Stock on each such Trading Day and the Conversion Rate on each such Trading Day (the “**Trading Price Condition**”). The Trading Prices shall be determined by the Bid Solicitation Agent pursuant to this subsection (b)(i) and the definition of Trading Price set forth in this Indenture. The Company shall provide written notice to the Bid Solicitation Agent (if other than the Company) of the three independent nationally recognized securities dealers selected by the Company pursuant to the definition of Trading Price, along with appropriate contact information for each. The Bid Solicitation Agent (if other than the Company) shall have no obligation to solicit the Trading Price per \$1,000 principal amount of Notes unless the Company has requested such solicitation, and the Company shall have no obligation to make such request (or, if the Company is acting as Bid Solicitation Agent, the Company shall have no obligation to determine the Trading Price per \$1,000 principal amount of Notes) unless a Holder or Holders of at least \$1,000,000 aggregate principal amount of Notes provides the Company with reasonable evidence that the Trading Price per \$1,000 principal amount of Notes on any Trading Day would be less than 98% of the product of the Last Reported Sale Price of the Common Stock on such Trading Day and the Conversion Rate on such Trading Day, at which time the Company shall instruct the Bid Solicitation Agent (if other than the Company) to solicit, or if the Company is acting as Bid Solicitation Agent, the Company shall solicit, such bids beginning on the next Trading Day and on each successive Trading Day until the Trading Price per \$1,000 principal amount of Notes is greater than or equal to 98% of the product of the Last Reported Sale Price of the Common Stock and the Conversion Rate. The Company shall determine the Trading Price per \$1,000 amount of Notes in accordance with the bids solicited by the Bid Solicitation Agent. If (x) the Company is not acting as Bid Solicitation Agent, and the Company does not instruct the Bid Solicitation Agent to solicit bids when obligated as provided in the preceding sentence, or if the Company instructs the Bid Solicitation Agent to obtain bids and the Bid Solicitation Agent fails to make such solicitation, or (y) the Company is acting as Bid Solicitation Agent and the Company fails to make such solicitation when obligated as provided in the preceding sentence, then, in either case, the Trading Price per \$1,000 principal amount of Notes shall be deemed to be less than 98% of the product of the Last Reported Sale Price of the Common Stock and the Conversion Rate on each Trading Day of such failure. If the Trading Price Condition has been met on any Trading Day, the Company shall so notify the Holders, the Trustee and the Conversion Agent (if other than the Trustee) in writing on or within one Business Day of such Trading Day. If, at any time after the Trading Price Condition has been met, the Trading Price per \$1,000 principal amount of Notes is greater than or equal to 98% of the product of the Last Reported Sale Price of the Common Stock and the Conversion Rate for such Trading Day, the Company shall so notify the Holders of the Notes, the Trustee and the Conversion Agent (if other than the Trustee) in writing that the Trading Price Condition is no longer met and thereafter neither the Company nor the Bid Solicitation Agent (if other than the Company) shall be required to solicit bids again until another qualifying request is made as provided above. Neither the Trustee nor the Bid Solicitation Agent shall have any liability or responsibility for any Trading Price or related information or the accuracy thereof.

(ii) If the Company calls any Note for redemption pursuant to Article 16, then a Holder of the Note called (or deemed called pursuant to Section 14.01(b)(ii)) for redemption may surrender such Note (or a portion thereof) called (or deemed called pursuant to Section 14.01(b)(ii)) for redemption for conversion at any time prior to the close of business on the second Scheduled Trading Day immediately prior to the applicable Redemption Date, even if the Notes are not otherwise convertible at such time. After that time, the right to convert such Note called (or deemed called pursuant to Section 14.01(b)(ii)) for redemption pursuant to this subsection (b)(ii) on account of such Redemption Notice shall expire, unless the Company defaults in the payment of the Redemption Price, in which case a Holder of such Note called (or deemed called pursuant to Section 14.01(b)(ii)) for redemption may convert such Note (or a portion thereof) called (or deemed called pursuant to Section 14.01(b)(ii)) for redemption until the Redemption Price has been paid or duly provided for. If the Company elects to redeem less than all of the outstanding Notes for redemption pursuant to Article 16, and the Holder of any Note (or any owner of a beneficial interest in any Global Note) is reasonably not able to determine, before the close of business on the 42nd Scheduled Trading Day immediately before the relevant Redemption Date (or, if the Company delivers a Redemption Notice electing Physical Settlement not less than 10 nor more than 65 Scheduled Trading Days prior to the related Redemption Date, then before the close of business on the ninth Scheduled Trading Day immediately before the relevant Redemption Date), whether such Note or beneficial interest, as applicable, is to be redeemed pursuant to such redemption, then such Holder or owner, as applicable, shall be entitled to convert such Note or beneficial interest, as applicable, at any time before the close of business on the second Scheduled Trading Day immediately prior to such Redemption Date, unless the Company defaults in the payment of the Redemption Price, in which case such Holder or owner, as applicable, shall be entitled to convert such Note (or any such beneficial interest in any Global Note), as applicable, until the Redemption Price has been paid or duly provided for, and in each case each such conversion shall be deemed to be of a Note called for redemption (including, without limitation, for purposes of Section 14.03).

(iii) If, prior to the close of business on the Business Day immediately preceding January 15, 2031, the Company elects to:

(A) issue to all or substantially all holders of the Common Stock any rights, options or warrants (other than pursuant to a stockholders rights plan, so long as such rights have not separated from the shares of the Common Stock) entitling them, for a period of not more than 60 calendar days after the announcement date of such issuance, to subscribe for or purchase shares of the Common Stock at a price per share that is less than the average of the Last Reported Sale Prices of the Common Stock for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of such issuance; or

(B) distribute to all or substantially all holders of the Common Stock the Company's assets, securities or rights to purchase securities of the Company (other than pursuant to a stockholders rights plan, so long as such rights have not separated from the shares of the Common Stock), which distribution has a per share value, as reasonably determined by the Company in good faith, exceeding 10% of the Last Reported Sale Price of the Common Stock on the Trading Day preceding the date of announcement for such distribution,

then, in either case, the Company shall notify all Holders of the Notes, the Trustee and the Conversion Agent (if other than the Trustee) (such notification, the "**Certain Distributions Notification**") (x) at least 45 Scheduled Trading Days prior to or (y) if in the Certain Distributions Notification the Company elects, and discloses that it has elected, Physical Settlement in respect of any conversions with Conversion Dates that occur after delivery to the Holders of the Certain Distributions Notification until the Certain Distributions Conversion Period End Date, at least 10 Scheduled Trading Days prior to, in either case, the Ex-Dividend Date for such issuance or distribution (or, if later in the case of any such separation of rights issued pursuant to a stockholders rights plan, as soon as reasonably practicable after the Company becomes aware that such separation or triggering event has occurred or will occur). Once the Company has given such notice, a Holder may surrender all or any portion of its Notes for conversion at any time until the earlier of (1) the close of business on the Business Day immediately preceding the Ex-Dividend Date for such issuance or distribution and (2) the Company's announcement that such issuance or distribution will not take place (such earlier date and time, the "**Certain Distributions Conversion Period End Date**").

Holders may not convert their Notes pursuant to this Section 14.01(b)(iii) if they participate (other than in the case of a share split or share combination), at the same time and upon the same terms as holders of the Common Stock and solely as a result of holding the Notes, in any of the transactions described above without having to convert their Notes as if they held a number of shares of Common Stock equal to the applicable Conversion Rate as of the Record Date for such issuance or distribution, *multiplied* by the principal amount (expressed in thousands) of Notes held by such Holder.

(iv) If a transaction or event that constitutes a Fundamental Change or a Make-Whole Fundamental Change occurs prior to the close of business on the Business Day immediately preceding January 15, 2031, regardless of whether a Holder has the right to require the Company to repurchase the Notes pursuant to Section 15.02, or if the Company is a party to a Share Exchange Event (other than a Share Exchange Event that is solely for the purpose of changing the Company's jurisdiction of organization that (x) does not constitute a Fundamental Change or a Make-Whole Fundamental Change and (y) results in a reclassification, conversion or exchange of outstanding shares of the Common Stock solely into shares of common stock of the surviving entity and such common stock becomes Reference Property for the Notes) that occurs prior to the close of business on the Business Day immediately preceding January 15, 2031 (each such Fundamental Change, Make-Whole Fundamental Change or Share Exchange Event, a "**Corporate Event**"), all or any portion of a Holder's Notes may be surrendered for conversion at any time from or after the effective date of the Corporate Event until the earlier of (x) 35 Trading Days after the effective date of such Corporate Event (or, if the Company gives notice after the effective date of such Corporate Event, until 35 Trading Days after the date the Company gives notice of such Corporate Event) or, if such Corporate Event also constitutes a Fundamental Change (other than an Exempted Fundamental Change), until the close of business on the Business Day immediately preceding the related Fundamental Change Repurchase Date and (y) the close of business on the second Scheduled Trading Day immediately preceding the Maturity Date. The Company shall notify Holders, the Trustee and the Conversion Agent (if other than the Trustee) as promptly as practicable following the date the Company publicly announces the effective date of such Corporate Event, but in no event later than the second Business Day after the effective date of such Corporate Event.

(v) Prior to the close of business on the Business Day immediately preceding January 15, 2031, a Holder may surrender all or any portion of its Notes for conversion at any time during any calendar quarter commencing after the calendar quarter ending on June 30, 2026 (and only during such calendar quarter), if the Last Reported Sale Price of the Common Stock for at least 20 Trading Days (whether or not consecutive) during the period of 30 consecutive Trading Days ending on, and including, the last Trading Day of the immediately preceding calendar quarter is greater than or equal to 130% of the Conversion Price on each applicable Trading Day. Neither the Trustee nor the Conversion Agent (if other than the Trustee) shall have any liability or responsibility for determining the convertibility of the Notes or whether the conditions described in this Section 14.01(b)(v) have been satisfied.

Section 14.02. *Conversion Procedure; Settlement Upon Conversion.*

(a) Subject to this Section 14.02, Section 14.03(b) and Section 14.07(a), upon conversion of any Note, the Company shall pay or deliver, as the case may be, to the converting Holder, in respect of each \$1,000 principal amount of Notes being converted, cash (“**Cash Settlement**”), shares of Common Stock, together with cash, if applicable, in lieu of delivering any fractional share of Common Stock in accordance with subsection (j) of this Section 14.02 (“**Physical Settlement**”) or a combination of cash and shares of Common Stock, together with cash, if applicable, in lieu of delivering any fractional share of Common Stock in accordance with subsection (j) of this Section 14.02 (“**Combination Settlement**”), at its election, as set forth in this Section 14.02.

(i) All conversions of Notes for which the relevant Conversion Date occurs on or after January 15, 2031, and all conversions during a Redemption Period of Notes called for redemption (or deemed called for redemption pursuant to Section 14.01(b)(ii)), shall be settled using the same Settlement Method.

(ii) Except for any conversions of Notes called for redemption (or deemed called for redemption pursuant to Section 14.01(b)(ii)) for which the relevant Conversion Date occurs during the related Redemption Period, and any conversions for which the relevant Conversion Date occurs on or after January 15, 2031 and except to the extent the Company has irrevocably elected Physical Settlement in the Certain Distributions Notification pursuant to Section 14.01(b)(iii) or previously made an irrevocable election with respect to all subsequent conversions of Notes pursuant to Section 14.02(a)(iii), the Company shall use the same Settlement Method for all conversions with the same Conversion Date, but the Company shall not have any obligation to use the same Settlement Method with respect to conversions with different Conversion Dates.

(iii) If, in respect of any Conversion Date (or the periods described in the fourth immediately succeeding set of parentheses, as the case may be), the Company elects to deliver a written notice (the “**Settlement Notice**”) of the relevant Settlement Method in respect of such Conversion Date (or such period, as the case may be), the Company shall deliver such Settlement Notice to the Trustee, the Conversion Agent (if other than the Trustee) and converting Holders no later than the close of business on the Trading Day immediately following the relevant Conversion Date (or, in the case of any conversions of Notes (x) called for redemption (or deemed called for redemption pursuant to Section 14.01(b)(ii)) for which the relevant Conversion Date occurs during the related Redemption Period, in such Redemption Notice, (y) for which the relevant Conversion Date occurs on or after January 15, 2031, no later than January 15, 2031 or (z) for which the Company has irrevocably elected Physical Settlement pursuant to Section 14.01(b)(iii), in the related Certain Distributions Notification) (in each case, the “**Settlement Method Election Deadline**”). If the Company does not elect a Settlement Method prior to the deadline set forth in the immediately preceding sentence, the Company shall no longer have the right to elect a Settlement Method with respect to any conversion on such Conversion Date or during such period, and the Company shall be deemed to have elected the Default Settlement Method with respect to such conversion. Any Settlement Notice shall specify the relevant Settlement Method and in the case of an election of Combination Settlement, the relevant Settlement Notice shall indicate the Specified Dollar Amount per \$1,000 principal amount of Notes. If the Company timely elects Combination Settlement (or is deemed to have elected Combination Settlement) with respect to a conversion but does not timely notify the converting Holder, the Trustee and the Conversion Agent (if other than the Trustee) of the applicable Specified Dollar Amount, then the Specified Dollar Amount for such conversion will be deemed to be \$1,000 per \$1,000 principal amount of Notes. For the avoidance of doubt, the Company’s failure to timely elect a Settlement Method or specify the applicable Specified Dollar Amount shall not constitute a Default under this Indenture.

The Company may, by notice to the Holders, the Trustee and the Conversion Agent (if other than the Trustee) prior to January 15, 2031, irrevocably fix the Settlement Method, to any Settlement Method that the Company is then permitted to elect, including Combination Settlement with a Specified Dollar Amount per \$1,000 principal amount of Notes of \$1,000 or with an ability to continue to set the Specified Dollar Amount per \$1,000 principal amount of Notes at or above any specific amount set forth in such election notice. Concurrently with providing notice to all Holders of an election to change the Default Settlement Method or irrevocably fix the Settlement Method, the Company shall promptly either post an announcement on its website or issue a current report on Form 8-K (or any successor form) disclosing such Default Settlement Method or irrevocably fixed Settlement Method. If the Company changes the Default Settlement Method or elects to irrevocably fix the Settlement Method, in either case, to Combination Settlement with an ability to continue to set the Specified Dollar Amount per \$1,000 principal amount of Notes at or above a specified amount, the Company will, after the date of such change or election, as the case may be, inform Holders converting their Notes of such Specified Dollar Amount no later than the relevant Settlement Method Election Deadline, or, if the Company does not timely notify Holders, such Specified Dollar Amount will be the specific amount set forth in the change or election notice or, if no specific amount was set forth in the change or election notice, such Specified Dollar Amount shall be \$1,000 per \$1,000 principal amount of Notes. A change in the Default Settlement Method or an irrevocable election shall apply to all Note conversions on Conversion Dates occurring subsequent to delivery of such notice; *provided, however*, that no such change in the Default Settlement Method or irrevocable election shall affect any Settlement Method theretofore elected (or deemed to be elected) with respect to any conversion. For the avoidance of doubt, such an irrevocable election, if made, shall be effective without the need to amend this Indenture or the Notes, including pursuant to the provisions described in Section 10.01(l). However, the Company may nonetheless choose to execute such an amendment at the Company's option.

(iv) The cash, shares of Common Stock or combination of cash and shares of Common Stock in respect of any conversion of Notes (the “**Settlement Amount**”) shall be computed as follows:

(A) if the Company elects (or is deemed to have elected) to satisfy its Conversion Obligation in respect of such conversion by Physical Settlement, the Company shall deliver to the converting Holder in respect of each \$1,000 principal amount of Notes being converted a number of shares of Common Stock equal to the Conversion Rate in effect on the Conversion Date (plus cash in lieu of any fractional share of Common Stock issuable upon conversion);

(B) if the Company elects (or is deemed to have elected) to satisfy its Conversion Obligation in respect of such conversion by Cash Settlement, the Company shall pay to the converting Holder in respect of each \$1,000 principal amount of Notes being converted cash in an amount equal to the sum of the Daily Conversion Values for each of the 40 consecutive Trading Days during the related Observation Period; and

(C) if the Company elects (or is deemed to have elected) to satisfy its Conversion Obligation in respect of such conversion by Combination Settlement, the Company shall pay or deliver, as the case may be, in respect of each \$1,000 principal amount of Notes being converted, a Settlement Amount equal to the sum of the Daily Settlement Amounts for each of the 40 consecutive Trading Days during the related Observation Period (plus cash in lieu of any fractional share of Common Stock issuable upon conversion).

(v) The Daily Settlement Amounts (if applicable) and the Daily Conversion Values (if applicable) shall be determined by the Company promptly following the last day of the Observation Period. Promptly after such determination of the Daily Settlement Amounts or the Daily Conversion Values, as the case may be, and the amount of cash payable in lieu of delivering any fractional share of Common Stock, the Company shall notify the Trustee and the Conversion Agent (if other than the Trustee) in writing of the Daily Settlement Amounts or the Daily Conversion Values, as the case may be, and the amount of cash payable in lieu of delivering fractional shares of Common Stock. The Trustee and the Conversion Agent (if other than the Trustee) shall have no responsibility for any such determination.

(b) Subject to Section 14.02(e), before any Holder of a Note shall be entitled to convert a Note as set forth above, such Holder shall (i) in the case of a Global Note, comply with the procedures of the Depositary in effect at that time and, if required, pay funds equal to the interest payable on the next Interest Payment Date to which such Holder is not entitled as set forth in Section 14.02(h) and, if required, pay all transfer or similar taxes, if any, pursuant to Section 14.02(e) and (ii) in the case of a Physical Note (1) complete, manually or electronically sign and deliver an irrevocable notice to the Conversion Agent as set forth in the Form of Notice of Conversion (or a facsimile thereof) (a “**Notice of Conversion**”) at the office of the Conversion Agent and state in writing therein the principal amount of Notes to be converted and the name or names (with addresses) in which such Holder wishes the certificate or certificates for any shares of Common Stock to be delivered upon settlement of the Conversion Obligation to be registered, (2) surrender such Notes, duly endorsed to the Company or in blank (and accompanied by appropriate endorsement and transfer documents), at the office of the Conversion Agent, (3) if required, furnish appropriate endorsements and transfer documents, (4) if required, pay funds equal to interest payable on the next Interest Payment Date to which such Holder is not entitled as set forth in Section 14.02(h) and (5) if required, pay all transfer or similar taxes, if any, pursuant to Section 14.02(e). The Trustee (and if different, the Conversion Agent) shall notify the Company of any conversion pursuant to this Article 14 on the Conversion Date for such conversion. No Notes may be surrendered for conversion by a Holder thereof if such Holder has also delivered a Fundamental Change Repurchase Notice to the Company in respect of such Notes and has not validly withdrawn such Fundamental Change Repurchase Notice in accordance with Section 15.03.

If more than one Note shall be surrendered for conversion at one time by the same Holder, the Conversion Obligation with respect to such Notes shall be computed on the basis of the aggregate principal amount of the Notes (or specified portions thereof to the extent permitted thereby) so surrendered.

(c) A Note shall be deemed to have been converted immediately prior to the close of business on the date (the “**Conversion Date**”) that the Holder has complied with the requirements set forth in subsection (b) above. Except as set forth in Section 14.03(b) and Section 14.07(a), the Company shall pay or deliver, as the case may be, the consideration due in respect of the Conversion Obligation on the second Business Day immediately following the relevant Conversion Date, if the Company elects to satisfy its Conversion Obligation through Physical Settlement (*provided* that, with respect to any Conversion Date following the Regular Record Date immediately preceding the Maturity Date where Physical Settlement applies to the related conversion, the Company will settle any such conversion on the Maturity Date (or, if the Maturity Date is not a Business Day, the next Business Day), and, for purposes of calculating the consideration due upon such conversion, the Conversion Date thereof will be deemed to occur on the second Scheduled Trading Day preceding the Maturity Date), or on the second Business Day immediately following the last Trading Day of the Observation Period, if the Company elects to satisfy its Conversion Obligation through any other Settlement Method. If any shares of Common Stock are due to a converting Holder, the Company shall issue or cause to be issued, and deliver (if applicable) through its common stock transfer agent to the Conversion Agent or to such Holder, or such Holder’s nominee or nominees, the full number of shares of Common Stock to which such Holder shall be entitled, in the case of conversion of a Global Note, in book-entry format through the Depository, in satisfaction of the Company’s Conversion Obligation.

(d) In case any Note shall be surrendered for partial conversion, the Company shall execute and the Trustee shall authenticate and deliver to or upon the written order of the Holder of the Note so surrendered a new Note or Notes in authorized denominations in an aggregate principal amount equal to the unconverted portion of the surrendered Note, without payment of any service charge by the converting Holder but, if required by the Company or Trustee, with payment of a sum sufficient to cover any documentary, stamp or similar issue or transfer tax or similar governmental charge required by law or that may be imposed in connection therewith as a result of the name of the Holder of the new Notes issued upon such conversion being different from the name of the Holder of the old Notes surrendered for such conversion.

(e) If a Holder submits a Note for conversion, the Company shall pay any documentary, stamp or similar issue or transfer tax due on the issue of any shares of Common Stock upon conversion, unless the tax is due because the Holder requests such shares to be issued in a name other than the Holder’s name, in which case the Holder shall pay that tax. The Conversion Agent may refuse to deliver the certificates representing the shares of Common Stock being issued in a name other than the Holder’s name until the Trustee receives a sum sufficient to pay any tax that is due by such Holder in accordance with the immediately preceding sentence.

(f) Except as provided in Section 14.04, no adjustment shall be made for dividends on any shares of Common Stock issued upon the conversion of any Note as provided in this Article 14.

(g) Upon the conversion of an interest in a Global Note, the Trustee, or the Custodian at the direction of the Trustee, shall make a notation on such Global Note as to the reduction in the principal amount represented thereby. The Company shall notify the Trustee in writing of any conversion of Notes effected through any Conversion Agent other than the Trustee.

(h) Upon conversion, a Holder shall not receive any separate cash payment for accrued and unpaid interest, if any, except as set forth below. The Company's settlement of the full Conversion Obligation shall be deemed to satisfy in full its obligation to pay the principal amount of the Note and accrued and unpaid interest, if any, to, but not including, the relevant Conversion Date. As a result, accrued and unpaid interest, if any, to, but not including, the relevant Conversion Date shall be deemed to be paid in full rather than cancelled, extinguished or forfeited. Upon a conversion of Notes into a combination of cash and shares of Common Stock, accrued and unpaid interest will be deemed to be paid first out of the cash paid upon such conversion. Notwithstanding the foregoing, if Notes are converted after the close of business on a Regular Record Date but prior to the open of business on the immediately following Interest Payment Date, Holders of such Notes as of the close of business on such Regular Record Date will receive the full amount of interest payable on such Notes (to, but not including, such Interest Payment Date) on such Interest Payment Date notwithstanding the conversion. However, Notes surrendered for conversion during the period from the close of business on any Regular Record Date to the open of business on the immediately following Interest Payment Date must be accompanied by funds equal to the amount of interest payable on the Notes so converted on the corresponding Interest Payment Date (regardless of whether the converting Holder was the Holder of record on the corresponding Regular Record Date); *provided* that no such payment shall be required (1) for conversions following the close of business on the Regular Record Date immediately preceding the Maturity Date; (2) for Notes called (or deemed called pursuant to Section 14.01(b)(ii)) for redemption, if the Company has specified a Redemption Date that is after a Regular Record Date and on or prior to the second Scheduled Trading Day immediately following the corresponding Interest Payment Date; (3) if the Company has specified a Fundamental Change Repurchase Date that is after a Regular Record Date and on or prior to the Business Day immediately following the corresponding Interest Payment Date; or (4) to the extent of any Defaulted Amounts, if any Defaulted Amounts exists at the time of conversion with respect to such Note. Therefore, for the avoidance of doubt, all Holders of record on the Regular Record Date immediately preceding the Maturity Date, any Redemption Date described in clause (2) above, and any Fundamental Change Repurchase Date described in clause (3) above shall receive the full interest payment due on the Maturity Date or other applicable Interest Payment Date in cash regardless of whether their Notes have been converted, redeemed and/or repurchased, as applicable, following such Regular Record Date.

(i) The Person in whose name the shares of Common Stock shall be issuable upon conversion shall be treated as a stockholder of record as of the close of business on the relevant Conversion Date (if the Company elects to satisfy the related Conversion Obligation by Physical Settlement) or the last Trading Day of the relevant Observation Period (if the Company elects to satisfy the related Conversion Obligation by Combination Settlement), as the case may be. Upon a conversion of Notes, such Person shall no longer be a Holder of such Notes surrendered for conversion.

(j) The Company shall not issue any fractional share of Common Stock upon conversion of the Notes and shall instead pay cash in lieu of delivering any fractional share of Common Stock issuable upon conversion based on the Daily VWAP for the relevant Conversion Date (or, if such Conversion Date is not a Trading Day, the immediately preceding Trading Day), in the case of Physical Settlement or based on the Daily VWAP for the last Trading Day of the relevant Observation Period, in the case of Combination Settlement. For each Note surrendered for conversion, if the Company has elected (or is deemed to have elected) Combination Settlement, the full number of shares that shall be issued upon conversion thereof shall be computed on the basis of the aggregate Daily Settlement Amounts for the relevant Observation Period and any fractional shares remaining after such computation shall be paid in cash. Subject to the Applicable Procedures of the Depositary, if a Holder submits more than one Note for conversion having the same Conversion Date, such Notes shall be aggregated for purposes of calculating cash in lieu of fractional shares.

Section 14.03. *Increased Conversion Rate Applicable to Certain Notes Surrendered in Connection with Make-Whole Fundamental Changes or Redemption Notice.* (a) If (x) the Effective Date of a Make-Whole Fundamental Change occurs prior to the Maturity Date or (y) the Company gives a Redemption Notice with respect to any or all of the Notes in accordance with Section 16.02 and, in each case, a Holder elects to convert its Notes in connection with such Make-Whole Fundamental Change or Redemption Notice, as the case may be, the Company shall, under the circumstances described below, increase the Conversion Rate for the Notes so surrendered for conversion by a number of additional shares of Common Stock (the “**Additional Shares**”), as described below. A conversion of Notes shall be deemed for these purposes to be “in connection with” such Make-Whole Fundamental Change if the relevant Conversion Date occurs during the period from, and including, the Effective Date of the Make-Whole Fundamental Change up to, and including, the close of business on the Business Day immediately prior to the related Fundamental Change Repurchase Date (or, in the case of an Exempted Fundamental Change or a Make-Whole Fundamental Change that would have been a Fundamental Change but for the proviso in clause (b) of the definition thereof, the 35th Trading Day immediately following the Effective Date of such Make-Whole Fundamental Change) (such period, the “**Make-Whole Fundamental Change Period**”). A conversion of Notes shall be deemed for these purposes to be “in connection with” a Redemption Notice if such conversion is of Notes called for redemption (or deemed called for redemption pursuant to Section 14.01(b)(ii)) and the relevant Conversion Date occurs during the related Redemption Period. For the avoidance of doubt, the Company shall increase the Conversion Rate in connection with a Redemption Notice only with respect to conversions of Notes called for redemption (or deemed called for redemption pursuant to Section 14.01(b)(ii)), and not of Notes not called (and not deemed called pursuant to Section 14.01(b)(ii)) for redemption. Accordingly, if the Company elects to redeem less than all of the outstanding Notes as described under Article 16, Holders of the Notes not called (and not deemed called pursuant to Section 14.01(b)(ii)) for redemption shall not be entitled to an increased Conversion Rate for conversions of such Notes on account of the Redemption Notice during the related Redemption Period if such Notes are otherwise convertible.

(b) Upon surrender of Notes for conversion in connection with a Make-Whole Fundamental Change or Redemption Notice, the Company shall, at its option, satisfy the related Conversion Obligation by Physical Settlement, Cash Settlement or Combination Settlement in accordance with Section 14.02; *provided, however*, that if, at the effective time of a Make-Whole Fundamental Change described in clause (b) of the definition of Fundamental Change, the Reference Property following such Make-Whole Fundamental Change is composed entirely of cash, for any conversion of Notes following the Effective Date of such Make-Whole Fundamental Change, the Conversion Obligation shall be calculated based solely on the Stock Price for the transaction and shall be deemed to be an amount of cash per \$1,000 principal amount of converted Notes equal to the Conversion Rate (including any adjustment for Additional Shares), *multiplied by* such Stock Price. In such event, the Conversion Obligation shall be determined and paid to Holders in cash on the fifth Business Day following the Conversion Date. The Company shall notify the Holders of Notes, the Trustee and the Conversion Agent (if other than the Trustee) in writing of the Effective Date of any Make-Whole Fundamental Change no later than five Business Days after such Effective Date.

(c) The number of Additional Shares, if any, by which the Conversion Rate shall be increased shall be determined by reference to the table below, based on the date on which the Make-Whole Fundamental Change occurs or becomes effective or the date of the Redemption Notice, as the case may be, (in each case, the “**Effective Date**”) and the price paid (or deemed to be paid) per share of the Common Stock in the Make-Whole Fundamental Change or with respect to the Redemption Notice, as the case may be (in each case, the “**Stock Price**”). If the holders of the Common Stock receive in exchange for their Common Stock only cash in a Make-Whole Fundamental Change described in clause (b) of the definition of Fundamental Change, the Stock Price shall be the cash amount paid per share. Otherwise, the Stock Price shall be the average of the Last Reported Sale Prices of the Common Stock over the five consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the applicable Effective Date. In the event that a conversion in connection with a Redemption Notice would also be deemed to be in connection with a Make-Whole Fundamental Change, a Holder of the Notes to be converted shall be entitled to a single increase to the Conversion Rate with respect to the first to occur of the date of the applicable Redemption Notice or the Effective Date of the applicable Make-Whole Fundamental Change, and the later event shall be deemed not to have occurred for purposes of such conversion. The Board of Directors shall make appropriate adjustments to the Stock Price, in its good faith determination, to account for any adjustment to the Conversion Rate that becomes effective, or any event requiring an adjustment to the Conversion Rate where the Ex-Dividend Date, Effective Date (as such term is used in Section 14.04) or Expiration Date of the event occurs during such five consecutive Trading Day period.

(d) The Stock Prices set forth in the column headings of the table below shall be adjusted as of any date on which the Conversion Rate of the Notes is otherwise adjusted. The adjusted Stock Prices shall equal the Stock Prices applicable immediately prior to such adjustment, *multiplied by* a fraction, the numerator of which is the Conversion Rate immediately prior to such adjustment giving rise to the Stock Price adjustment and the denominator of which is the Conversion Rate as so adjusted. The number of Additional Shares set forth in the table below shall be adjusted in the same manner and at the same time as the Conversion Rate as set forth in Section 14.04.

(e) The following table sets forth the number of Additional Shares of Common Stock by which the Conversion Rate shall be increased per \$1,000 principal amount of Notes pursuant to this Section 14.03 for each Stock Price and Effective Date set forth below:

Effective Date	Stock Price											
	\$11.16	\$12.00	\$13.00	\$14.51	\$16.50	\$18.86	\$21.00	\$25.00	\$30.00	\$35.00	\$45.00	\$55.00
April 9, 2026	20.6782	17.8167	15.0277	11.7588	8.6552	6.1257	4.5252	2.5996	1.2830	0.5909	0.0578	0.0000
April 15, 2027	20.6782	17.8167	15.0277	11.7588	8.6497	6.0080	4.3629	2.4224	1.1380	0.4894	0.0302	0.0000
April 15, 2028	20.6782	17.8167	15.0277	11.7374	8.2867	5.5742	3.9267	2.0496	0.8747	0.3240	0.0029	0.0000
April 15, 2029	20.6782	17.8167	14.9123	10.9214	7.3406	4.6426	3.0824	1.4204	0.4907	0.1217	0.0000	0.0000
April 15, 2030	20.6782	17.2017	13.2285	8.9063	5.3000	2.8674	1.6338	0.5328	0.0830	0.0000	0.0000	0.0000
April 15, 2031	20.6782	14.4058	7.9954	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

The exact Stock Price and Effective Date may not be set forth in the table above, in which case:

(i) if the Stock Price is between two Stock Prices in the table above or the Effective Date is between two Effective Dates in the table above, the number of Additional Shares shall be determined by a straight-line interpolation between the number of Additional Shares set forth for the higher and lower Stock Prices and the earlier and later Effective Dates, as applicable, based on a 365- or 366-day year, as applicable;

(ii) if the Stock Price is greater than \$55.00 per share (subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table above pursuant to subsection (d) above), no Additional Shares shall be added to the Conversion Rate; and

(iii) if the Stock Price is less than \$11.16 per share (subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table above pursuant to subsection (d) above), no Additional Shares shall be added to the Conversion Rate.

Notwithstanding the foregoing, in no event shall the Conversion Rate per \$1,000 principal amount of Notes exceed 89.6057 shares of Common Stock, subject to adjustment in the same manner as the Conversion Rate pursuant to Section 14.04.

(f) Nothing in this Section 14.03 shall prevent an adjustment to the Conversion Rate pursuant to Section 14.04 in respect of a Make-Whole Fundamental Change.

Section 14.04. *Adjustment of Conversion Rate.* The Conversion Rate shall be adjusted from time to time by the Company if any of the following events occurs, except that the Company shall not make any adjustments to the Conversion Rate if Holders of the Notes participate (other than in the case of (x) a share split or share combination or (y) a tender or exchange offer), at the same time and upon the same terms as holders of the Common Stock and solely as a result of holding the Notes, in any of the transactions described in this Section 14.04, without having to convert their Notes, as if they held a number of shares of Common Stock equal to the Conversion Rate, multiplied by the principal amount (expressed in thousands) of Notes held by such Holder.

(a) If the Company exclusively issues shares of Common Stock as a dividend or distribution on shares of the Common Stock, or if the Company effects a share split or share combination in respect of the Common Stock, the Conversion Rate shall be adjusted based on the following formula:

$$CR' = CR_0 \times \frac{OS'}{OS_0}$$

where,

CR<sub>0</sub> = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date of such dividend or distribution, or immediately prior to the open of business on the Effective Date of such share split or share combination, as applicable;

CR' = the Conversion Rate in effect immediately after the open of business on such Ex-Dividend Date or Effective Date, as applicable;

OS<sub>0</sub> = the number of shares of Common Stock outstanding immediately prior to the open of business on such Ex-Dividend Date or Effective Date, as applicable, before giving effect to such dividend, distribution, share split or share combination; and

OS' = the number of shares of Common Stock outstanding immediately after giving effect to such dividend, distribution, share split or share combination.

Any adjustment made under this Section 14.04(a) shall become effective immediately after the open of business on the Ex-Dividend Date for such dividend or distribution, or immediately after the open of business on the Effective Date for such share split or share combination, as applicable. If any dividend or distribution of the type described in this Section 14.04(a) is declared but not so paid or made, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution, to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

(b) If the Company issues to all or substantially all holders of the Common Stock any rights, options or warrants (other than pursuant to a stockholders rights plan) entitling them, for a period of not more than 60 calendar days after the announcement date of such issuance, to subscribe for or purchase shares of the Common Stock at a price per share that is less than the average of the Last Reported Sale Prices of the Common Stock for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of such issuance, the Conversion Rate shall be increased based on the following formula:

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

where,

CR<sub>0</sub> = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such issuance;

CR' = the Conversion Rate in effect immediately after the open of business on such Ex-Dividend Date;

OS<sub>0</sub> = the number of shares of Common Stock outstanding immediately prior to the open of business on such Ex-Dividend Date;

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

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

Any increase made under this Section 14.04(b) shall be made successively whenever any such rights, options or warrants are issued and shall become effective immediately after the open of business on the Ex-Dividend Date for such issuance. To the extent that shares of the Common Stock are not delivered after the expiration of such rights, options or warrants, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect had the increase with respect to the issuance of such rights, options or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights, options or warrants are not so issued, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect if such Ex-Dividend Date for such issuance had not occurred.

For purposes of this Section 14.04(b) and for the purpose of Section 14.01(b)(iii)(A), in determining whether any rights, options or warrants entitle the holders of Common Stock to subscribe for or purchase shares of the Common Stock at a price per share that is less than such average of the Last Reported Sale Prices of the Common Stock for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement for such issuance, and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by the Company in good faith.

(c) If the Company distributes shares of its Capital Stock, evidences of its indebtedness, other assets or property of the Company or rights, options or warrants to acquire its Capital Stock or other securities, to all or substantially all holders of the Common Stock, excluding (i) dividends, distributions or issuances (including share splits) as to which an adjustment was effected (or would be effected, disregarding the 1% Provision) pursuant to Section 14.04(a) or Section 14.04(b), (ii) except as otherwise described in Section 14.11, rights issued pursuant to any stockholders rights plan of the Company then in effect, (iii) dividends or distributions paid exclusively in cash, as to which the provisions set forth in Section 14.04(d) shall apply, (iv) dividends or distributions of Reference Property in exchange for or upon conversion of the Common Stock in a Share Exchange Event, (v) Spin-Offs as to which the provisions set forth below in this Section 14.04(c) shall apply (any of such shares of Capital Stock, evidences of indebtedness, other assets or property or rights, options or warrants to acquire Capital Stock or other securities, the “**Distributed Property**”) and (vi) tender offers and exchange offers as to which an adjustment is effected (or would be effected, disregarding the 1% Provision) pursuant to Section 14.04(e), then the Conversion Rate shall be increased based on the following formula:

$$CR' = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

where,

CR<sub>0</sub> = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such distribution;

CR' = the Conversion Rate in effect immediately after the open of business on such Ex-Dividend Date;

SP<sub>0</sub> = the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such distribution; and

FMV = the fair market value (as determined by the Company in good faith) of the Distributed Property with respect to each outstanding share of the Common Stock on the Ex-Dividend Date for such distribution.

Any increase made under the portion of this Section 14.04(c) above shall become effective immediately after the open of business on the Ex-Dividend Date for such distribution. If such distribution is not so paid or made, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect if such distribution had not been declared. Notwithstanding the foregoing, if “FMV” (as defined above) is equal to or greater than “SP<sub>0</sub>” (as defined above), in lieu of the foregoing increase, each Holder of a Note shall receive, in respect of each \$1,000 principal amount thereof, at the same time and upon the same terms as holders of the Common Stock and without having to convert their Notes, receive the Distributed Property, the amount and kind of Distributed Property such Holder would have received if such Holder owned a number of shares of Common Stock equal to the Conversion Rate in effect on the Ex-Dividend Date for the distribution. If the Company determines the “FMV” (as defined above) of any distribution for purposes of this Section 14.04(c) by reference to the actual or when-issued trading market for any securities, it shall in doing so consider the prices in such market over the same period used in computing the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such distribution.

With respect to an adjustment pursuant to this Section 14.04(c) where there has been a payment of a dividend or other distribution on the Common Stock of shares of Capital Stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit of the Company, that are, or, when issued, will be, listed or admitted for trading on a U.S. national securities exchange (a “Spin-Off”), the Conversion Rate shall be increased based on the following formula:

$$CR' = CR_0 \times \frac{FMV_0 + MP_0}{MP_0}$$

where,

CR<sub>0</sub> = the Conversion Rate in effect immediately prior to the end of the Valuation Period;

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

FMV<sub>0</sub> = the average of the Last Reported Sale Prices of the Capital Stock or similar equity interest distributed to holders of the Common Stock applicable to one share of the Common Stock (determined by reference to the definition of Last Reported Sale Price as set forth in Section 1.01 as if references therein to Common Stock were to such Capital Stock or similar equity interest) over the first 10 consecutive Trading Day period after, and including, the Ex-Dividend Date of the Spin-Off (the “Valuation Period”); and

MP<sub>0</sub> = the average of the Last Reported Sale Prices of the Common Stock over the Valuation Period.

The increase to the Conversion Rate under the preceding paragraph shall occur at the close of business on the last Trading Day of the Valuation Period; *provided that* (x) in respect of any conversion of Notes for which Physical Settlement is applicable, if the relevant Conversion Date occurs during the Valuation Period, the reference to “10” in the preceding paragraph shall be deemed to be replaced with such lesser number of Trading Days as have elapsed from, and including, the Ex-Dividend Date of such Spin-Off to, and including, the Conversion Date in determining the Conversion Rate and (y) in respect of any conversion of Notes for which Cash Settlement or Combination Settlement is applicable, for any Trading Day that falls within the relevant Observation Period for such conversion and within the Valuation Period, the reference to “10” in the preceding paragraph shall be deemed to be replaced with such lesser number of Trading Days as have elapsed from, and including, the Ex-Dividend Date for the Spin-Off to, and including, such Trading Day in determining the Conversion Rate as of such Trading Day of such Observation Period. If any dividend or distribution that constitutes a Spin-Off is declared but not so paid or made, the Conversion Rate shall be immediately decreased, effective as of the date the Board of Directors determines not to pay or make such dividend or distribution, to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared or announced.

For purposes of this Section 14.04(c) (and subject in all respect to Section 14.11), rights, options or warrants distributed by the Company to all holders of the Common Stock entitling them to subscribe for or purchase shares of the Company’s Capital Stock, including 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 shares of the Common Stock; (ii) are not exercisable; and (iii) are also issued in respect of future issuances of the Common Stock, shall be deemed not to have been distributed for purposes of this Section 14.04(c) (and no adjustment to the Conversion Rate under this Section 14.04(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 14.04(c). If any such right, option or warrant are subject to events, upon the occurrence of which such rights, options or warrants become exercisable to purchase different securities, 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-Dividend Date with respect to new rights, options or warrants with such rights (in which case the existing rights, options or warrants shall be deemed to terminate and expire on such date 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 immediately 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 14.04(c) was made, (1) in the case of any such rights, options or warrants that shall all have been redeemed or purchased without exercise by any holders thereof, upon such final redemption or purchase (x) the Conversion Rate shall be readjusted as if such rights, options or warrants had not been issued and (y) the Conversion Rate shall then again be readjusted to give effect to such distribution, deemed distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or purchase price received by a holder or holders of 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 Common Stock as of the date of such redemption or purchase, 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 and warrants had not been issued.

(d) If the Company pays or makes any cash dividend or distribution to all or substantially all holders of the Common Stock, the Conversion Rate shall be adjusted based on the following formula:

$$CR' = CR_0 \times \frac{SP_0}{SP_0 - C}$$

where,

- CR<sub>0</sub> = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such dividend or distribution;
- CR' = the Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for such dividend or distribution;
- SP<sub>0</sub> = the Last Reported Sale Price of the Common Stock on the Trading Day immediately preceding the Ex-Dividend Date for such dividend or distribution; and
- C = the amount in cash per share the Company dividends or distributes to all or substantially all holders of the Common Stock.

Any increase pursuant to this Section 14.04(d) shall become effective immediately after the open of business on the Ex-Dividend Date for such dividend or distribution. If such dividend or distribution is not so paid, the Conversion Rate shall be decreased, effective as of the date the Board of Directors determines not to make or pay such dividend or distribution, to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared. Notwithstanding the foregoing, if "C" (as defined above) is equal to or greater than "SP<sub>0</sub>" (as defined above), in lieu of the foregoing increase, each Holder of a Note shall receive, for each \$1,000 principal amount of Notes it holds, at the same time and upon the same terms as holders of shares of the Common Stock and without having to convert their Notes, the amount of cash that such Holder would have received if such Holder owned a number of shares of Common Stock equal to the Conversion Rate in effect on the Ex-Dividend Date for such cash dividend or distribution.

(e) If the Company or any of its Subsidiaries make a payment in respect of a tender or exchange offer for the Common Stock that is subject to the then-applicable tender offer rules under the Exchange Act (other than an odd lot tender offer), to the extent that the cash and value of any other consideration included in the payment per share of the Common Stock exceeds the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer, the Conversion Rate shall be increased based on the following formula:

$$CR' = CR_0 \times \frac{AC + (SP' \times OS')}{OS_0 \times SP'}$$

where,

- CR<sub>0</sub> = the Conversion Rate in effect immediately prior to the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires (the date such tender offer or exchange offer expires, the “**Expiration Date**”);
- CR' = the Conversion Rate in effect immediately after the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the Expiration Date;
- AC = the aggregate value of all cash and any other consideration (as determined by the Company in good faith) paid or payable for shares of Common Stock purchased in such tender or exchange offer;
- OS<sub>0</sub> = the number of shares of Common Stock outstanding immediately prior to the Expiration Date (prior to giving effect to the purchase of all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer);
- OS' = the number of shares of Common Stock outstanding immediately after the Expiration Date (after giving effect to the purchase of all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer); and
- SP' = the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the Expiration Date.

The increase to the Conversion Rate under this Section 14.04(e) shall occur at the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires; *provided* that (x) in respect of any conversion of Notes for which Physical Settlement is applicable, if the relevant Conversion Date occurs during the 10 Trading Days immediately following, and including, the Trading Day next succeeding the Expiration Date of any tender or exchange offer, references to “10” or “10th” in the preceding paragraph shall be deemed replaced with such lesser number of Trading Days as have elapsed from, and including, the Trading Day next succeeding the Expiration Date of such tender or exchange offer to, and including, the Conversion Date in determining the Conversion Rate and (y) in respect of any conversion of Notes for which Cash Settlement or Combination Settlement is applicable, for any Trading Day that falls within the relevant Observation Period for such conversion and within the 10 Trading Days immediately following, and including, the Trading Day next succeeding the Expiration Date of any tender or exchange offer, references to “10” or “10th” in the preceding paragraph shall be deemed replaced with such lesser number of Trading Days as have elapsed from, and including, the Trading Day next succeeding the Expiration Date of such tender or exchange offer to, and including, such Trading Day in determining the Conversion Rate as of such Trading Day.

In the event that the Company or one of its Subsidiaries is obligated to purchase shares of Common Stock pursuant to any such tender offer or exchange offer, but the Company is, or such Subsidiary is, permanently prevented by applicable law from consummating any such purchases, or all such purchases are rescinded, then the Conversion Rate shall be decreased to be the Conversion Rate that would then be in effect if such tender offer or exchange offer had not been made or had been made only in respect of the purchases that have been consummated.

(f) Notwithstanding this Section 14.04 or any other provision of this Indenture or the Notes, if a Conversion Rate adjustment becomes effective on any Ex-Dividend Date, and a Holder that has converted its Notes on or after such Ex-Dividend Date and on or prior to the related Record Date would be treated as the record holder of the shares of Common Stock as of the related Conversion Date as described under Section 14.02(i) based on an adjusted Conversion Rate for such Ex-Dividend Date, then, notwithstanding the Conversion Rate adjustment provisions in this Section 14.04, the Conversion Rate adjustment relating to such Ex-Dividend Date shall not be made for such converting Holder. Instead, such Holder shall be treated as if such Holder were the record owner of the shares of Common Stock on an unadjusted basis and participate in the related dividend, distribution or other event giving rise to such adjustment.

(g) Except as stated herein, the Company shall not adjust the Conversion Rate for the issuance of shares of the Common Stock or any securities convertible into or exchangeable for shares of the Common Stock or the right to purchase shares of the Common Stock or such convertible or exchangeable securities.

(h) In addition to those adjustments required by clauses (a), (b), (c), (d) and (e) of this Section 14.04, and to the extent permitted by applicable law and subject to the applicable rules of The New York Stock Exchange and the NYSE Texas, the Company from time to time may increase the Conversion Rate by any amount for a period of at least 20 Business Days if the Board of Directors determines that such increase would be in the Company’s best interest. In addition, to the extent permitted by applicable law and subject to the applicable rules of The New York Stock Exchange and the NYSE Texas, the Company may (but is not required to) increase the Conversion Rate to avoid or diminish any income tax to holders of Common Stock or rights to purchase Common Stock in connection with a dividend or distribution of shares of Common Stock (or rights to acquire shares of Common Stock) or similar event. Whenever the Conversion Rate is increased pursuant to either of the preceding two sentences, the Company shall deliver to the Holder of each Note a notice of the increase at least 15 days prior to the date the increased Conversion Rate takes effect, and such notice shall state the increased Conversion Rate and the period during which it will be in effect.

(i) Except as stated in this Indenture, the Company shall not adjust the Conversion Rate for the issuance of shares of Common Stock or any securities convertible into or exchangeable for shares of Common Stock or the right to purchase shares of Common Stock or such convertible or exchangeable securities. For illustrative purposes only and without limiting the generality of the preceding sentence, the Conversion Rate shall not be adjusted:

(i) upon the issuance of shares of Common Stock at a price below the Conversion Price or otherwise, other than any such issuance described in Section 14.04(a), Section 14.04(b), Section 14.04(c) or Section 14.04(e);

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

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

(iv) upon the issuance of any shares of the Common Stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in clause (iii) of this subsection and outstanding as of the date the Notes were first issued;

(v) upon the repurchase of any shares of Common Stock pursuant to an open market share repurchase program or other buy-back transaction, including structured or derivative transactions, that is not a tender or exchange offer described in Section 14.04(e);

(vi) solely for a change in the par value (or lack of par value) of the Common Stock; or

(vii) for accrued and unpaid interest, if any.

(j) All calculations and other determinations under this Article 14 shall be made by the Company and shall be made to the nearest one-ten thousandth (1/10,000th) of a share.

(k) If an adjustment to the Conversion Rate otherwise required by the provisions of this Section 14.04 would result in a change of less than 1% to the Conversion Rate, then, notwithstanding the foregoing, the Company may, at its election, defer and carry forward such adjustment, except that all such deferred adjustments must be given effect immediately upon the occurrence of any of the following:

- (i) when all such deferred adjustments would result in an aggregate change of at least 1% to the Conversion Rate;
- (ii) on the Conversion Date for any Notes (in the case of Physical Settlement);
- (iii) on each Trading Day of any Observation Period related to any conversion of Notes (in the case of Cash Settlement or Combination Settlement);
- (iv) on any date on which the Company delivers a Redemption Notice;
- (v) on the effective date of any Fundamental Change and/or the Effective Date of any Make-Whole Fundamental Change; and
- (vi) on January 15, 2031.

The provisions of this Section 14.04(k) are referred to herein as the “**1% Provision.**”

(l) Whenever the Conversion Rate is adjusted as herein provided, the Company shall promptly file with the Trustee (and the Conversion Agent if not the Trustee) an Officer’s Certificate setting forth the Conversion Rate after such adjustment and setting forth a brief statement of the facts requiring such adjustment. Unless and until a Responsible Officer of the Trustee shall have received such Officer’s Certificate, the Trustee shall not be deemed to have knowledge of any adjustment of the Conversion Rate and may assume without inquiry that the last Conversion Rate of which it has knowledge is still in effect. Promptly after delivery of such certificate, the Company shall prepare a written notice of such adjustment of the Conversion Rate setting forth the adjusted Conversion Rate and the date on which each adjustment becomes effective and shall deliver such notice of such adjustment of the Conversion Rate to each Holder (with a copy to the Trustee). Failure to deliver such notice shall not affect the legality or validity of any such adjustment.

(m) For purposes of this Section 14.04, the number of shares of Common Stock at any time outstanding shall not include shares of Common Stock held in the treasury of the Company so long as the Company does not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company, but shall include shares of Common Stock issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock.

Section 14.05. *Adjustments of Prices.* Whenever any provision of this Indenture requires the Company to calculate the Last Reported Sale Prices, the Daily VWAPs, the Daily Conversion Values or the Daily Settlement Amounts over a span of multiple days (including an Observation Period and the period for determining the Stock Price for purposes of a Make-Whole Fundamental Change or Redemption Notice), the Company shall make appropriate adjustments in good faith (without duplication in respect of any adjustment made pursuant to Section 14.04) to each to account for any adjustment to the Conversion Rate that becomes effective, or any event requiring an adjustment to the Conversion Rate where the Ex-Dividend Date, Effective Date or Expiration Date, as the case may be, of the event occurs, at any time during the period when the Last Reported Sale Prices, the Daily VWAPs, the Daily Conversion Values or the Daily Settlement Amounts are to be calculated.

Section 14.06. *Shares to Be Fully Paid.* The Company shall reserve, free from preemptive rights, out of its authorized but unissued shares or shares held in treasury, sufficient shares of Common Stock to provide for conversion of the Notes from time to time as such Notes are presented for conversion (assuming delivery of the maximum number of Additional Shares pursuant to Section 14.03 and that at the time of computation of such number of shares, all such Notes would be converted by a single Holder and that Physical Settlement were applicable).

Section 14.07. *Effect of Recapitalizations, Reclassifications and Changes of the Common Stock.*

(a) In the case of:

- (i) any recapitalization, reclassification or change of the Common Stock (other than changes in par value or resulting from a subdivision or combination),
- (ii) any consolidation, merger or combination involving the Company,
- (iii) any sale, lease or other transfer to a third party of all or substantially all of the consolidated assets of the Company and the Company's Subsidiaries, taken as a whole, or
- (iv) any statutory share exchange,

in each case, as a result of which the Common Stock would be converted into, or exchanged for, stock, other securities, other property or assets (including cash or any combination thereof) (any such event, a "**Share Exchange Event**"), then at and after the effective time of such Share Exchange Event, the right to convert each \$1,000 principal amount of Notes shall be changed into a right to convert such principal amount of Notes into the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) that a holder of a number of shares of Common Stock equal to the Conversion Rate immediately prior to such Share Exchange Event would have owned or been entitled to receive (the "**Reference Property**," with each "**unit of Reference Property**" meaning the kind and amount of Reference Property that a holder of one share of Common Stock is entitled to receive) upon such Share Exchange Event and, prior to or at the effective time of such Share Exchange Event, the Company or the successor or acquiring company, as the case may be, shall execute with the Trustee, without the consent of the Holders, a supplemental indenture permitted under Section 10.01(g) providing for such change in the right to convert each \$1,000 principal amount of Notes; *provided, however*, that at and after the effective time of the Share Exchange Event (A) the Company or the successor or acquiring company, as the case may be, shall continue to have the right to determine the form of consideration to be paid or delivered, as the case may be, upon conversion of Notes in accordance with Section 14.02 and (B) (I) any amount payable in cash upon conversion of the Notes in accordance with Section 14.02 shall continue to be payable in cash, (II) any shares of Common Stock that the Company would have been required to deliver upon conversion of the Notes in accordance with Section 14.02 shall instead be deliverable in the amount and type of Reference Property that a holder of that number of shares of Common Stock would have been entitled to receive in such Share Exchange Event and (III) the Daily VWAP and the Last Reported Sale Price shall be calculated based on the value of a unit of Reference Property that a holder of one share of Common Stock would have received in such Share Exchange Event.

If the Share Exchange Event causes the Common Stock to be converted into, or exchanged for, the right to receive more than a single type of consideration (determined based in part upon any form of stockholder election), then (i) the Reference Property into which the Notes will be convertible shall be deemed to be the weighted average of the types and amounts of consideration actually received by the holders of Common Stock, and (ii) the unit of Reference Property for purposes of the immediately preceding paragraph shall refer to the consideration referred to in clause (i) attributable to one share of Common Stock. If the holders of the Common Stock receive only cash in such Share Exchange Event, then for all conversions for which the relevant Conversion Date occurs after the effective date of such Share Exchange Event (A) the consideration due upon conversion of each \$1,000 principal amount of Notes shall be solely cash in an amount equal to the Conversion Rate in effect on the Conversion Date (as may be increased by any Additional Shares pursuant to Section 14.03), *multiplied by* the price paid per share of Common Stock in such Share Exchange Event and (B) the Company shall satisfy the Conversion Obligation by paying such cash amount to converting Holders on the fifth Business Day immediately following the relevant Conversion Date. The Company shall notify Holders, the Trustee and the Conversion Agent (if other than the Trustee) of such weighted average as soon as reasonably practicable after such determination is made.

If the Reference Property in respect of any Share Exchange Event includes, in whole or in part, shares of Common Equity or American depositary receipts (or other interests) in respect thereof, such supplemental indenture described in the second immediately preceding paragraph shall provide for anti-dilution and other adjustments that shall be as nearly equivalent as is possible to the adjustments provided for in this Article 14 with respect to the portion of the Reference Property consisting of such Common Equity or American depositary receipts (or other interests) in respect thereof. If, in the case of any Share Exchange Event, the Reference Property includes shares of stock, securities or other property or assets (other than cash and/or cash equivalents) of a Person other than the Company or the successor or purchasing company, as the case may be, in such Share Exchange Event, then such supplemental indenture shall also be executed by such other Person, if such other Person is an affiliate of the Company or the successor or acquiring company, and shall contain such additional provisions to protect the interests of the Holders of the Notes as the Company in good faith reasonably considers necessary by reason of the foregoing, including the provisions providing for the purchase rights set forth in Article 15.

(b) When the Company executes a supplemental indenture pursuant to subsection (a) of this Section 14.07, the Company shall promptly file with the Trustee an Officer's Certificate briefly stating the reasons therefor, the kind or amount of cash, securities or property or asset that will comprise a unit of Reference Property after any such Share Exchange Event, any adjustment to be made with respect thereto and that all conditions precedent have been complied with, and shall promptly deliver notice thereof to all Holders. The Company shall cause notice of the execution of such supplemental indenture to be delivered to each Holder within 20 days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of such supplemental indenture.

(c) The Company shall not become a party to any Share Exchange Event unless its terms are consistent with this Section 14.07. None of the foregoing provisions shall affect the right of a Holder of Notes to convert its Notes into cash, shares of Common Stock or a combination of cash and shares of Common Stock, as applicable, as set forth in Section 14.01 and Section 14.02 prior to the effective date of such Share Exchange Event.

(d) The above provisions of this Section shall similarly apply to successive Share Exchange Events.

Section 14.08. *Certain Covenants.* (a) Subject to Sections 14.02(d) and 14.02(e), the Company covenants that all shares of Common Stock issued upon conversion of Notes will be fully paid and non-assessable by the Company and free from all documentary, stamp or similar issue or transfer taxes, liens and charges with respect to the issue thereof.

(b) The Company covenants that, if any shares of Common Stock to be provided for the purpose of conversion of Notes hereunder require registration with or approval of any governmental authority under any federal or state law before such shares of Common Stock may be validly issued upon conversion, the Company will, to the extent then permitted by the rules and interpretations of the Commission, secure such registration or approval, as the case may be.

(c) The Company further covenants that if at any time the Common Stock shall be listed on any national securities exchange or automated quotation system the Company will list and use its commercially reasonable efforts to keep listed, so long as the Common Stock shall be so listed on such exchange or automated quotation system, any Common Stock issuable upon conversion of the Notes.

Section 14.09. *Responsibility of Trustee.* The Trustee and any other Conversion Agent shall not at any time be under any duty or responsibility to any Holder to determine the Conversion Rate (or any adjustment thereto) or whether any facts exist that may require any adjustment (including any increase) of the Conversion Rate, or with respect to the nature or extent or calculation of any such adjustment when made, or with respect to the method employed, or herein or in any supplemental indenture provided to be employed, in making the same. The Trustee and any other Conversion Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock, or of any securities, property or cash that may at any time be issued or delivered upon the conversion of any Note; and the Trustee and any other Conversion Agent make no representations with respect thereto. Neither the Trustee nor any Conversion Agent shall be responsible for any failure of the Company to issue, transfer or deliver any shares of Common Stock or stock certificates or other securities or property or cash upon the surrender of any Note for the purpose of conversion or to comply with any of the duties, responsibilities or covenants of the Company contained in this Article. Without limiting the generality of the foregoing, neither the Trustee nor any Conversion Agent shall be under any responsibility to determine the correctness of any provisions contained in any supplemental indenture entered into pursuant to Section 14.07 relating either to the kind or amount of shares of stock or securities or property (including cash) receivable by Holders upon the conversion of their Notes after any event referred to in such Section 14.07 or to any adjustment to be made with respect thereto, but, subject to the provisions of Section 7.01, may accept (without any independent investigation) as conclusive evidence of the correctness of any such provisions, and shall be protected in conclusively relying upon, the Officer's Certificate (which the Company shall be obligated to file with the Trustee prior to the execution of any such supplemental indenture) with respect thereto. Neither the Trustee nor the Conversion Agent shall be responsible for determining whether any event contemplated by Section 14.01(b) has occurred that makes the Notes eligible for conversion or no longer eligible therefor. The Trustee and the Conversion Agent may conclusively rely upon any notice with respect to the commencement or termination of such conversion rights, and the Company agrees to deliver such notices to the Trustee and the Conversion Agent immediately after the occurrence of any such event or at such other times as shall be provided for in Section 14.01(b). Neither the Trustee nor any agent acting under this Indenture (other than the Company, if acting in such capacity) shall have any obligation to make any calculation or determine whether the Notes may be surrendered for conversion pursuant to this Indenture, or to notify the Company or the Depository or any Holders if the Notes have become convertible pursuant to the terms of this Indenture.

Section 14.10. *Reserved.*

Section 14.11. *Stockholder Rights Plans.* If the Company has a stockholder rights plan in effect upon conversion of the Notes, each share of Common Stock, if any, issued upon such conversion shall be entitled to receive the appropriate number of rights, if any, under such stockholder rights plan and the certificates representing the Common Stock issued upon such conversion shall bear such legends, if any, in each case as may be provided by the terms of any such stockholder rights plan, as the same may be amended from time to time. However, if, prior to any conversion of Notes, the rights have separated from the shares of Common Stock in accordance with the provisions of the applicable stockholder rights plan, the Conversion Rate shall be adjusted at the time of separation as if the Company distributed to all or substantially all holders of the Common Stock Distributed Property as provided in Section 14.04(c), subject to readjustment in the event of the expiration, termination or redemption of such rights.

Section 14.12. *Exchange in Lieu of Conversion.* When a Holder surrenders its Notes for conversion, the Company may, at its election (an “**Exchange Election**”), cause the Notes to be delivered, on or prior to the close of business on the Trading Day following the Conversion Date, to a financial institution designated by the Company for exchange in lieu of conversion. In order to accept any Notes surrendered for conversion, the designated financial institution must agree to timely pay and/or deliver, as the case may be, in exchange for such Notes, the cash, shares of Common Stock or a combination thereof due upon conversion as described in Section 14.02. If the Company makes an Exchange Election, the Company shall, by the close of business on the Trading Day immediately following the relevant Conversion Date, notify the Holder surrendering its Notes for conversion, the Trustee and the Conversion Agent (if other than the Trustee) in writing that it has made the Exchange Election, and the Company shall notify the designated financial institution of the Settlement Method it has elected with respect to such conversion and the relevant deadline for payment and/or delivery of cash, shares of Common Stock or a combination thereof due upon conversion.

The Company and the Conversion Agent shall cooperate to cause such Notes to be delivered to the designated financial institution and the Conversion Agent shall be entitled to conclusively rely on the Company’s instruction in connection with effecting any Exchange Election and shall have no liability for such Exchange Election outside of its control.

Any Notes exchanged by the designated financial institution shall remain outstanding, notwithstanding the surrender of such Notes and will be subject to the Applicable Procedures. If the designated financial institution agrees to accept any Notes for exchange but does not timely pay and/or deliver the required cash, shares of Common Stock or a combination thereof due upon conversion, or if such designated financial institution does not accept the Notes for exchange, the Company shall notify the Trustee, the Conversion Agent (if other than the Trustee) and the Holder surrendering its Notes for conversion in writing and shall pay and/or deliver the required cash, shares of Common Stock or a combination thereof due upon conversion to the converting Holder at the time and in the manner required under this Indenture as if the Company had not made an Exchange Election.

The Company’s designation of a financial institution to which the Notes may be submitted for exchange does not require that financial institution to accept any Notes (unless the financial institution has separately made an agreement with the Company). The Company may, but shall not be obligated to, enter into a separate agreement with any designated financial institution that would compensate it for any such transaction.

ARTICLE 15  
REPURCHASE OF NOTES AT OPTION OF HOLDERS

Section 15.01. *[Intentionally Omitted]*.

Section 15.02. *Repurchase at Option of Holders Upon a Fundamental Change.* (a) If a Fundamental Change (other than an Exempted Fundamental Change) occurs at any time, each Holder shall have the right, at such Holder's option, to require the Company to repurchase for cash all of such Holder's Notes, or any portion of the principal amount thereof that is equal to \$1,000 or an integral multiple of \$1,000, on the date (the "**Fundamental Change Repurchase Date**") specified by the Company that is not less than 20 Business Days or more than 35 Business Days following the date of the Fundamental Change Company Notice at a repurchase price equal to 100% of the principal amount thereof, *plus* accrued and unpaid interest thereon to, but excluding, the Fundamental Change Repurchase Date (the "**Fundamental Change Repurchase Price**"), unless the Fundamental Change Repurchase Date falls after a Regular Record Date but on or prior to the Interest Payment Date to which such Regular Record Date relates, in which case the Company shall instead pay the full amount of accrued and unpaid interest (to, but not including, such Interest Payment Date) to Holders of record as of such Regular Record Date, and the Fundamental Change Repurchase Price shall be equal to 100% of the principal amount of Notes to be repurchased pursuant to this Article 15. The Fundamental Change Repurchase Date shall be subject to postponement in order to allow the Company to comply with applicable law.

(b) Repurchases of Notes under this Section 15.02 shall be made, at the option of the Holder thereof, upon:

(i) delivery to the Paying Agent or the tender agent appointed to facilitate the repurchase by a Holder of a duly completed notice (the "**Fundamental Change Repurchase Notice**") in the form set forth in Attachment 2 to the Form of Note attached hereto as Exhibit A, if the Notes are Physical Notes, or in compliance with the Applicable Procedures for surrendering interests in Global Notes, if the Notes are Global Notes, in each case on or before the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date; and

(ii) delivery of the Notes, if the Notes are Physical Notes, to the Paying Agent at any time after delivery of the Fundamental Change Repurchase Notice (together with all necessary endorsements for transfer) at the office of the Paying Agent, or book-entry transfer of the Notes, if the Notes are Global Notes, in compliance with the procedures of the Depository, in each case such delivery or transfer being a condition to receipt by the Holder of the Fundamental Change Repurchase Price therefor.

The Fundamental Change Repurchase Notice in respect of any Physical Notes to be repurchased shall state:

- (i) the certificate numbers of the Notes to be delivered for repurchase;
- (ii) the portion of the principal amount of Notes to be repurchased, which must be \$1,000 or an integral multiple thereof; and

(iii) that the Notes are to be repurchased by the Company pursuant to the applicable provisions of the Notes and this Indenture;

*provided, however,* that if the Notes are Global Notes, to exercise the Fundamental Change repurchase right, Holders must comply with the Applicable Procedures.

Notwithstanding anything herein to the contrary, any Holder delivering to the Paying Agent or tender agent the Fundamental Change Repurchase Notice contemplated by this Section 15.02 shall have the right to withdraw, in whole or in part, such Fundamental Change Repurchase Notice at any time prior to the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date by delivery of a written notice of withdrawal to the Paying Agent or tender agent in accordance with Section 15.03.

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

(c) On or before the 20th Business Day after the occurrence of the effective date of a Fundamental Change, the Company shall provide to all Holders of Notes, the Trustee, the Conversion Agent (if other than the Trustee) and the Paying Agent (in the case of a Paying Agent other than the Trustee) a notice (the “**Fundamental Change Company Notice**”) of the occurrence of the effective date of the Fundamental Change and of the repurchase right at the option of the Holders arising as a result thereof. In the case of Physical Notes, such notice shall be by first class mail or, in the case of Global Notes, such notice shall be delivered in accordance with the Applicable Procedures of the Depository. Each Fundamental Change Company Notice shall specify:

- (i) the events causing the Fundamental Change;
- (ii) the effective date of the Fundamental Change;
- (iii) the last date on which a Holder may exercise the repurchase right pursuant to this Article 15;
- (iv) the Fundamental Change Repurchase Price;
- (v) the Fundamental Change Repurchase Date;
- (vi) the name and address of the Paying Agent and the Conversion Agent, if applicable;
- (vii) if applicable, the Conversion Rate and any adjustments to the Conversion Rate as a result of the related Make-Whole Fundamental Change and/or the 1% Provision;
- (viii) that the Notes with respect to which a Fundamental Change Repurchase Notice has been delivered by a Holder may be converted only if the Holder withdraws the Fundamental Change Repurchase Notice in accordance with the terms of this Indenture; and

(ix) the procedures that Holders must follow to require the Company to repurchase their Notes.

No failure of the Company to give the foregoing notices and no defect therein shall limit the Holders' repurchase rights or affect the validity of the proceedings for the repurchase of the Notes pursuant to this Section 15.02.

At the Company's written request, given at least five days prior to the date the Fundamental Change Company Notice is to be sent, the Paying Agent shall give such notice in the Company's name and at the Company's expense; *provided, however*, that, in all cases, the text of such Fundamental Change Company Notice shall be prepared by the Company.

(d) Notwithstanding the foregoing, no Notes may be repurchased by the Company on any date at the option of the Holders in connection with a Fundamental Change if the principal amount of the Notes has been accelerated, and such acceleration has not been rescinded, on or prior to such date (except in the case of an acceleration resulting from a Default by the Company in the payment of the Fundamental Change Repurchase Price with respect to such Notes). The Paying Agent will promptly return to the respective Holders thereof any Physical Notes held by it during the acceleration of the Notes (except in the case of an acceleration resulting from a Default by the Company in the payment of the Fundamental Change Repurchase Price with respect to such Notes), or any instructions for book-entry transfer of the Notes in compliance with the Applicable Procedures shall be deemed to have been cancelled, and, upon such return or cancellation, as the case may be, the Fundamental Change Repurchase Notice with respect thereto shall be deemed to have been withdrawn.

(e) Notwithstanding anything to the contrary in this Indenture, the Company shall not be required to repurchase, or to make an offer to repurchase, the Notes upon a Fundamental Change if a third party makes such an offer in the same manner, at the same time and otherwise in compliance with the requirements for an offer made by the Company as set forth in this Article 15, and such third party purchases all Notes properly surrendered and not validly withdrawn under its offer in the same manner, at the same time and otherwise in compliance with the requirements for an offer made by the Company as set forth in this Article 15.

(f) Notwithstanding anything to the contrary in this Article 15, the Company shall not be required to send a Fundamental Change Company Notice, or offer to repurchase or repurchase Notes in connection with a Fundamental Change occurring pursuant to clause (b)(A) or (b)(B) (or pursuant to clause (a) or (d) that also constitutes a Fundamental Change occurring pursuant to clause (b)(A) or (b)(B)) of the definition thereof, if:

(i) such Fundamental Change constitutes a Share Exchange Event for which the Reference Property consists entirely of cash in U.S. dollars;

(ii) immediately after such Fundamental Change, the Notes become convertible (pursuant to the provisions described in Section 14.07 and, if applicable, Section 14.03) into consideration that consists solely of U.S. dollars in an amount per \$1,000 principal amount of Notes that equals or exceeds the Fundamental Change Repurchase Price per \$1,000 principal amount of the Notes (calculated assuming that the same includes the maximum amount of accrued but unpaid interest payable as part of the Fundamental Change Repurchase Price for such Fundamental Change); and

(iii) the Company timely sends notice of such Fundamental Change pursuant to Section 14.01(b)(iv).

(g) For purposes of this Article 15, the Paying Agent may be any agent, depositary, tender agent, paying agent or other agent appointed by the Company to accomplish the purposes set forth herein.

Section 15.03. *Withdrawal of Fundamental Change Repurchase Notice.* (a) A Fundamental Change Repurchase Notice may be withdrawn (in whole or in part) in respect of Physical Notes by means of a written notice of withdrawal delivered to the office of the Paying Agent in accordance with this Section 15.03 at any time prior to the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date, specifying:

(i) the principal amount of the Notes with respect to which such notice of withdrawal is being submitted, which must be \$1,000 or an integral multiple thereof,

(ii) the certificate number of the Note in respect of which such notice of withdrawal is being submitted, and

(iii) the principal amount, if any, of such Note that remains subject to the original Fundamental Change Repurchase Notice, which portion must be in principal amounts of \$1,000 or an integral multiple of \$1,000;

*provided, however,* that if the Notes are Global Notes, to withdraw their Notes subject to a Fundamental Change repurchase, Holders must comply with appropriate procedures of the Depositary.

Section 15.04. *Deposit of Fundamental Change Repurchase Price.* (a) The Company will deposit with the Paying Agent (or if the Company is acting as its own Paying Agent, set aside, segregate and hold in trust as provided in Section 4.04) on or prior to 11:00 a.m., New York City time, on the Fundamental Change Repurchase Date (subject to extension in order to allow the Company to comply with applicable law) an amount of money sufficient to repurchase all of the Notes to be repurchased at the appropriate Fundamental Change Repurchase Price. Subject to receipt of funds and/or Notes by the Paying Agent, payment for Notes surrendered for repurchase (and not withdrawn prior to the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date) will be made on the later of (i) the Fundamental Change Repurchase Date (*provided* the Holder has satisfied the conditions in Section 15.02) and (ii) the time of book-entry transfer or the delivery of such Note to the Paying Agent by the Holder thereof in the manner required by Section 15.02 by mailing checks for the amount payable to the Holders of such Notes entitled thereto as they shall appear in the Note Register; *provided, however*, that payments to the Depository shall be made by wire transfer of immediately available funds to the account of the Depository or its nominee. The Paying Agent shall, promptly after such payment and upon written demand by the Company, return to the Company any funds in excess of the Fundamental Change Repurchase Price.

(b) If by 11:00 a.m. New York City time, on the Fundamental Change Repurchase Date, the Paying Agent or tender agent holds money sufficient to make payment on all the Notes or portions thereof that are to be repurchased on such Fundamental Change Repurchase Date, or, if extended in order to allow the Company to comply with applicable law, such later date, then, with respect to the Notes that have been properly surrendered for repurchase and have not been validly withdrawn, (i) such Notes will cease to be outstanding, (ii) interest will cease to accrue on such Notes on the Fundamental Change Repurchase Date or, if extended in order to allow the Company to comply with applicable law, such later date (whether or not book-entry transfer of the Notes has been made or the Notes have been delivered to the Paying Agent) and (iii) all other rights of the Holders of such Notes with respect to the Notes will terminate on the Fundamental Change Repurchase Date or, if extended in order to allow the Company to comply with applicable law, such later date (other than (x) the right to receive the Fundamental Change Repurchase Price and (y) if the Fundamental Change Repurchase Date falls after a Regular Record Date but on or prior to the related Interest Payment Date, the right of the Holder of record on such Regular Record Date to receive the full amount of accrued and unpaid interest, if any, to, but not including, such Interest Payment Date).

(c) Upon surrender of a Physical Note that is to be repurchased in part pursuant to Section 15.02, the Company shall execute and the Trustee shall authenticate and deliver to the Holder a new Physical Note in an authorized denomination equal in principal amount to the unreurchased portion of the Physical Note surrendered.

Section 15.05. *Covenant to Comply with Applicable Laws Upon Repurchase of Notes.* In connection with any repurchase offer upon a Fundamental Change pursuant to this Article 15, the Company will, if required:

- (a) comply with the tender offer rules under the Exchange Act that may then be applicable;
- (b) file a Schedule TO or any other required schedule under the Exchange Act; and

(c) otherwise comply in all material respects with all federal and state securities laws in connection with any offer by the Company to repurchase the Notes;

in each case, so as to permit the rights and obligations under this Article 15 to be exercised in the time and in the manner specified in this Article 15 subject to postponement in order to allow the Company to comply with applicable law. To the extent that the provisions of any securities laws or regulations enacted or adopted after the date of this Indenture conflict with the provisions of this Indenture relating to the Company's obligations to purchase the Notes upon a Fundamental Change, the Company will comply with the applicable securities laws and regulations and will not be deemed to have breached the Company's obligations under such provisions of this Indenture by virtue of such conflict.

ARTICLE 16  
OPTIONAL REDEMPTION

Section 16.01. *Optional Redemption.* No sinking fund is provided for the Notes, which means that the Company is not required to redeem or retire the Notes periodically. The Notes shall not be redeemable by the Company prior to April 20, 2029. On or after April 20, 2029, the Company may redeem (an "**Optional Redemption**") for cash all or any portion of the Notes (subject to the Partial Redemption Limitation), at the Redemption Price, if the Last Reported Sale Price of the Common Stock has been at least 130% of the Conversion Price then in effect for at least 20 Trading Days (whether or not consecutive), including the Trading Day immediately preceding the date on which the Company provides the Redemption Notice in accordance with Section 16.02, during any 30 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date on which the Company provides the Redemption Notice in accordance with Section 16.02.

Section 16.02. *Notice of Optional Redemption; Selection of Notes.* (a) In case the Company exercises its Optional Redemption right to redeem all or, as the case may be, any part of the Notes pursuant to Section 16.01, it shall fix a date for redemption (each, a "**Redemption Date**") and it or, at its written request received by the Trustee not less than five Business Days prior to the date such Redemption Notice is to be sent (or such shorter period of time as may be acceptable to the Trustee), the Trustee, in the name of and at the expense of the Company, shall deliver or cause to be delivered a notice of such Optional Redemption (a "**Redemption Notice**") not less than 45 nor more than 65 Scheduled Trading Days prior to the Redemption Date (*provided* that if, in accordance with the provisions described in Section 14.02, the Company elects to settle all conversions of Notes called for redemption (or deemed called for redemption as described in Section 14.01(b)(ii)) with a Conversion Date that occurs during the related Redemption Period by Physical Settlement, then the Company shall provide not less than 10 nor more than 65 Scheduled Trading Days' notice before the Redemption Date) to the Trustee, the Conversion Agent (if other than the Trustee), the Paying Agent (if other than the Trustee) and each Holder of Notes. The Redemption Date must be a Business Day, and the Company shall not specify a Redemption Date that falls on or after the 41st Scheduled Trading Day immediately preceding the Maturity Date.

(b) The Redemption Notice shall be delivered in accordance with Applicable Procedures of the Depositary (if the Notes to be redeemed are Global Notes), and, if delivered in the manner herein provided, shall be conclusively presumed to have been duly given, whether or not the Holder receives such notice. In any case, failure to give such Redemption Notice by mail or any defect in the Redemption Notice to the Holder of any Note designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any other Note.

(c) Each Redemption Notice shall specify:

(i) the Redemption Date;

(ii) the Redemption Price;

(iii) that on the Redemption Date, the Redemption Price will become due and payable upon each Note to be redeemed, and that interest thereon, if any, shall cease to accrue on and after the Redemption Date;

(iv) the place or places where such Notes are to be surrendered for payment of the Redemption Price;

(v) that Holders may surrender their Notes called for redemption (or deemed called for redemption as described in Section 14.01(b)(ii)) for conversion during the related Redemption Period;

(vi) the procedures a converting Holder must follow to convert its Notes called for redemption (or deemed called for redemption as described in Section 14.01(b)(ii)) and the Settlement Method and Specified Dollar Amount, if applicable;

(vii) the Conversion Rate and, if applicable, the number of Additional Shares added to the Conversion Rate in accordance with Section 14.03;

(viii) the CUSIP, ISIN or other similar numbers, if any, assigned to such Notes; and

(ix) in case any Note is to be redeemed in part only, the portion of the principal amount thereof to be redeemed and on and after the Redemption Date, upon surrender of such Note, a new Note in principal amount equal to the unredeemed portion thereof shall be issued.

A Redemption Notice shall be irrevocable.

(d) If fewer than all of the outstanding Notes are to be redeemed and the Notes to be redeemed are Global Notes, the Notes to be redeemed will be selected by the Depository in accordance with the Applicable Procedures. If fewer than all of the outstanding Notes are to be redeemed and the Notes to be redeemed are not Global Notes, the Trustee shall select the Notes or portions thereof to be redeemed (in principal amounts of \$1,000 or multiples thereof) by such method as the Company instructs the Trustee to use. If the Company elects to redeem fewer than all of the outstanding Notes, at least \$100,000,000 aggregate principal amount of Notes must be outstanding and not subject to redemption as of, and after giving effect to, delivery of the relevant Redemption Notice (such requirement, the “**Partial Redemption Limitation**”). If the Trustee (or the Depository, with respect to Global Notes) selects any Note for partial redemption and a Holder submits a portion of that Note after such selection, the portion of the Note submitted for conversion shall be deemed (so far as may be possible) to be the portion selected for redemption.

Section 16.03. *Payment of Notes Called for Redemption.* (a) If any Redemption Notice has been given in respect of the Notes in accordance with Section 16.02, the Notes so subject to redemption shall become due and payable on the Redemption Date at the place or places stated in the Redemption Notice and at the applicable Redemption Price. On presentation and surrender of the Notes to be redeemed at the place or places stated in the Redemption Notice, the Notes shall be paid and redeemed by the Company at the applicable Redemption Price. Upon surrender of a Physical Note that is to be redeemed in part pursuant to Section 16.01, the Company shall execute and the Trustee shall authenticate and deliver to the Holder a new Physical Note in an authorized denomination equal in principal amount to the unredeemed portion of the Physical Note surrendered.

(b) Prior to 10:00 a.m. New York City time on the Redemption Date, the Company shall deposit with the Paying Agent or, if the Company or a Subsidiary of the Company is acting as the Paying Agent, shall segregate and hold in trust as provided in Section 7.05 an amount of cash (in immediately available funds if deposited on the Redemption Date), sufficient to pay the Redemption Price of all of the Notes to be redeemed on such Redemption Date. Subject to receipt of funds by the Paying Agent, payment for the Notes to be redeemed shall be made on the Redemption Date for such Notes. The Paying Agent shall, promptly after such payment and upon written demand by the Company, return to the Company any funds in excess of the Redemption Price.

Section 16.04. *Restrictions on Redemption.* The Company may not redeem any Notes on any date if the principal amount of the Notes has been accelerated in accordance with the terms of this Indenture, and such acceleration has not been rescinded, on or prior to the Redemption Date (except in the case of an acceleration resulting from a Default by the Company in the payment of the Redemption Price with respect to such Notes).

#### ARTICLE 17 MISCELLANEOUS PROVISIONS

Section 17.01. *Provisions Binding on Company's Successors.* All the covenants, stipulations, promises and agreements of the Company contained in this Indenture shall bind its successors and assigns whether so expressed or not.

Section 17.02. *Official Acts by Successor Corporation.* Any act or proceeding by any provision of this Indenture authorized or required to be done or performed by any board, committee or Officer of the Company shall and may be done and performed with like force and effect by the like board, committee or officer of any corporation or other entity that shall at the time be the lawful sole successor of the Company.

Section 17.03. *Addresses for Notices, Etc.* Any notice or demand that by any provision of this Indenture is required or permitted to be given or served by the Trustee or by the Holders on the Company shall be deemed to have been sufficiently given or made, for all purposes if given or served by being deposited postage prepaid by overnight courier or sent electronically in PDF format or via registered or certified mail in a post office letter box addressed (until another address is filed by the Company with the Trustee) to Atlas Energy Solutions Inc., 5918 W. Courtyard Drive, Suite 500, Austin, Texas 78730, Attention: Chief Financial Officer, Email: contracts@atlas.energy. Any notice, direction, request or demand hereunder to or upon the Trustee shall be deemed to have been sufficiently given or made or filed with, for all purposes, if it is in writing and actually received by the Trustee (including electronically or in PDF format) at the Corporate Trust Office. In no event shall the Trustee or the Conversion Agent be obligated to monitor any website maintained by the Company or any press releases issued by the Company.

The Trustee, by notice to the Company, may designate additional or different addresses for subsequent notices or communications.

Any notice or communication delivered or to be delivered to a Holder of Physical Notes shall be mailed to it by first class mail, postage prepaid, at its address as it appears on the Note Register and shall be sufficiently given to it if so mailed within the time prescribed. Any notice or communication delivered or to be delivered to a Holder of Global Notes shall be delivered in accordance with the Applicable Procedures of the Depository and shall be sufficiently given to it if so delivered within the time prescribed.

Failure to mail or deliver a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders. If a notice or communication is mailed or delivered, as the case may be, in the manner provided above, it is duly given, whether or not the addressee receives it.

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

Section 17.04. *Governing Law; Jurisdiction.* THIS INDENTURE AND EACH NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

The Company irrevocably consents and agrees, for the benefit of the Holders from time to time of the Notes and the Trustee, that any legal action, suit or proceeding against it with respect to obligations, liabilities or any other matter arising out of or in connection with this Indenture or the Notes may be brought in the courts of the State of New York or the courts of the United States of America located in the Borough of Manhattan, New York City, New York and, until amounts due and to become due in respect of the Notes have been paid, hereby irrevocably consents and submits to the non-exclusive jurisdiction of each such court *in personam*, generally and unconditionally with respect to any action, suit or proceeding for itself in respect of its properties, assets and revenues.

The Company irrevocably and unconditionally waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions, suits or proceedings arising out of or in connection with this Indenture brought in the courts of the State of New York or the courts of the United States of America located in the Borough of Manhattan, New York City, New York and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

Section 17.05. *Evidence of Compliance with Conditions Precedent; Certificates and Opinions of Counsel to Trustee.* Upon any application or demand by the Company to the Trustee to take any action under any of the provisions of this Indenture, the Company shall, if requested by the Trustee, furnish to the Trustee an Officer's Certificate and an Opinion of Counsel, in form and substance reasonably satisfactory to the Trustee, stating that such action is permitted by the terms of this Indenture and that all conditions precedent to such action have been complied with.

Each Officer's Certificate and Opinion of Counsel provided for, by or on behalf of the Company in this Indenture and delivered to the Trustee with respect to compliance with this Indenture (other than the Officer's Certificates provided for in Section 4.08) shall include (a) a statement that the person signing such certificate is familiar with the requested action and this Indenture; (b) a brief statement as to the nature and scope of the examination or investigation upon which the statement contained in such certificate is based; (c) a statement that, in the judgment of such person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed judgment as to whether or not such action is permitted by this Indenture; and (d) a statement as to whether or not, in the judgment of such person, such action is permitted by this Indenture and that all conditions precedent to such action have been complied with.

Section 17.06. *Legal Holidays.* In any case where any Interest Payment Date, any Redemption Date, any Fundamental Change Repurchase Date or the Maturity Date is not a Business Day or is not a Valid Payment Date, then any action to be taken on such date need not be taken on such date, but may be taken on the next succeeding Business Day that is a Valid Payment Date with the same force and effect as if taken on such date, and no interest shall accrue on any such payment in respect of the delay.

Section 17.07. *No Security Interest Created.* Nothing in this Indenture or in the Notes, expressed or implied, shall be construed to constitute a security interest under the Uniform Commercial Code or similar legislation, as now or hereafter enacted and in effect, in any jurisdiction.

Section 17.08. *Benefits of Indenture.* Nothing in this Indenture or in the Notes, expressed or implied, shall give to any Person, other than the Holders, the parties hereto, any Paying Agent, any Conversion Agent, any Bid Solicitation Agent, any Custodian, any authenticating agent, any Note Registrar and their successors hereunder, any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 17.09. *Table of Contents, Headings, Etc.* The table of contents and the titles and headings of the articles and sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

Section 17.10. *Authenticating Agent.* The Trustee may appoint an authenticating agent that shall be authorized to act on its behalf and subject to its direction in the authentication and delivery of Notes in connection with the original issuance thereof and transfers and exchanges of Notes hereunder, including under Section 2.04, Section 2.05, Section 2.06, Section 2.07, Section 10.04 and Section 15.04 as fully to all intents and purposes as though the authenticating agent had been expressly authorized by this Indenture and those Sections to authenticate and deliver Notes. For all purposes of this Indenture, the authentication and delivery of Notes by the authenticating agent shall be deemed to be authentication and delivery of such Notes “by the Trustee” and a certificate of authentication executed on behalf of the Trustee by an authenticating agent shall be deemed to satisfy any requirement hereunder or in the Notes for the Trustee’s certificate of authentication. Such authenticating agent shall at all times be a Person eligible to serve as trustee hereunder pursuant to Section 7.08.

Any corporation or other entity into which any authenticating agent may be merged or converted or with which it may be consolidated, or any corporation or other entity resulting from any merger, consolidation or conversion to which any authenticating agent shall be a party, or any corporation or other entity succeeding to the corporate trust business of any authenticating agent, shall be the successor of the authenticating agent hereunder, if such successor corporation or other entity is otherwise eligible under this Section 17.10, without the execution or filing of any paper or any further act on the part of the parties hereto or the authenticating agent or such successor corporation or other entity.

Any authenticating agent may at any time resign by giving written notice of resignation to the Trustee and to the Company. The Trustee may at any time terminate the agency of any authenticating agent by giving written notice of termination to such authenticating agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time any authenticating agent shall cease to be eligible under this Section, the Trustee may appoint a successor authenticating agent (which may be the Trustee), shall give written notice of such appointment to the Company and shall deliver notice of such appointment to all Holders.

The Company agrees to pay to the authenticating agent from time to time reasonable compensation for its services although the Company may terminate the authenticating agent, if it determines such agent’s fees to be unreasonable.

The provisions of Section 7.02, Section 7.03, Section 7.04, Section 8.03 and this Section 17.10 shall be applicable to any authenticating agent.

If an authenticating agent is appointed pursuant to this Section 17.10, the Notes may have endorsed thereon, in addition to the Trustee's certificate of authentication, an alternative certificate of authentication in the following form:

\_\_\_\_\_?  
as Authenticating Agent, certifies that this is one of the Notes described in the within-named Indenture.

By: \_\_\_\_\_  
Authorized Signatory

Section 17.11. *Execution in Counterparts.* This Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument. The exchange of copies of this Indenture and of signature pages by facsimile or PDF or other electronic transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF or other electronic means shall be deemed to be their original signatures for all purposes.

Section 17.12. *Severability; Entire Agreement.* In the event any provision of this Indenture or in the Notes shall be invalid, illegal or unenforceable, then (to the extent permitted by law) the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired. This Indenture and the exhibits hereto set forth the entire agreement and understanding of the parties related to the transactions contemplated hereby and supersedes all prior agreements and understandings, oral or written.

Section 17.13. *Waiver of Jury Trial.* EACH OF THE COMPANY, THE HOLDERS AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 17.14. *Force Majeure.* In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, pandemics, epidemics, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility; it being understood that the Trustee shall use reasonable efforts that are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

Section 17.15. *Calculations.* The Company shall be responsible for making all calculations called for hereunder or under the Notes. These calculations include, but are not limited to, determinations of the Stock Price, the Last Reported Sale Prices of the Common Stock, the Trading Price of the Notes (for purposes of determining whether the Notes are convertible as described herein), the Redemption Price, the Daily VWAPs, the Daily Conversion Values, the Daily Settlement Amounts, accrued interest payable on the Notes, Additional Interest, if any, payable on the Notes and the Conversion Rate of the Notes. The Company shall make all these calculations in good faith and, absent manifest error, the Company's calculations shall be final and binding on Holders of Notes. The Company shall upon request provide a schedule of its calculations to each of the Trustee and the Conversion Agent (if other than the Trustee), and each of the Trustee and Conversion Agent is entitled to rely conclusively upon the accuracy of the Company's calculations without independent verification. The Trustee will forward the Company's calculations to any Holder of Notes upon the written request of that Holder at the sole cost and expense of the Company. Neither the Trustee nor the Conversion Agent will have any responsibility to make calculations under this Indenture, nor will either of them have any responsibility to monitor the Company's stock or trading price, determine whether the conditions to convertibility of the Notes have been met or determine whether the circumstances requiring changes to the Conversion Rate have occurred.

Section 17.16. *USA PATRIOT Act.* The parties hereto acknowledge that in accordance with Section 326 of the USA PATRIOT Act, the Trustee, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The parties to this Indenture agree that they will provide the Trustee with such information as it may request in order for the Trustee to satisfy the requirements of the USA PATRIOT Act.

Section 17.17. *Tax Withholding.* Any applicable withholding taxes (including backup withholding) may be withheld from interest and payments upon conversion, repurchase or maturity of the Notes, or if any withholding taxes (including backup withholding) are paid on behalf of a Holder or beneficial owner of Notes, those withholding taxes may be withheld from or set off against payments of cash or Common Stock, if any, payable on the Notes (or any payments on the Common Stock) or sales proceeds received by or other funds or assets of the Holder or beneficial owner. Further, in order to comply with applicable tax laws, rules and regulations, the Company and the Trustee agree to cooperate with each other and, if permitted by law and not subject to confidentiality obligations, share information each has in its possession (upon the reasonable request of the other) about any beneficial owner of Notes, to facilitate the determination of whether such party has tax related obligations in respect of any such beneficial owner of Notes arising under this Indenture pursuant to any such applicable tax laws, rules or regulations, and each agrees that Trustee may make any withholding or deduction from payments under the Indenture to the extent necessary to comply with such applicable laws, rules or regulations as described in the immediately preceding sentence.

Section 17.18. *Electronic Signatures.* This Indenture (or any documents executed in connection with this Indenture) shall be valid, binding and enforceable against a party when executed and delivered by an authorized individual on behalf of the party by means of (i) an original manual signature, (ii) a faxed, scanned, or photocopied manual signature, or (iii) any other electronic signature permitted by the federal Electronic Signatures in Global and National Commerce Act, state enactments of Uniform Electronic Transactions Act, and/or any relevant electronic signature law, including any relevant provisions of the Uniform Commercial Code (collectively, “**Signature Law**”), in each case to the extent applicable. Each faxed, scanned or photocopied manual signature, or other electronic signature, shall for all purposes have the same validity, legal effect, and admissibility in evidence as an original manual signature. Each party hereto shall be entitled to conclusively rely upon, and shall have no liability with respect to, any faxed, scanned, or photocopied manual signature, or other electronic signature, of any other party and shall have no duty to investigate, confirm or otherwise verify the validity or authenticity thereof. For the avoidance of doubt, original manual signatures shall be used for the authentication by the Trustee of Notes, or for the execution or indorsement of writings when required under the Uniform Commercial Code or other Signature Law due to the character or intended character of the writings.

*[Remainder of page intentionally left blank]*

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

ATLAS ENERGY SOLUTIONS INC.

By: /s/ Blake McCarthy

Name: Blake McCarthy

Title: Chief Financial Officer

*[Signature Page to Indenture]*

---

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, as Trustee

By: /s/ Gregory M. Jackson

Name: Gregory M. Jackson

Title: Vice President

*[Signature Page to Indenture]*

---

[FORM OF FACE OF NOTE]

[INCLUDE FOLLOWING LEGEND IF A GLOBAL NOTE]

[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 HEREUNDER 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.]

[INCLUDE FOLLOWING LEGEND IF A RESTRICTED SECURITY]

[THIS SECURITY AND THE COMMON STOCK, IF ANY, ISSUABLE UPON CONVERSION OF THIS SECURITY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE ACQUIRER:

(1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS A “QUALIFIED INSTITUTIONAL BUYER” (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT, AND

(2) AGREES FOR THE BENEFIT OF ATLAS ENERGY SOLUTIONS INC. (THE “COMPANY”) THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS THE LATER OF (X) ONE YEAR AFTER THE LAST ORIGINAL ISSUE DATE HEREOF OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THERETO AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW, EXCEPT:

(A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, OR

(B) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT AND IS EFFECTIVE AT THE TIME OF SUCH TRANSFER, OR

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

(D) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT OR ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH CLAUSE (2)(D) ABOVE, THE COMPANY AND THE TRUSTEE RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.]<sup>1</sup>

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

---

<sup>1</sup>The Restrictive Legend shall be deemed removed from the face of this Note without further action by the Company, Trustee or the Holders of this Note at such time and in the manner provided under Section 2.05 of the Indenture.

No. [\_\_\_\_\_]

[Initially]<sup>2</sup> \$[\_\_\_\_\_]

CUSIP No. [\_\_\_\_\_]<sup>3</sup>

Atlas Energy Solutions Inc., a corporation duly organized and validly existing under the laws of the State of Delaware (the “**Company**,” which term includes any successor corporation or other entity under the Indenture referred to on the reverse hereof), for value received hereby promises to pay to [CEDE & CO.]<sup>4</sup> [\_\_\_\_\_]<sup>5</sup>, or registered assigns, the principal sum [as set forth in the “Schedule of Exchanges of Notes” attached hereto]<sup>6</sup> [of \$[\_\_\_\_\_]]<sup>7</sup>, which amount, taken together with the principal amounts of all other outstanding Notes, shall not, unless permitted by the Indenture, exceed \$450,000,000 in aggregate at any time, in accordance with the rules and procedures of the Depository, on April 15, 2031, and interest thereon as set forth below.

This Note shall bear interest at the rate of 0.50% per year from April 9, 2026, or from, and including, the most recent date on which interest had been paid or duly provided for to, but excluding, the next scheduled Interest Payment Date until April 15, 2031. Accrued interest on the Notes shall be computed on the basis of a 360-day year composed of twelve 30-day months. Interest is payable semi-annually in arrears on each April 15 and October 15, commencing on October 15, 2026, to Holders of record at the close of business on the preceding April 1 and October 1 (whether or not such day is a Business Day), respectively. Additional Interest will be payable as set forth in Section 4.06(d), Section 4.06(e) and Section 6.03 of the within-mentioned Indenture, and any reference to interest on, or in respect of, any Note therein shall be deemed to include Additional Interest if, in such context, Additional Interest is, was or would be payable pursuant to any of such Section 4.06(d), Section 4.06(e) or Section 6.03, and any express mention of the payment of Additional Interest in any provision therein shall not be construed as excluding Additional Interest in those provisions thereof where such express mention is not made.

---

<sup>2</sup>Include if a global note.

<sup>3</sup>At such time as the Company notifies the Trustee that the Restrictive Legend is to be removed in accordance with the Indenture, the CUSIP number for this Note shall be deemed to be [\_\_\_\_\_].

<sup>4</sup>Include if a global note.

<sup>5</sup>Include if a physical note.

<sup>6</sup>Include if a global note.

<sup>7</sup>Include if a physical note.

Any Defaulted Amounts shall accrue interest per annum at the rate borne by the Notes, subject to the enforceability thereof under applicable law, from, and including, the relevant payment date to, but excluding, the date on which such Defaulted Amounts shall have been paid by the Company, at its election, in accordance with Section 2.03(c) of the Indenture.

The Company shall pay the principal of and interest on this Note, if and so long as such Note is a Global Note, by wire transfer of immediately available funds to the Depository or its nominee, as the case may be, as the registered Holder of such Note. As provided in and subject to the provisions of the Indenture, the Company shall pay the principal of any Notes (other than Notes that are Global Notes) at the office or agency designated by the Company for that purpose. The Company has initially designated the Trustee as its Paying Agent and Note Registrar in respect of the Notes and the Corporate Trust Office as a place where Notes may be presented for payment or for registration of transfer and exchange.

Reference is made to the further provisions of this Note set forth on the reverse hereof, including, without limitation, provisions giving the Holder of this Note the right to convert this Note into cash, shares of Common Stock or a combination of cash and shares of Common Stock, as applicable, on the terms and subject to the limitations set forth in the Indenture. Such further provisions shall for all purposes have the same effect as though fully set forth at this place.

**This Note shall be construed in accordance with and governed by the laws of the State of New York.**

In the case of any conflict between this Note and the Indenture, the provisions of the Indenture shall control and govern.

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

*[Remainder of page intentionally left blank]*

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

ATLAS ENERGY SOLUTIONS INC.

By: \_\_\_\_\_  
Name:  
Title:

Dated:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION  
as Trustee, certifies that this is one of the Notes described  
in the within-named Indenture.

By: \_\_\_\_\_  
Authorized Signatory

[FORM OF REVERSE OF NOTE]

Atlas Energy Solutions Inc.  
0.50% Convertible Senior Note due 2031

This Note is one of a duly authorized issue of Notes of the Company, designated as its 0.50% Convertible Senior Notes due 2031 (the “Notes”), limited to the aggregate principal amount of \$450,000,000, all issued or to be issued under and pursuant to an Indenture dated as of April 9, 2026 (the “Indenture”), between the Company and U.S. Bank Trust Company, National Association, as trustee (the “Trustee”), to which Indenture and all indentures supplemental thereto reference is hereby made for a description of the rights, limitations of rights, obligations, duties and immunities thereunder of the Trustee, the Company and the Holders of the Notes. Additional Notes may be issued in an unlimited aggregate principal amount, subject to certain conditions specified in the Indenture. Capitalized terms used in this Note and not defined in this Note shall have the respective meanings set forth in the Indenture.

In case certain Events of Default shall have occurred and be continuing, the principal of, and interest on, all Notes may be declared, by either the Trustee or Holders of at least 25% in aggregate principal amount of Notes then outstanding, and upon said declaration shall become, due and payable, in the manner, with the effect and subject to the conditions and certain exceptions set forth in the Indenture.

Subject to the terms and conditions of the Indenture, the Company will make all payments and deliveries in respect of the Fundamental Change Repurchase Price on the Fundamental Change Repurchase Date, the Redemption Price on any Redemption Date and the principal amount on the Maturity Date, as the case may be, to the Holder who surrenders a Note to a Paying Agent to collect such payments in respect of the Note. The Company will pay cash amounts in money of the United States of America that at the time of payment is legal tender for payment of public and private debts.

The Indenture contains provisions permitting the Company and the Trustee in certain circumstances, without the consent of the Holders of the Notes, and in certain other circumstances, with the consent of the Holders of not less than a majority in aggregate principal amount of the Notes at the time outstanding, evidenced as in the Indenture provided, to execute supplemental indentures modifying the terms of the Indenture and the Notes as described therein. It is also provided in the Indenture that, subject to certain exceptions, the Holders of a majority in aggregate principal amount of the Notes at the time outstanding may on behalf of the Holders of all of the Notes waive any past Default or Event of Default under the Indenture and its consequences.

Notwithstanding any other provision of the Indenture or any provision of this Note, each Holder shall have the contractual right to receive payment or delivery, as the case may be, of (x) the principal (including the Redemption Price and the Fundamental Change Repurchase Price, if applicable) of, (y) accrued and unpaid interest, if any, on, and (z) the consideration due upon conversion of, this Note, on or after the respective due dates expressed or provided for in this Note or in the Indenture, or to institute suit for the enforcement of any such payment or delivery, as the case may be.

The Notes are issuable in registered form without coupons in minimum denominations of \$1,000 principal amount and integral multiples in excess thereof. At the office or agency of the Company referred to on the face hereof, and in the manner and subject to the limitations provided in the Indenture, Notes may be exchanged for a like aggregate principal amount of Notes of other authorized denominations, without payment of any service charge but, if required by the Company or Trustee, with payment of a sum sufficient to cover any transfer or similar tax that may be imposed in connection therewith as a result of the name of the Holder of the new Notes issued upon such exchange of Notes being different from the name of the Holder of the old Notes surrendered for such exchange.

The Notes shall be redeemable at the Company's option on or after April 20, 2029 in accordance with the terms and subject to the conditions specified in the Indenture. No sinking fund is provided for the Notes.

Upon the occurrence of a Fundamental Change (other than an Exempted Fundamental Change), the Holder has the right, at such Holder's option, to require the Company to repurchase for cash all of such Holder's Notes or any portion thereof (in principal amounts of \$1,000 or integral multiples thereof) on the Fundamental Change Repurchase Date at a price equal to the Fundamental Change Repurchase Price.

Subject to the provisions of the Indenture, the Holder hereof has the right, at its option, during certain periods and upon the occurrence of certain conditions specified in the Indenture, prior to the close of business on the second Scheduled Trading Day immediately preceding the Maturity Date, to convert any Notes or portion thereof that is \$1,000 or an integral multiple thereof, into cash, shares of Common Stock or a combination of cash and shares of Common Stock, as applicable, at the Conversion Rate specified in the Indenture, as adjusted from time to time as provided in the Indenture.

## ABBREVIATIONS

The following abbreviations, when used in the inscription of the face of this Note, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM = as tenants in common

UNIF GIFT MIN ACT = Uniform Gifts to Minors Act

CUST = Custodian

TEN ENT = as tenants by the entireties

JT TEN = joint tenants with right of survivorship and not as tenants in common

Additional abbreviations may also be used though not in the above list.



[FORM OF NOTICE OF CONVERSION]

To: U.S. Bank Trust Company, National Association  
Corp Trust Services – Atlanta  
2 Concourse Parkway NE, Suite 800  
Atlanta GA 30328  
Attention: Atlas Energy Solutions Inc. Administrator

The undersigned registered owner of this Note hereby exercises the option to convert this Note, or the portion hereof (that is \$1,000 principal amount or an integral multiple thereof) below designated, into cash, shares of Common Stock or a combination of cash and shares of Common Stock, at the Company’s election, in accordance with the terms of the Indenture referred to in this Note, and directs that any cash payable and any shares of Common Stock issuable and deliverable upon such conversion, together with any cash for any fractional share, and any Notes representing any unconverted principal amount hereof, be issued and delivered to the registered Holder hereof unless a different name has been indicated below. If any shares of Common Stock or any portion of this Note not converted are to be issued in the name of a Person other than the undersigned, the undersigned will pay all documentary, stamp or similar issue or transfer taxes, if any in accordance with Section 14.02(d) and Section 14.02(e) of the Indenture. Any amount required to be paid to the undersigned on account of interest accompanies this Note. Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Indenture.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature(s)

\_\_\_\_\_  
Signature Guarantee

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

Fill in for registration of shares if  
to be issued, and Notes if to  
be delivered, other than to and in the  
name of the registered holder:

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Street Address)

\_\_\_\_\_  
(City, State and Zip Code)

Please print name and address

Principal amount to be converted (if less than all): \$\_\_\_\_\_,000

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

\_\_\_\_\_  
Social Security or Other Taxpayer  
Identification Number

[FORM OF FUNDAMENTAL CHANGE REPURCHASE NOTICE]

To: Paying Agent

The undersigned registered owner of this Note hereby acknowledges receipt of a notice from Atlas Energy Solutions Inc. (the "Company") as to the occurrence of a Fundamental Change with respect to the Company and specifying the Fundamental Change Repurchase Date and requests and instructs the Company to pay to the registered holder hereof in accordance with Section 15.02 of the Indenture referred to in this Note (1) the entire principal amount of this Note, or the portion thereof (that is \$1,000 principal amount or an integral multiple thereof) below designated, and (2) if such Fundamental Change Repurchase Date does not fall during the period after a Regular Record Date and on or prior to the corresponding Interest Payment Date, accrued and unpaid interest, if any, thereon to, but excluding, such Fundamental Change Repurchase Date. Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Indenture.

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

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature(s)

\_\_\_\_\_  
Social Security or Other Taxpayer  
Identification Number

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

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

## [FORM OF ASSIGNMENT AND TRANSFER]

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

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

- To Atlas Energy Solutions Inc. or a subsidiary thereof; or
- Pursuant to a registration statement that has become or been declared effective under the Securities Act of 1933, as amended; or
- Pursuant to and in compliance with Rule 144A under the Securities Act of 1933, as amended; or
- Pursuant to and in compliance with Rule 144 under the Securities Act of 1933, as amended, or any other available exemption from the registration requirements of the Securities Act of 1933, as amended.

Dated: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
Signature(s)

\_\_\_\_\_  
Signature Guarantee

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

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

[Insert Dealer Name]  
[Insert Dealer Address]

**DATE:** [\_\_\_\_\_] , 2026

**TO:** Atlas Energy Solutions Inc.  
5918 W. Courtyard Drive, Suite 500  
Austin, Texas 78730

**FROM:** [Insert Dealer Name]

**SUBJECT:** [Base][Additional] Call Option Transaction

The purpose of this letter agreement (this “**Confirmation**”) is to confirm the terms and conditions of the call option transaction entered into between [Dealer] (“**Dealer**”) and Atlas Energy Solutions Inc. (“**Counterparty**”) as of the Trade Date specified below (the “**Transaction**”). This letter agreement constitutes a “Confirmation” as referred to in the ISDA Master Agreement specified below. This Confirmation shall replace any previous agreements and serve as the final documentation for the Transaction.

The definitions and provisions contained in the 2002 ISDA Equity Derivatives Definitions (the “**Equity Definitions**”), as published by the International Swaps and Derivatives Association, Inc. (“**ISDA**”), are incorporated into this Confirmation. In the event of any inconsistency between the Equity Definitions and this Confirmation, this Confirmation shall govern. Certain defined terms used herein are based on terms that are defined in the Offering Memorandum dated [\_\_\_\_\_] , 2026 (the “**Offering Memorandum**”) relating to the [\_\_]% Convertible Senior Notes due 2031 (as originally issued by Counterparty, the “**Convertible Notes**” and each USD 1,000 principal amount of Convertible Notes, a “**Convertible Note**”) issued by Counterparty in an aggregate initial principal amount of USD [\_\_\_\_\_] (as increased by [up to]<sup>1</sup> an additional aggregate principal amount of USD [\_\_\_\_\_] [if and to the extent that]<sup>2</sup> [pursuant to the exercise by]<sup>3</sup> the Initial Purchasers (as defined herein) [exercise]<sup>4</sup>[of]<sup>5</sup> their option to purchase additional Convertible Notes pursuant to the Purchase Agreement (as defined herein)) pursuant to an Indenture [to be]<sup>6</sup> dated [\_\_\_\_\_] , 2026 between Counterparty and [\_\_\_\_\_] , as trustee (the “**Indenture**”). In the event of any inconsistency between the terms defined in the Offering Memorandum, the Indenture and this Confirmation, this Confirmation shall govern. The parties acknowledge that this Confirmation is entered into on the date hereof with the understanding that (i) definitions set forth in the Indenture that are also defined herein by reference to the Indenture and (ii) sections of the Indenture that are referred to herein, in each case, will conform to the descriptions thereof in the Offering Memorandum. If any such definitions in the Indenture or any such sections of the Indenture differ from the descriptions thereof in the Offering Memorandum, the descriptions thereof in the Offering Memorandum will govern for purposes of this Confirmation. The parties further acknowledge that the Indenture section numbers used herein are based on the [draft of the Indenture last reviewed by Dealer as of the date of this Confirmation, and if any such section numbers are changed in the Indenture as executed, the parties will amend this Confirmation in good faith to preserve the intent of the parties]<sup>7</sup>[Indenture as executed]<sup>8</sup>. Subject to the foregoing, references to the Indenture herein are references to the Indenture as in effect on the date of its execution, and if the Indenture is amended or supplemented following such date, any such amendment or supplement (other than any amendment or supplement (x) pursuant to Section 10.01(n) of the Indenture that, as determined by the Calculation Agent, conforms the Indenture to the description of the Convertible Notes in the Offering Memorandum or (y) pursuant to Section 10.01(g) of the Indenture, subject, in the case of this clause (y), to the second paragraph under “Method of Adjustment” in Section 3 below) will be disregarded for purposes of this Confirmation unless the parties agree otherwise in writing. For purposes of the Equity Definitions, the Transaction shall be deemed to be a Share Option Transaction.

<sup>1</sup> Include in the Base Call Option Confirmation.

<sup>2</sup> Include in the Base Call Option Confirmation.

<sup>3</sup> Include in the Additional Call Option Confirmation.

<sup>4</sup> Include in the Base Call Option Confirmation.

<sup>5</sup> Include in the Additional Call Option Confirmation.

<sup>6</sup> Insert if Indenture is not completed at the time of the Confirmation.

<sup>7</sup> Include in the Base Call Option Confirmation. Include in the Additional Call Option Confirmation if it is executed before closing of the base deal.

<sup>8</sup> Include in the Additional Call Option Confirmation, but only if the Additional Call Option Confirmation is executed after closing of the base deal.

Each party is hereby advised, and each such party acknowledges, that the other party has engaged in, or refrained from engaging in, substantial financial transactions and has taken other material actions in reliance upon the parties' entry into the Transaction to which this Confirmation relates on the terms and conditions set forth below.

1. This Confirmation evidences a complete and binding agreement between Dealer and Counterparty as to the terms of the Transaction to which this Confirmation relates. This Confirmation shall be subject to an agreement (the "**Agreement**") in the form of the 2002 ISDA Master Agreement as if Dealer and Counterparty had executed an agreement in such form on the date hereof (but without any Schedule except for (i) the election of U.S. Dollars ("**USD**") as the Termination Currency, (ii) the election of the laws of the State of New York as the governing law (without reference to choice of law doctrine), (iii) the modification that following the payment of the Premium on the Premium Payment Date, the condition precedent in Section 2(a)(iii) of the Agreement with respect to Events of Default or Potential Events of Default (other than an Event of Default or Potential Event of Default arising under Section 5(a)(ii), 5(a)(iv) or 5(a)(vii) of the Agreement) shall not apply to a payment or delivery owing by Dealer to Counterparty [, (iv) the election of an executed guarantee of [ ] ("**Guarantor**") dated as of the Trade Date in customary form as a Credit Support Document, (v) the election of Guarantor as Credit Support Provider in relation to Dealer]<sup>9</sup> and [(vi)][(iv)] the election that the "Cross-Default" provisions of Section 5(a)(vi) of the Agreement shall apply to Dealer with a "Threshold Amount" of three percent of [Dealer's][Dealer's ultimate parent's] shareholders' equity; *provided* that (A) "Specified Indebtedness" shall not include obligations in respect of deposits received in the ordinary course of Dealer's banking business, (B) the phrase "or becoming capable at such time of being declared" shall be deleted from clause (1) of such Section 5(a)(vi), (C) the following language shall be added to the end thereof: "Notwithstanding the foregoing, a default under subsection (2) hereof shall not constitute an Event of Default if (x) the default was caused solely by error or omission of an administrative or operational nature; (y) funds were available to enable the party to make the payment when due; and (z) the payment is made within two Local Business Days of such party's receipt of written notice of its failure to pay.").

2. The terms of the particular Transaction to which this Confirmation relates are as follows:

General Terms.

Trade Date:	[ ], 2026
Effective Date:	The Premium Payment Date (it being understood, for the avoidance of doubt, that Section 9(u) of this Confirmation shall be effective as of the Trade Date).
Option Style:	"Modified American", as described opposite the caption "Procedures for Exercise" below.
Option Type:	Call
Buyer:	Counterparty
Seller:	Dealer
Shares:	The common stock of Counterparty, USD 0.01 par value per share (Exchange symbol "AESI").
Number of Options:	[ ] <sup>10</sup> . For the avoidance of doubt, the Number of Options shall be reduced by any Options exercised or deemed exercised by Counterparty. In no event will the Number of Options be less than zero.

---

<sup>9</sup> To be included for Dealers without a long-term debt rating (to be ultimate parent if applicable).

<sup>10</sup> For the Base Call Option Confirmation, this is equal to the number of Convertible Notes in principal amount of USD 1,000 initially issued on the closing date for the Convertible Notes. For the Additional Call Option Confirmation, this is equal to the number of additional Convertible Notes in principal amount of USD 1,000.

Applicable Percentage: [ ]<sup>11</sup>%

Option Entitlement: A number equal to the product of the Applicable Percentage and [ ].<sup>12</sup>

Strike Price: USD [ ]

Cap Price: USD [ ]

Premium: USD [ ]

Premium Payment Date: [ ], 2026

Exchange: The New York Stock Exchange

Related Exchange(s): All Exchanges

Excluded Provisions: Section 14.04(h) and Section 14.03 of the Indenture.

Procedures for Exercise.

Conversion Date: With respect to any conversion of a Convertible Note (other than any conversion of Convertible Notes with a “Conversion Date” (as such term is defined in the Indenture) occurring prior to the Free Convertibility Date (any such conversion, an “**Early Conversion**”), which conversion shall be subject to the provisions set forth in Section 9(h)(i)), the date on which the “Holder” (as such term is defined in the Indenture) of such Convertible Note satisfies all of the requirements for conversion thereof as set forth in Section 14.02(b) of the Indenture; *provided* that if Counterparty has not delivered to Dealer a related Notice of Exercise, then in no event shall a Conversion Date be deemed to occur hereunder (and no Option shall be exercised or deemed to be exercised hereunder) with respect to any surrender of a Convertible Note for conversion in respect of which Counterparty has elected to designate a financial institution for exchange in lieu of conversion of such Convertible Note pursuant to Section 14.12 of the Indenture.

Free Convertibility Date: January 15, 2031

Expiration Time: The Valuation Time

Expiration Date: April 15, 2031, subject to earlier exercise.

Multiple Exercise: Applicable, as described opposite the captions “Automatic Exercise” and “Automatic Exercise of Remaining Repayment Options After Free Convertibility Date” below.

---

<sup>11</sup> To be the relevant percentage for each Dealer.

<sup>12</sup> Insert the initial Conversion Rate for the Convertible Notes.

Automatic Exercise:

Notwithstanding Section 3.4 of the Equity Definitions, on each Conversion Date occurring on or after the Free Convertibility Date, in respect of which a “Notice of Conversion” (as such term is defined in the Indenture) that is effective as to Counterparty has been delivered by the relevant converting “Holder” (as such term is defined in the Indenture), a number of Options equal to [(i)] the number of Convertible Notes in denominations of USD 1,000 as to which such Conversion Date has occurred[, *minus* (ii) the number of Options that are or are deemed to be automatically exercised on such Conversion Date under the Base Call Option Transaction Confirmation letter agreement dated [\_\_\_\_\_], 2026 between Dealer and Counterparty (the “**Base Call Option Confirmation**”),]<sup>13</sup> shall be deemed to be automatically exercised; *provided* that such Options shall be exercised or deemed exercised only if Counterparty has provided a Notice of Exercise to Dealer in accordance with “Notice of Exercise” below.

Notwithstanding the foregoing, in no event shall the aggregate number of Options that are exercised or deemed exercised hereunder exceed the Number of Options.

Automatic Exercise of Remaining  
Repayment Options After Free  
Convertibility Date:

Notwithstanding anything herein or in Section 3.4 of the Equity Definitions to the contrary, unless Counterparty notifies Dealer in writing prior to 5:00 p.m. (New York City time) on the Scheduled Valid Day immediately preceding the Expiration Date that it does not wish automatic exercise to occur with respect to any Remaining Repayment Options (as defined below), a number of Options equal to the lesser of (a) the Number of Options (after giving effect to the provisions opposite the caption “Automatic Exercise” above) as of 9:00 a.m. (New York City time) on the Expiration Date and (b) the Remaining Repayment Options [*minus* the number of “Remaining Options” (as defined in the Base Call Option Confirmation)]<sup>14</sup> (such lesser number, the “**Remaining Options**”) will be deemed to be automatically exercised as if (i) a number of Convertible Notes (in denominations of USD 1,000 principal amount) equal to such number of Remaining Options were outstanding under the Indenture and were converted with a “Conversion Date” (as defined in the Indenture) occurring on or after the Free Convertibility Date and (ii) the Notice of Final Settlement Method, if any, applied to such Convertible Notes; *provided* that no such automatic exercise pursuant to this paragraph will occur if the Relevant Price for each Valid Day during the Settlement Averaging Period is less than or equal to the Strike Price. “**Remaining Repayment Options**” shall mean the excess of (I) the number of Options corresponding to the aggregate number of Convertible Notes (in denominations of USD 1,000 principal amount) that were subject to Repayment Events (as defined in Section 9(h)(ii) below) (other than Repayment Events that result directly from a “Fundamental Change” (as defined in the Indenture) or an “Optional Redemption” (as defined in the Indenture)) (“**Repurchase Events**”) during the term of the Transaction over (II) the aggregate number of Repayment Options (as defined below) that were terminated hereunder pursuant to Section 9(h)(ii) relating to Repurchase Events during the term of the Transaction [*plus* the aggregate number of “Repayment Options” (as defined in the Base Call Option Confirmation) terminated under the Base Call Option Confirmation relating to “Repurchase Events” (as defined therein) during the term of the “Transaction” under the Base Call Option Confirmation]<sup>15</sup>. Counterparty shall notify Dealer in writing of the number of Remaining Repayment Options before 5:00 p.m. (New York City time) on the Scheduled Valid Day immediately preceding the Expiration Date.

---

<sup>13</sup> Include for Additional Call Option Confirmation only.

<sup>14</sup> Include in the Additional Call Option Confirmation.

<sup>15</sup> Include in the Additional Call Option Confirmation.

Notwithstanding anything to the contrary in the Equity Definitions or opposite the caption “Automatic Exercise” above, but subject to “Automatic Exercise of Remaining Repayment Options After Free Convertibility Date” above, in order to exercise any Options, Counterparty must notify Dealer in writing on or prior to 5:00 p.m. (New York City time) on the second Scheduled Valid Day immediately preceding the Expiration Date of the number of such Options; *provided* that, notwithstanding the foregoing, such notice (and the related exercise of Options hereunder) shall be effective if given after the applicable notice deadline specified above but prior to 5:00 p.m. (New York City time) on the fifth Exchange Business Day following such notice deadline, in which event the Calculation Agent shall have the right to adjust Dealer’s delivery obligation hereunder and the Settlement Date in good faith and in a commercially reasonable manner, with respect to the exercise of such Options, as appropriate to reflect the additional commercially reasonable costs and losses (limited to losses as a result of hedging mismatches and market losses) and expenses incurred by Dealer or any of its affiliates in connection with its hedging activities as a result of its not having received such notice prior to such notice deadline (it being understood that the adjusted delivery obligation described in the preceding proviso can never be less than zero and can never require any payment by Counterparty); *provided further* that, if the Relevant Settlement Method for such Options is (x) Net Share Settlement and the Specified Cash Amount is not USD 1,000, (y) Cash Settlement or (z) Combination Settlement, Dealer shall have received a separate written notice (the “**Notice of Final Settlement Method**”) on or prior to 5:00 p.m. (New York City time) on the Scheduled Valid Day immediately preceding the Free Convertibility Date specifying (1) the Relevant Settlement Method for such Options and (2) if the settlement method for the related Convertible Notes is not “Settlement in Shares” or “Settlement in Cash” (each as defined below), the fixed amount of cash per Convertible Note that Counterparty has elected to pay to “Holders” (as such term is defined in the Indenture) of the related Convertible Notes (the “**Specified Cash Amount**”). Counterparty acknowledges its responsibilities under applicable securities laws, and in particular Section 9 and Section 10(b) of the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), and the rules and regulations thereunder, in respect of any election of a settlement method with respect to the Convertible Notes. For the avoidance of doubt, if the relevant “Conversion Date” (as such term is defined in the Indenture) for any Convertible Notes occurs prior to the Free Convertibility Date, no Options shall be subject to exercise in connection with such Early Conversion, and such conversion shall be subject to the provisions set forth in Section 9(h)(i).

Valuation Time: At the close of trading of the regular trading session on the Exchange; *provided* that if the principal trading session is extended, the Calculation Agent shall determine the Valuation Time in its reasonable discretion.

Market Disruption Event: Section 6.3(a) of the Equity Definitions is hereby replaced in its entirety by the following:

“‘Market Disruption Event’ means, in respect of a Share, (i) a failure by the primary U.S. national or regional securities exchange or market on which the Shares are listed or admitted for trading to open for trading during its regular trading session or (ii) the occurrence or existence prior to 1:00 p.m. (New York City time) on any Scheduled Valid Day for the Shares for more than one half-hour period in the aggregate during regular trading hours of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant stock exchange or otherwise) in the Shares or in any options contracts or futures contracts relating to the Shares.”

Settlement Terms.

Settlement Method: For any Option, Net Share Settlement; *provided* that if the Relevant Settlement Method set forth below for such Option is not Net Share Settlement, then the Settlement Method for such Option shall be such Relevant Settlement Method, but only if Counterparty shall have notified Dealer of the Relevant Settlement Method in the Notice of Final Settlement Method for such Option.

Relevant Settlement Method: In respect of any Option:

(i) if Counterparty has elected (or is deemed to have elected) to settle its conversion obligations in respect of the related Convertible Note (A) entirely in Shares pursuant to Section 14.02(a)(iv)(A) of the Indenture (together with cash in lieu of fractional Shares) (such settlement method, “**Settlement in Shares**”), (B) in a combination of cash and Shares pursuant to Section 14.02(a)(iv)(C) of the Indenture with a Specified Cash Amount less than USD 1,000 (such settlement method, “**Low Cash Combination Settlement**”) or (C) in a combination of cash and Shares pursuant to Section 14.02(a)(iv)(C) of the Indenture with a Specified Cash Amount equal to USD 1,000, then, in each case, the Relevant Settlement Method for such Option shall be Net Share Settlement;

(ii) if Counterparty has elected to settle its conversion obligations in respect of the related Convertible Note in a combination of cash and Shares pursuant to Section 14.02(a)(iv)(C) of the Indenture with a Specified Cash Amount greater than USD 1,000, then the Relevant Settlement Method for such Option shall be Combination Settlement; and

(iii) if Counterparty has elected to settle its conversion obligations in respect of the related Convertible Note entirely in cash pursuant to Section 14.02(a)(iv)(B) of the Indenture (such settlement method, “**Settlement in Cash**”), then the Relevant Settlement Method for such Option shall be Cash Settlement.

Net Share Settlement:

If Net Share Settlement is applicable to any Option exercised or deemed exercised hereunder, Dealer will deliver to Counterparty, on the relevant Settlement Date for each such Option, a number of Shares (the “**Net Share Settlement Amount**”) equal to the sum, for each Valid Day during the Settlement Averaging Period for each such Option, of (i) (a) the Daily Option Value for such Valid Day, *divided by* (b) the Relevant Price on such Valid Day, *divided by* (ii) the number of Valid Days in the Settlement Averaging Period; *provided* that in no event shall the Net Share Settlement Amount for any Option exceed a number of Shares equal to the Applicable Limit for such Option, *divided by* the Applicable Limit Price on the Settlement Date for such Option.

Dealer will pay cash in lieu of delivering any fractional Shares to be delivered with respect to any Net Share Settlement Amount valued at the Relevant Price for the last Valid Day of the Settlement Averaging Period.

Combination Settlement:

If Combination Settlement is applicable to any Option exercised or deemed exercised hereunder, Dealer will pay or deliver, as the case may be, to Counterparty, on the relevant Settlement Date for each such Option:

(i) an amount of cash (the “**Combination Settlement Cash Amount**”) equal to the sum, for each Valid Day during the Settlement Averaging Period for such Option, of (A) an amount (the “**Daily Combination Settlement Cash Amount**”) equal to the lesser of (1) the product of (x) the Applicable Percentage and (y) the Specified Cash Amount, *minus* USD 1,000 and (2) the Daily Option Value, *divided by* (B) the number of Valid Days in the Settlement Averaging Period; *provided* that if the calculation in clause (A) above results in zero or a negative number for any Valid Day, the Daily Combination Settlement Cash Amount for such Valid Day shall be deemed to be zero; and

(ii) a number of Shares (the “**Combination Settlement Share Amount**”) equal to the sum, for each Valid Day during the Settlement Averaging Period for such Option, of a number of Shares for such Valid Day (the “**Daily Combination Settlement Share Amount**”) equal to (A) (1) the Daily Option Value on such Valid Day *minus* the Daily Combination Settlement Cash Amount for such Valid Day, *divided by* (2) the Relevant Price on such Valid Day, *divided by* (B) the number of Valid Days in the Settlement Averaging Period; *provided* that if the calculation in sub-clause (A)(1) above results in zero or a negative number for any Valid Day, the Daily Combination Settlement Share Amount for such Valid Day shall be deemed to be zero; *provided* that in no event shall the sum of (x) the Combination Settlement Cash Amount for any Option and (y) the Combination Settlement Share Amount for such Option, *multiplied by* the Applicable Limit Price on the Settlement Date for such Option exceed the Applicable Limit for such Option.

Dealer will pay cash in lieu of delivering any fractional Shares to be delivered with respect to any Combination Settlement Share Amount valued at the Relevant Price for the last Valid Day of the Settlement Averaging Period.

Cash Settlement:

If Cash Settlement is applicable to any Option exercised or deemed exercised hereunder, in lieu of Section 8.1 of the Equity Definitions, Dealer will pay to Counterparty, on the relevant Settlement Date for each such Option, an amount of cash (the “**Cash Settlement Amount**”) equal to the sum, for each Valid Day during the Settlement Averaging Period for such Option, of (i) the Daily Option Value for such Valid Day, *divided by* (ii) the number of Valid Days in the Settlement Averaging Period; *provided* that, in no event shall the Cash Settlement Amount exceed the Applicable Limit for such Option.

Daily Option Value:

For any Valid Day, an amount equal to (i) the Option Entitlement on such Valid Day, *multiplied by* (ii) (A) the lesser of the Relevant Price on such Valid Day and the Cap Price, *minus* (B) the Strike Price on such Valid Day; *provided* that if the calculation contained in clause (ii) above results in a negative number, the Daily Option Value for such Valid Day shall be deemed to be zero. In no event will the Daily Option Value be less than zero.

Applicable Limit:

For any Option, an amount of cash equal to the Applicable Percentage *multiplied by* the excess of (i) the aggregate of (A) the amount of cash, if any, paid to the “Holder” (as defined in the Indenture) of the related Convertible Note upon conversion of such Convertible Note and (B) the number of Shares, if any, delivered to the “Holder” (as defined in the Indenture) of the related Convertible Note upon conversion of such Convertible Note, *multiplied by* the Applicable Limit Price on the Settlement Date for such Option, over (ii) USD 1,000. Counterparty shall notify Dealer (which notice may, for the avoidance of doubt, be by e-mail) of such amount of cash, if any, and number of Shares, if any, prior to the Settlement Date.

Applicable Limit Price:

On any day, the opening price as displayed under the heading “Op” on Bloomberg page AESI <equity> (or any successor thereto).

Valid Day:	A day on which (i) there is no Market Disruption Event and (ii) trading in the Shares generally occurs on the Exchange or, if the Shares are not then listed on the Exchange, on the principal other U.S. national or regional securities exchange on which the Shares are then listed or, if the Shares are not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Shares are then listed or admitted for trading. If the Shares are not so listed or admitted for trading, "Valid Day" means a Business Day.
Scheduled Valid Day:	A day that is scheduled to be a Valid Day on the principal U.S. national or regional securities exchange or market on which the Shares are listed or admitted for trading. If the Shares are not so listed or admitted for trading, "Scheduled Valid Day" means a Business Day.
Business Day:	Any day other than a Saturday, a Sunday or a day on which the Federal Reserve Bank of New York is authorized or required by law or executive order to close or be closed.
Relevant Price:	On any Valid Day, the per Share volume-weighted average price as displayed under the heading "Bloomberg VWAP" on Bloomberg page "AESI <equity> AQR" (or its equivalent successor if such page is not available) in respect of the period from the scheduled open of trading on the Exchange until the Scheduled Closing Time of the Exchange on such Valid Day (or if such volume-weighted average price is unavailable, the market value of one Share on such Valid Day, as determined by the Calculation Agent using, if practicable, a volume-weighted average method). The Relevant Price will be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours.
Settlement Averaging Period:	For any Option, the 40 consecutive Valid Days commencing on, and including, the 41st Scheduled Valid Day immediately prior to the Expiration Date.
Settlement Date:	For any Option, the second Business Day immediately following the last Valid Day of the Settlement Averaging Period for such Option.
Settlement Currency:	USD
Other Applicable Provisions:	The provisions of Sections 9.1(c), 9.8, 9.9 and 9.11 of the Equity Definitions will be applicable, except that all references in such provisions to "Physically-settled" shall be read as references to "Share Settled". "Share Settled" in relation to any Option means that Net Share Settlement or Combination Settlement is applicable to that Option.
Representation and Agreement:	Notwithstanding Section 9.11 of the Equity Definitions, the parties acknowledge that any Shares delivered to Counterparty may be, upon delivery, subject to restrictions and limitations arising from Counterparty's status as issuer of the Shares under applicable securities laws.

3. **Additional Terms applicable to the Transaction.**

Adjustments applicable to the Transaction:

Potential Adjustment Events:

Notwithstanding Section 11.2(e) of the Equity Definitions, a "Potential Adjustment Event" means an occurrence of any event or condition, as set forth in any Dilution Adjustment Provision, that would result in an adjustment under the Indenture to the "Conversion Rate" or the composition of a "unit of Reference Property" or to any "Last Reported Sale Price," "Daily VWAP," "Daily Conversion Value" or "Daily Settlement Amount" (each such term as defined in the Indenture). For the avoidance of doubt, Dealer shall not have any delivery or payment obligation hereunder and no adjustment shall be made to the terms of the Transaction, on account of (x) any distribution of cash, property or securities by Counterparty to "Holders" (as defined in the Indenture) of the Convertible Notes (upon conversion or otherwise) or (y) any other transaction in which "Holders" (as such term is defined in the Indenture) of the Convertible Notes are entitled to participate, in each case, in lieu of an adjustment under the Indenture of the type referred to in the immediately preceding sentence (including, without limitation, pursuant to the fourth sentence of the first paragraph of Section 14.04(c) of the Indenture or the fourth sentence of Section 14.04(d) of the Indenture).

Method of Adjustment:

Calculation Agent Adjustment, which means that, notwithstanding Section 11.2(c) of the Equity Definitions, upon any Potential Adjustment Event, the Calculation Agent acting in a commercially reasonable manner shall make an adjustment corresponding to the adjustment to be made pursuant to the Indenture to any one or more of the Strike Price, Number of Options, Option Entitlement, Relevant Price or other applicable price with respect to the Shares and/or composition of the "Shares" hereunder.

Notwithstanding the foregoing and "Consequences of Merger Events / Tender Offers" below:

- (i) if the Calculation Agent, acting in good faith and a commercially reasonable manner, disagrees with any adjustment to the Convertible Notes that involves an exercise of discretion by Counterparty or its board of directors (including, without limitation, pursuant to Section 14.05 of the Indenture, Section 14.07 of the Indenture or any supplemental indenture entered into thereunder or in connection with any proportional adjustment or the determination of the fair value of any securities, property, rights or other assets), then in each such case, the Calculation Agent will determine an adjustment to be made to any one or more of the Strike Price, Number of Options, Option Entitlement, Relevant Price or other applicable price with respect to the Shares and/or composition of the "Shares" hereunder in a commercially reasonable manner; *provided* that, notwithstanding the foregoing, if any Potential Adjustment Event occurs during the Settlement Averaging Period but no adjustment was made to any Convertible Note under the Indenture because the relevant "Holder" (as such term is defined in the Indenture) was deemed to be a record owner of the underlying Shares on the related "Conversion Date" (as such term is defined in the Indenture), then the Calculation Agent shall make an adjustment, as determined by it, to the terms hereof in order to account for such Potential Adjustment Event in a commercially reasonable manner;

- (ii) in connection with any Potential Adjustment Event as a result of an event or condition set forth in Section 14.04(b) of the Indenture or Section 14.04(c) of the Indenture where, in either case, the period for determining “Y” (as such term is used in Section 14.04(b) of the Indenture) or “SP<sub>0</sub>” (as such term is used in Section 14.04(c) of the Indenture), as the case may be, begins before Counterparty has publicly announced the event or condition giving rise to such Potential Adjustment Event, then the Calculation Agent shall have the right to adjust any variable relevant to the exercise, settlement or payment for the Transaction as appropriate to reflect the costs (including, but not limited to, hedging mismatches and market losses) and expenses incurred by Dealer in connection with its hedging activities as a result of such event or condition not having been publicly announced prior to the beginning of such period; and
- (iii) if any Potential Adjustment Event is declared and (a) the event or condition giving rise to such Potential Adjustment Event is subsequently amended, modified, cancelled or abandoned, (b) the “Conversion Rate” (as defined in the Indenture) is otherwise not adjusted at the time or in the manner contemplated by the relevant Dilution Adjustment Provision based on such declaration or (c) the “Conversion Rate” (as defined in the Indenture) is adjusted as a result of such Potential Adjustment Event and subsequently re-adjusted (each of clauses (a), (b) and (c), a “**Potential Adjustment Event Change**”) then, in each case, the Calculation Agent shall have the right to adjust any variable relevant to the exercise, settlement or payment for the Transaction as appropriate to reflect the costs (including, but not limited to, hedging mismatches and market losses) and expenses incurred by Dealer in connection with its hedging activities as a result of such Potential Adjustment Event Change.

Dilution Adjustment Provisions:

Sections 14.04(a), (b), (c), (d) and (e) and Section 14.05 of the Indenture.

Extraordinary Events applicable to the Transaction:

Merger Events:

Applicable; *provided* that notwithstanding Section 12.1(b) of the Equity Definitions, a “Merger Event” means the occurrence of any event or condition set forth in the definition of “Share Exchange Event” in Section 14.07(a) of the Indenture.

Tender Offers:

Applicable; *provided* that notwithstanding Section 12.1(d) of the Equity Definitions, a “Tender Offer” means the occurrence of any event or condition set forth in Section 14.04(e) of the Indenture.

Consequences of Merger Events/  
Tender Offers:

Notwithstanding Section 12.2 and Section 12.3 of the Equity Definitions, upon the occurrence of a Merger Event or a Tender Offer that is required under the terms of the Indenture to result in an adjustment to the terms of the Convertible Notes, the Calculation Agent shall make a corresponding adjustment to any one or more of the nature of the Shares, Strike Price, Number of Options and Option Entitlement, in each case, to the extent an analogous adjustment would be made pursuant to the Indenture in connection with such Merger Event or Tender Offer, or to the definitions of “Exchange”, “Relevant Price” and “Settlement Averaging Period” in this Confirmation and any other variable relevant to the exercise, settlement or payment for the Transaction, subject to the second paragraph under “Method of Adjustment”; *provided* that any such adjustment shall be made without regard to any adjustment to the “Conversion Rate” (as defined in the Indenture) pursuant to any Excluded Provision. Notwithstanding the foregoing, if, with respect to a Merger Event or a Tender Offer, (i) the consideration for the Shares includes (or, at the option of a holder of Shares, may include) shares of an entity or person that is not a corporation or is not organized under the laws of the United States, any State thereof or the District of Columbia or (ii) the Counterparty to the Transaction following such Merger Event or Tender Offer will not be a corporation or will not be either (A) the Issuer following such Merger Event or Tender Offer or (B) a wholly owned subsidiary of the Issuer (1) that is a corporation organized under the laws of the United States, any State thereof or the District of Columbia, (2) whose obligations under the Transaction are fully and unconditionally guaranteed by the Issuer, (3) with respect to which the Calculation Agent determines that treating such wholly owned subsidiary as the Counterparty will not have a material adverse effect on Dealer’s rights or obligations hereunder, Dealer’s hedging activities, or the costs or expenses of engaging in any of the foregoing and (4) with respect to which Dealer determines, in its reasonable discretion, that treating such wholly owned subsidiary as the Counterparty will be in compliance with applicable legal, regulatory or self-regulatory requirements, and with related policies and procedures, applicable to Dealer, then, in either case, an Additional Termination Event may apply at Dealer’s sole reasonable election with respect to which the Transaction is the sole Affected Transaction and Counterparty is the sole Affected Party, and Dealer shall be the party entitled to designate an Early Termination Date pursuant to Section 6(b) of the Agreement and to determine the amount payable pursuant to Section 6(e) of the Agreement; *provided* that Dealer shall use good faith efforts to consult with Counterparty on a non-binding basis prior to terminating the Transaction pursuant to this sentence (it being understood that Dealer may condition such consultation on Counterparty making the representation in Section 8(f) hereof in writing as of the relevant date and Dealer shall not be obligated to consult with Counterparty if such consultation would have an adverse impact on Dealer under the Transaction) unless Dealer reasonably determines that it is impracticable or inappropriate to preserve the Transaction. For the avoidance of doubt, the foregoing provisions will apply regardless of whether any Merger Event or Tender Offer gives rise to an Early Conversion.

Modified Calculation Agent Adjustment as set forth in Section 12.3(d) of the Equity Definitions; *provided that*, in respect of an Announcement Event, (v) references to “Tender Offer” shall be replaced by references to “Announcement Event” and references to “Tender Offer Date” shall be replaced by references to “date of such Announcement Event”, (w) the phrase “exercise, settlement, payment or any other terms of the Transaction (including, without limitation, the spread)” shall be replaced with the phrase “Cap Price (*provided that* in no event shall the Cap Price be less than the Strike Price)”, (x) the words “whether within a commercially reasonable period of time (as determined by the Calculation Agent) prior to or after the Announcement Event” shall be inserted prior to the word “which” in the seventh line, (y) the text beginning “Cancellation...” in the 11th line thereof through the end of the paragraph shall be deleted and replaced with “such event shall constitute an Additional Termination Event with respect to which the Transaction is the sole Affected Transaction and Counterparty is the sole Affected Party, and Dealer shall be the party entitled to designate an Early Termination Date pursuant to Section 6(b) of the Agreement and to determine the amount payable pursuant to Section 6(e) of the Agreement” and (z) for the avoidance of doubt, the Calculation Agent shall determine whether the relevant Announcement Event has had a material economic effect on the Transaction (and, if so, shall adjust the Cap Price accordingly to account for such economic effect in a commercially reasonable manner) on one or more occasions on or after the date of the Announcement Event up to, and including, the Expiration Date, any Early Termination Date and/or any other date of cancellation, it being understood that any adjustment in respect of an Announcement Event shall take into account any earlier adjustment relating to the same Announcement Event. An Announcement Event shall be an “Extraordinary Event” for purposes of the Equity Definitions, to which Article 12 of the Equity Definitions is applicable.

Announcement Event:

(i) The public announcement by Issuer, any affiliate or agent of Issuer, any Valid Third Party Entity or any agent or affiliate of a Valid Third Party Entity (each, a “**Relevant Entity**”) of (x) any transaction or event that, if completed, would constitute a Merger Event or Tender Offer, (y) any potential acquisition or disposition by Issuer and/or its subsidiaries where the aggregate consideration exceeds 35% of the market capitalization of Issuer as of the date of such announcement (an “**Acquisition Transaction**”) or (z) the intention to enter into a Merger Event or Tender Offer or an Acquisition Transaction, (ii) the public announcement by Issuer of an intention to solicit or enter into, or to explore strategic alternatives or other similar undertaking that may include, a Merger Event or Tender Offer or an Acquisition Transaction or (iii) any subsequent public announcement by a Relevant Entity of a change to a transaction or intention that is the subject of an announcement of the type described in clause (i) or (ii) of this sentence (including, without limitation, a new announcement by a Relevant Entity relating to such a transaction or intention or the announcement of a withdrawal from, or the abandonment or discontinuation of, such a transaction or intention), as determined by the Calculation Agent. For the avoidance of doubt, the occurrence of an Announcement Event with respect to any transaction or intention shall not preclude the occurrence of a later Announcement Event with respect to such transaction or intention. For purposes of this definition of “Announcement Event,” (A) “Merger Event” shall mean such term as defined under Section 12.1(b) of the Equity Definitions (but, for the avoidance of doubt, the remainder of the definition of “Merger Event” in Section 12.1(b) of the Equity Definitions following the definition of “Reverse Merger” therein shall be disregarded) and (B) “Tender Offer” shall mean such term as defined under Section 12.1(d) of the Equity Definitions.

Valid Third Party Entity:

In respect of any transaction, any third party that has a *bona fide* intent to enter into or consummate such transaction (it being understood and agreed that in determining whether such third party has such a *bona fide* intent, the Calculation Agent may take into consideration the effect of the relevant announcement by such third party on the Shares and/or options relating to the Shares).

Nationalization, Insolvency or Delisting:

Cancellation and Payment (Calculation Agent Determination); *provided* that notwithstanding Section 12.6(c)(ii) of the Equity Definitions such event shall constitute an Additional Termination Event with respect to which the Transaction is the sole Affected Transaction and Counterparty is the sole Affected Party, and Dealer shall be the party entitled to designate an Early Termination Date pursuant to Section 6(b) of the Agreement and to determine the amount payable pursuant to Section 6(e) of the Agreement; *provided further* that, in addition to the provisions of Section 12.6(a)(iii) of the Equity Definitions, it will also constitute a Delisting if the Exchange is located in the United States and the Shares are not immediately re-listed, re-traded or re-quoted on any of the New York Stock Exchange, The Nasdaq Global Select Market or The Nasdaq Global Market (or their respective successors); if the Shares are immediately re-listed, re-traded or re-quoted on any of the New York Stock Exchange, The Nasdaq Global Select Market or The Nasdaq Global Market (or their respective successors), such exchange or quotation system shall thereafter be deemed to be the Exchange.

Additional Disruption Events:

Change in Law:

Applicable; *provided* that (i) Section 12.9(a)(ii) of the Equity Definitions is hereby amended by replacing the parenthetical beginning after the word “regulation” in the second line thereof with the words “(including, for the avoidance of doubt and without limitation, (x) any tax law or (y) adoption or promulgation of new regulations authorized or mandated by existing statute),” (ii) Section 12.9(a)(ii)(X) of the Equity Definitions is hereby amended by replacing the word “Shares” with the phrase “its Hedge Positions”, (iii) Section 12.9(a)(ii)(X) of the Equity Definitions is hereby amended by immediately following the word “Transaction”, adding the phrase “in the manner contemplated by the Hedging Party on the Trade Date” and (iv) adding the words “*provided* that, in the case of clause (Y) hereof where such determination is based on Dealer’s policies and procedures, such policies and procedures have been adopted by Dealer in good faith and are generally applicable in similar situations and applied in a non-discriminatory manner” after the semicolon in the last line thereof.

Failure to Deliver:

Applicable

Hedging Disruption:

Applicable; *provided* that:

- (i) Section 12.9(a)(v) of the Equity Definitions is hereby amended by (a) inserting the following words at the end of clause (A) thereof: “in the manner contemplated by the Hedging Party on the Trade Date” and (b) inserting the following language at the end of such Section:

“, *provided* that any such inability that occurs solely due to the deterioration of the creditworthiness of the Hedging Party shall not be deemed a Hedging Disruption. For the avoidance of doubt, the term “equity price risk” shall be deemed to include, but shall not be limited to, stock price and volatility risk. And, for the further avoidance of doubt, any such transactions or assets referred to in phrases (A) or (B) above must be available on commercially reasonable pricing terms.”; and

(ii) Section 12.9(b)(iii) of the Equity Definitions is hereby amended by inserting in the third line thereof, after the words “to terminate the Transaction”, the words “or a portion of the Transaction affected by such Hedging Disruption”.

Increased Cost of Hedging:

Not Applicable

Hedging Party:

For all applicable Additional Disruption Events, Dealer or an affiliate of Dealer; *provided* that all calculations and determinations by the Hedging Party shall be made in good faith and in a commercially reasonable manner; *provided further* that nothing herein shall limit or alter, or be deemed to limit or alter, the ability of Dealer or an affiliate of Dealer (whether acting as Dealer, the Hedging Party, the Determining Party or the Calculation Agent) to hedge its obligations under the Transaction in a manner it deems appropriate, as determined by Dealer or an affiliate of Dealer in its sole discretion. The Hedging Party agrees that it will comply with the provisions set forth in the second paragraph under “Calculation Agent” below.

Determining Party:

For all applicable Extraordinary Events, Dealer; *provided, however*, that all calculations, adjustments and determinations by the Determining Party shall be made in good faith and in a commercially reasonable manner. Dealer agrees that it will comply with the provisions set forth in the second paragraph under “Calculation Agent” in Section 4 below in respect of any calculation, adjustment or determination it makes as Determining Party.

Acknowledgments:

Non-Reliance:

Applicable

Agreements and Acknowledgments  
Regarding Hedging Activities:

Applicable

Additional Acknowledgments:

Applicable

**4. Calculation Agent.**

Dealer; *provided* that, following the occurrence and during the continuance of an Event of Default of the type described in Section 5(a)(vii) of the Agreement with respect to which Dealer is the sole Defaulting Party, Counterparty shall have the right to designate a nationally recognized independent equity derivatives dealer to replace Dealer as the Calculation Agent, and the parties shall work in good faith to execute any appropriate documentation required by such replacement Calculation Agent. All calculations, adjustments and determinations by the Calculation Agent shall be made in good faith and in a commercially reasonable manner.

Following any calculation, adjustment or determination by the Calculation Agent or Determining Party hereunder, upon a written request by Counterparty (which may be by e-mail), the Calculation Agent or Determining Party, as the case may be, shall promptly (but in any event within three Scheduled Trading Days) provide to Counterparty by e-mail to the e-mail address provided by Counterparty in such request a report (in a commonly used file format for the storage and manipulation of financial data) displaying in reasonable detail the basis for such calculation, adjustment or determination (including any quotations, market data, information from internal or external sources or assumptions used in making such calculation, adjustment or determination), it being understood that neither the Calculation Agent nor Determining Party shall be obligated to disclose any confidential or proprietary models or other information that is confidential, proprietary or subject to contractual, legal or regulatory obligations to not disclose such information.

5. **Account Details.**

(a) Account for payments to Counterparty: To Be Advised.

Account for delivery of Shares to Counterparty: To Be Advised.

(b) Account for payments to Dealer (or as otherwise provided by or on behalf of Dealer):

Bank:   
SWIFT:   
Bank Routing:   
Acct Name:   
Acct No.:

Account for delivery of Shares from Dealer: To Be Advised.

6. **Offices.**

(a) The Office of Counterparty for the Transaction is: Inapplicable, Counterparty is not a Multibranch Party.

(b) The Office of Dealer for the Transaction is:

7. **Notices.**

(a) Address for notices or communications to Counterparty:

To: Atlas Energy Solutions Inc.  
5918 W. Courtyard Drive, Suite 500  
Austin, Texas 78730  
Attention: Dathan C. Voelter  
Telephone: (512) 695-3727  
Email: dvoelter@atlas.energy

With a copy to:

Vinson & Elkins LLP  
200 West 6<sup>th</sup> Street, Suite 2500  
Austin, Texas 78701  
Attention: Thomas G. Zentner  
Telephone: (512) 542-8449  
Email: tzentner@velaw.com

(b) Address for notices or communications to Dealer:

**8. Representations and Warranties of Counterparty.**

Counterparty hereby represents and warrants to Dealer that, as of the date hereof, each of the representations and warranties of Counterparty set forth in Section 3 of the Purchase Agreement (the "**Purchase Agreement**") dated as of [\_\_\_\_\_], 2026 between Counterparty and J.P. Morgan Securities LLC, BofA Securities, Inc. and Barclays Capital Inc., as representatives of the initial purchasers (the "**Initial Purchasers**") party thereto, is true and correct and is hereby deemed to be repeated to Dealer as if set forth herein. Counterparty hereby further represents and warrants to Dealer on the date hereof and on and as of the Premium Payment Date that:

- (a) (i) Counterparty has the corporate power to execute, deliver and perform its obligations under this Confirmation; (ii) this Confirmation has been duly authorized, executed and delivered by Counterparty; and (iii) this Confirmation constitutes Counterparty's valid and binding obligation, enforceable against Counterparty in accordance with its terms, subject to (A) bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance and similar laws affecting the rights and remedies of creditors generally, either under state or federal law, (B) general principles of equity and (C) the qualification that broadly worded waivers, waivers of rights to damages, offsets or defenses, indemnification, waivers of unknown or future claims, and waivers of statutory, regulatory or constitutional rights may be limited on public policy or statutory grounds.
- (b) In lieu of the representation set forth in Section 3(a)(iii) of the Agreement, the execution and delivery by Counterparty of this Confirmation and the performance of Counterparty's obligations hereunder (i) will not violate the Amended and Restated Certificate of Incorporation of Counterparty or the Amended and Restated Bylaws of Counterparty, (ii) will not violate any provision of any Covered Laws (other than federal or state securities, commodities or "blue sky" laws, including the antifraud provisions thereof), (iii) will not result in a breach or violation of, or constitute a default under, any agreement or instrument filed as an exhibit to Counterparty's Annual Report on Form 10-K filed on February 24, 2026 (for the year ended December 31, 2025), as updated by any subsequent filings, and (iv) will not conflict with or result in a breach or violation of any order, writ, injunction or decree of any court or governmental authority or agency. "**Covered Laws**" means the laws of the State of New York, the General Corporation Law of the State of Delaware and the federal laws of the United States of America.
- (c) Under the Covered Laws, no consent, approval, license or exemption by, or order or authorization of, or filing, recording or registration with, any governmental authority is required to be obtained or made by Counterparty in connection with the execution and delivery of this Confirmation or the performance by Counterparty of its obligations hereunder, except (i) such as have been obtained or made prior to the date hereof or (ii) such as may be required under federal or state securities laws.
- (d) Counterparty is not and, after consummation of the transactions contemplated hereby, will not be required to register as an "investment company" as such term is defined in the Investment Company Act of 1940, as amended.
- (e) Counterparty is an "eligible contract participant" (as such term is defined in Section 1a(18) of the Commodity Exchange Act, as amended (the "**CEA**"), other than a person that is an eligible contract participant under Section 1a(18)(C) of the CEA).
- (f) Counterparty is not, on the date hereof, in possession of any material non-public information with respect to Counterparty or the Shares.
- (g) Counterparty is not aware of any state or local (including any non-U.S. jurisdiction's) law, rule, regulation or regulatory order applicable to the Shares that would give rise to any reporting, consent, registration or other requirement (including without limitation a requirement to obtain prior approval from any person or entity) as a result of Dealer or its affiliates owning or holding (however defined) Shares.
- (h) Counterparty (A) is capable of evaluating investment risks independently, both in general and with regard to all transactions and investment strategies involving a security or securities; (B) will exercise independent judgment in evaluating the recommendations of any broker-dealer or its associated persons, unless it has otherwise notified the broker-dealer in writing; and (C) has total assets of at least USD 50 million.

- (i) The assets used in the Transaction (1) are not assets of any “plan” (as such term is defined in Section 4975 of the U.S. Internal Revenue Code of 1986, as amended (the “Code”)) subject to Section 4975 of the Code or any “employee benefit plan” (as such term is defined in Section 3(3) of the U.S. Employee Retirement Income Security Act of 1974, as amended (“ERISA”)) subject to Title I of ERISA, and (2) do not constitute “plan assets” within the meaning of Department of Labor Regulation 2510.3-101, 29 CFR Section 2510-3-101.
- (j) On and immediately after each of the Trade Date and the Premium Payment Date, (A) Counterparty will not be insolvent or rendered insolvent, left with unreasonably small capital or intend to incur debts beyond its ability to pay its debts as they mature, as these concepts are used in Section 548(a)(1)(B) of the U.S. Bankruptcy Code (Title 11 of the United States Code) (the “Bankruptcy Code”) and (B) Counterparty would be able to purchase the Number of Shares in compliance with Section 160 of the General Corporation Law of the State of Delaware.
- (k) Without limiting the generality of Section 13.1 of the Equity Definitions, Counterparty acknowledges that neither Dealer nor any of its affiliates is making any representations or warranties or taking any position or expressing any view with respect to the treatment of the Transaction under any accounting standards including ASC Topic 260, *Earnings Per Share*, ASC Topic 815, *Derivatives and Hedging*, or ASC Topic 480, *Distinguishing Liabilities from Equity* and ASC 815-40, *Derivatives and Hedging - Contracts in Entity's Own Equity* (or any successor issue statements) or any other accounting guidance.
- (l) Counterparty acknowledges that the Transaction may constitute a purchase of its equity securities. Counterparty further acknowledges that, pursuant to the provisions of the Coronavirus Aid, Relief and Economic Security Act (the “Cares Act”), Counterparty will be required to agree to certain time-bound restrictions on its ability to purchase its equity securities if it receives loans, loan guarantees or direct loans (as that term is defined in the Cares Act) under section 4003(b) of the Cares Act. Counterparty further acknowledges that it may be required to agree to certain time-bound restrictions on its ability to purchase its equity securities if it receives loans, loan guarantees or direct loans (as that term is defined in the Cares Act) under programs or facilities established by the Board of Governors of the Federal Reserve System for the purpose of providing liquidity to the financial system. Accordingly, Counterparty represents and warrants that it has not applied, and throughout the term of the Transaction shall not apply, for a loan, loan guarantee, direct loan (as that term is defined in the Cares Act) or other investment, or to receive any financial assistance or relief (howsoever defined) under any program or facility that (a) is established under applicable law, including the Cares Act and the Federal Reserve Act, as amended, and (b) requires, as a condition of such loan, loan guarantee, direct loan (as that term is defined in the Cares Act), investment, financial assistance or relief, that Counterparty agree, attest, certify or warrant that it has not, as of the date specified in such condition, repurchased, or will not repurchase, any equity security of Counterparty.

9. **Other Provisions.**

- (a) *Opinions.* Counterparty shall deliver to Dealer an opinion of counsel, dated as of the Premium Payment Date and reasonably acceptable to Dealer in form and substance, with respect to the matters set forth in Sections 8(a), 8(b)(i)-(iii) and 8(c) of this Confirmation, subject to customary assumptions, qualifications and exceptions. Delivery of such opinion to Dealer shall be a condition precedent for the purpose of Section 2(a)(iii) of the Agreement with respect to each obligation of Dealer under Section 2(a)(i) of the Agreement.

- (b) Repurchase Notices. Counterparty shall, on any day on which Counterparty effects any repurchase of Shares, promptly give Dealer a written notice of such repurchase (a “**Repurchase Notice**”) on such day if following such repurchase, the number of outstanding Shares as determined on such day is (i) less than [ ]<sup>16</sup> million (in the case of the first such notice) or (ii) thereafter more than [ ]<sup>17</sup> million less than the number of Shares included in the immediately preceding Repurchase Notice; *provided* that, with respect to any repurchase of Shares pursuant to a plan under Rule 10b5-1 under the Exchange Act (as defined below), Counterparty may elect to satisfy such requirement by giving Dealer written notice of entry into such plan on the date of such entry, the maximum number of Shares that may be purchased thereunder and the approximate dates or periods during which such repurchases may occur (with such maximum number of Shares deemed repurchased on the date of such notice for purposes of this Section 9(b)), in each case so long as such written notice shall not contain any material non-public information with respect to the Issuer or the Shares. Counterparty agrees to indemnify and hold harmless Dealer and its affiliates and their respective officers, directors, employees, affiliates, advisors, agents and controlling persons (each, an “**Indemnified Person**”) from and against any and all losses (including losses relating to Dealer’s commercially reasonable hedging activities as a consequence of becoming, or of the risk of becoming, a Section 16 “insider”, including without limitation, any forbearance from commercially reasonable hedging activities or cessation of commercially reasonable hedging activities and any losses in connection therewith with respect to the Transaction), claims, damages, judgments, liabilities and reasonable expenses (including reasonable out-of-pocket attorney’s fees of one outside counsel in each relevant jurisdiction), joint or several, which an Indemnified Person may become subject to, as a result of Counterparty’s failure to provide Dealer with a Repurchase Notice on the day and in the manner specified in this paragraph, and to reimburse, within 30 days, upon written request, each of such Indemnified Persons for any reasonable out-of-pocket legal or other expenses incurred in connection with investigating, preparing for, providing testimony or other evidence in connection with or defending any of the foregoing. If any suit, action, proceeding (including any governmental or regulatory investigation), claim or demand shall be brought or asserted against the Indemnified Person as a result of Counterparty’s failure to provide Dealer with a Repurchase Notice in accordance with this paragraph, such Indemnified Person shall promptly notify Counterparty in writing, and Counterparty, upon request of the Indemnified Person, shall retain counsel reasonably satisfactory to the Indemnified Person to represent the Indemnified Person and any others Counterparty may designate in such proceeding and shall pay the reasonable fees and expenses of such counsel related to such proceeding. Counterparty shall not be liable for any settlement of any proceeding contemplated by this paragraph that is effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, Counterparty agrees to indemnify any Indemnified Person from and against any loss or liability by reason of such settlement or judgment. Counterparty shall not, without the prior written consent of the Indemnified Person (such consent not to be unreasonably withheld, conditioned or delayed), effect any settlement of any pending or threatened proceeding contemplated by this paragraph that is in respect of which any Indemnified Person is or would have been a party and indemnity could have been sought hereunder by such Indemnified Person, unless such settlement includes an unconditional release of such Indemnified Person from all liability on claims that are the subject matter of such proceeding on terms reasonably satisfactory to such Indemnified Person. If the indemnification provided for in this paragraph is unavailable to an Indemnified Person or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then Counterparty, in lieu of indemnifying such Indemnified Person thereunder, shall contribute to the amount paid or payable by such Indemnified Person as a result of such losses, claims, damages or liabilities. The remedies provided for in this paragraph (b) are not exclusive and shall not limit any rights or remedies which may otherwise be available to any Indemnified Person at law or in equity. The indemnity and contribution agreements contained in this paragraph shall remain operative and in full force and effect regardless of the termination of the Transaction.
- (c) Regulation M. Counterparty is not on the Trade Date engaged in a distribution, as such term is used in Regulation M under the Exchange Act, of any securities of Counterparty, other than a distribution meeting the requirements of the exception set forth in Rules 101(b)(10) and 102(b)(7) of Regulation M. Counterparty shall not, until the second Scheduled Trading Day immediately following the Effective Date, engage in any such distribution.

---

<sup>16</sup> To be the number of Shares outstanding that would cause Dealer’s current position in the shares underlying the Transaction (including the number of Shares underlying any additional transaction if the greenshoe is exercised in full, and any Shares under pre-existing call option transactions with Counterparty) to increase by 0.5%. To be determined with respect to Dealer with greatest number of underlying Shares.

<sup>17</sup> To be the number of Shares that, if repurchased, would cause Dealer’s current position in the shares underlying the Transaction (including the number of Shares underlying any additional transaction if the greenshoe is exercised in full, and any Shares under pre-existing call option transactions with Counterparty) to increase by a further 0.5% from the threshold for the first Repurchase Notice. To be determined with respect to Dealer with greatest number of underlying Shares.

- (d) No Manipulation. Counterparty is not entering into the Transaction to create actual or apparent trading activity in the Shares (or any security convertible into or exchangeable for the Shares) or to raise or depress or otherwise manipulate the price of the Shares (or any security convertible into or exchangeable for the Shares) or otherwise in violation of the Exchange Act.
- (e) Transfer or Assignment.
- (i) Counterparty shall have the right to transfer or assign its rights and obligations hereunder with respect to all, but not less than all, of the Options hereunder (such Options, the “**Transfer Options**”); *provided* that such transfer or assignment shall be subject to reasonable conditions that Dealer may impose, including but not limited, to the following conditions:
- (A) With respect to any Transfer Options, Counterparty shall not be released from its notice and indemnification obligations pursuant to Section 9(b) or any obligations under Section 9(n) or 9(s) of this Confirmation;
- (B) Any Transfer Options shall only be transferred or assigned to a third party that is a “United States person” (as defined in Section 7701(a)(30) of the Code);
- (C) Such transfer or assignment shall be effected on terms, including any reasonable undertakings by such third party (including, but not limited to, an undertaking with respect to compliance with applicable securities laws in a manner that, in the commercially reasonable judgment of Dealer, will not expose Dealer to material risks under applicable securities laws) and execution of any documentation and delivery of legal opinions with respect to securities laws and other matters by such third party and Counterparty, as are requested and reasonably satisfactory to Dealer;
- (D) Dealer will not, as a result of such transfer or assignment (including, for the avoidance of doubt, after giving effect to any indemnity or other contractual obligation from the transferee or assignee to Dealer provided in connection with such transfer or assignment), be required to (i) pay or deliver to the transferee or assignee on any payment date or delivery date an amount or a number of Shares under Section 2(d)(i)(4) of the Agreement greater than an amount or a number of Shares that Dealer would have been required to pay or deliver to Counterparty in the absence of such transfer or assignment (except to the extent that the greater amount or number of Shares is due to a Change in Tax Law after the date of such transfer or assignment) or (ii) receive from the transferee or assignee on any payment date an amount, after taking into account amounts payable under Section 2(d)(i)(4) of the Agreement as well as any applicable withholding, that would be less than the amount, if any, that Dealer would have received from Counterparty in the absence of such transfer or assignment (except to the extent that the lesser amount is due to a Change in Tax Law after the date of such transfer or assignment);
- (E) An Event of Default, Potential Event of Default or Termination Event will not occur as a result of such transfer or assignment;
- (F) Without limiting the generality of clause (B), Counterparty shall cause the transferee or assignee to make such Payee Tax Representations and to provide such tax documentation (including a duly executed and completed U.S. Internal Revenue Service Form W-9 (or applicable successor form)) as may be reasonably requested by Dealer to permit Dealer to determine that results described in clauses (D) and (E) will not occur upon or after such transfer or assignment; and

- (G) Counterparty shall be responsible for reasonable out-of-pocket costs and expenses, including reasonable counsel fees, incurred by Dealer in connection with such transfer or assignment.
- (ii) Dealer may transfer or assign all or any part of its rights or obligations under the Transaction (A) without Counterparty's consent (but with prompt subsequent (but in no event more than two Exchange Business Days') written notice to Counterparty), to any affiliate of Dealer (1) that has a long-term issuer rating or a rating for its long term, unsecured and unsubordinated indebtedness that is equal to or better than the lesser of (a) Dealer's long-term issuer rating or the rating for Dealer's long-term, unsecured and unsubordinated indebtedness at the time of such transfer or assignment and (b) A- by S&P Global Ratings, a division of S&P Global Inc., or its successor ("**S&P**"), or A3 by Moody's Investors Service, Inc. or its successor ("**Moody's**") or, if either S&P or Moody's ceases to rate such issuer or such indebtedness, as the case may be, at least an equivalent rating or better by a substitute rating agency mutually agreed by Counterparty and Dealer, or (2) whose obligations hereunder will be guaranteed, pursuant to the terms of a customary guarantee in a form used by Dealer generally for similar transactions, by Dealer (or its ultimate parent), or (B) with Counterparty's consent (such consent not to be unreasonably withheld or delayed), to any other third party with a long-term issuer rating or a rating for its long term, unsecured and unsubordinated indebtedness equal to or better than the lesser of (1) Dealer's long-term issuer rating or the rating for Dealer's long-term, unsecured and unsubordinated indebtedness at the time of such transfer or assignment and (2) A- by S&P or A3 by Moody's or, if either S&P or Moody's ceases to rate such issuer or such indebtedness, as the case may be, at least an equivalent rating or better by a substitute rating agency mutually agreed by Counterparty and Dealer; *provided that* (x) Dealer and such affiliate or third party, as the case may be, both qualify as "dealers in securities" within the meaning of Section 475(c)(1) of the Code or such transfer or assignment does not result in a deemed exchange by Counterparty within the meaning of Section 1001 of the Code, (y) Counterparty will not, as a result of any transfer or assignment (including, for the avoidance of doubt, after giving effect to any indemnity or other contractual obligation from the transferee or assignee to Counterparty provided in connection with such transfer or assignment), be required to (I) pay the transferee or assignee on any payment date an amount under Section 2(d)(i)(4) of the Agreement greater than the amount, if any, that Counterparty would have been required to pay to Dealer in the absence of such transfer or assignment (except to the extent that the greater amount is due to a Change in Tax Law after the date of such transfer or assignment) or (II) receive from the transferee or assignee on any payment date an amount, after taking into account amounts payable or deliverable under Section 2(d)(i)(4) of the Agreement as well as any applicable withholding, that would be less than the amount or a number of Shares, if any, that Counterparty would have received from Dealer in the absence of such transfer or assignment (except to the extent that the lesser amount or number of Shares is due to a Change in Tax Law after the date of such transfer or assignment), and (z) Dealer shall cause the transferee or assignee to make such Payee Tax Representations and to provide such tax documentation (including a duly executed and completed U.S. Internal Revenue Service Form W-9 or applicable Form W-8 (or applicable successor form)) as may be reasonably requested by Counterparty to permit Counterparty to determine that the result described in clauses (x) and (y) will not occur upon or after such transfer or assignment. Dealer shall notify Counterparty of any transfer or assignment pursuant to the foregoing sentence promptly following such transfer or assignment. If at any time at which (A) the Section 16 Percentage exceeds 8.5%, (B) the Option Equity Percentage exceeds 14.5% or (C) the Share Amount exceeds the Applicable Share Limit (if any applies) (any such condition described in clauses (A), (B) or (C), an "**Excess Ownership Position**"), Dealer is unable after using its commercially reasonable efforts to effect a transfer or assignment of Options to a third party on pricing terms reasonably acceptable to Dealer and within a time period reasonably acceptable to Dealer such that no Excess Ownership Position exists, then Dealer may designate any Exchange Business Day as an Early Termination Date with respect to a portion of the Transaction (the "**Terminated Portion**"), such that following such partial termination no Excess Ownership Position exists. In the event that Dealer so designates an Early Termination Date with respect to a portion of the Transaction, a payment shall be made pursuant to Section 6 of the Agreement as if (1) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Transaction and a Number of Options equal to the number of Options underlying the Terminated Portion, (2) Counterparty were the sole Affected Party with respect to such partial termination and (3) the Terminated Portion were the sole Affected Transaction (and, for the avoidance of doubt, the provisions of Section 9(k) shall apply to any amount that is payable by Dealer to Counterparty pursuant to this sentence as if Counterparty was not the Affected Party). The "**Section 16 Percentage**" as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the number of Shares that Dealer and each person subject to aggregation of Shares with Dealer and each "group" of which Dealer is a member or may be deemed a member, in each case, under Section 13 or Section 16 of the Exchange Act and rules promulgated thereunder, directly or indirectly beneficially own (as defined under Section 13 or Section 16 of the Exchange Act and rules promulgated thereunder) and (B) the denominator of which is the number of Shares outstanding. The "**Option Equity Percentage**" as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the sum of (1) the product of the Number of Options and the Option Entitlement and (2) the aggregate number of Shares underlying any other call option transaction sold by Dealer to Counterparty, and (B) the denominator of which is the number of Shares outstanding. The "**Share Amount**" as of any day is the number of Shares that Dealer and any person whose ownership position would be aggregated with that of Dealer (Dealer or any such person, a "**Dealer Person**") under any law, rule, regulation, regulatory order or organizational documents or contracts of Counterparty that are, in each case, applicable to ownership of Shares ("**Applicable Restrictions**"), owns, beneficially owns, constructively owns, controls, holds the power to vote or otherwise meets a relevant definition of ownership under any Applicable Restriction, as determined by Dealer in its reasonable discretion. The "**Applicable Share Limit**" means a number of Shares equal to (A) the minimum number of Shares that could give rise to reporting or registration obligations or other requirements (including obtaining prior approval from any person or entity) of a Dealer Person, or could result in an adverse effect on a Dealer Person, under any Applicable Restriction, as determined by Dealer in its reasonable discretion, but excluding reporting obligations arising under Section 13 of the Exchange Act as in effect on the Trade Date, *minus* (B) 1% of the number of Shares outstanding.

- (iii) Notwithstanding any other provision in this Confirmation to the contrary requiring or allowing Dealer to purchase, sell, receive or deliver any Shares or other securities, or make or receive any payment in cash, to or from Counterparty, Dealer may designate any of its affiliates to purchase, sell, receive or deliver such Shares or other securities, or make or receive such payment in cash, and otherwise to perform Dealer's obligations in respect of the Transaction and any such designee may assume such obligations. Dealer shall be discharged of its obligations to Counterparty to the extent of any such performance.
  
- (f) *Staggered Settlement.* If upon advice of counsel with respect to applicable legal and regulatory requirements, including any requirements relating to Dealer's hedging activities hereunder, Dealer reasonably determines that it would not be practicable or advisable to deliver, or to acquire Shares to deliver, any or all of the Shares to be delivered by Dealer on any Settlement Date for the Transaction, Dealer may, by notice to Counterparty on or prior to any Settlement Date (a "**Nominal Settlement Date**"), elect to deliver the Shares on two or more dates (each, a "**Staggered Settlement Date**") as follows:
  - (i) in such notice, Dealer will specify to Counterparty the related Staggered Settlement Dates (the first of which will be such Nominal Settlement Date and the last of which will be no later than the twentieth (20th) Exchange Business Day following such Nominal Settlement Date) and the number of Shares that it will deliver on each Staggered Settlement Date;
  - (ii) the aggregate number of Shares that Dealer will deliver to Counterparty hereunder on all such Staggered Settlement Dates will equal the number of Shares that Dealer would otherwise be required to deliver on such Nominal Settlement Date; and

- (iii) the Settlement Method terms will apply on each Staggered Settlement Date, except that the cash and/or Shares due upon settlement will be allocated among such Staggered Settlement Dates as specified by Dealer in the notice referred to in clause (i) above.
- (g) Role of Agent. [Insert relevant Dealer agency or communications language, if any.] Any performance by Counterparty of its obligations (including notice obligations) through or by means of [DEALER AGENT's] agency for Dealer shall constitute good performance of Counterparty's obligations to Dealer.] [Reserved.]
- (h) Additional Termination Events.
- (i) Notwithstanding anything to the contrary in this Confirmation, upon any Early Conversion in respect of which a "Notice of Conversion" (as such term is defined in the Indenture) that is effective as to Counterparty has been delivered by the relevant converting "Holder" (as such term is defined in the Indenture):
- (A) Counterparty shall, within five Scheduled Trading Days of the "Conversion Date" (as such term is defined in the Indenture) for such Early Conversion, provide written notice (an "**Early Conversion Notice**") to Dealer specifying the number of Convertible Notes surrendered for conversion on such "Conversion Date" (such Convertible Notes, the "**Affected Convertible Notes**"), and the giving of such **Early Conversion Notice** shall constitute an Additional Termination Event as provided in this clause (i); provided that any "Early Conversion Notice" as defined in, and delivered to Dealer pursuant to, the Base Call Option Confirmation shall be deemed to be an Early Conversion Notice pursuant to this Confirmation and the terms of such "Early Conversion Notice" shall apply, *mutatis mutandis*, to this Confirmation]<sup>18</sup>;
- (B) upon receipt of any such Early Conversion Notice, Dealer shall designate an Exchange Business Day as an Early Termination Date (which Exchange Business Day shall be no earlier than one Scheduled Trading Day following the "Conversion Date" (as such term is defined in the Indenture) for such Early Conversion) with respect to the portion of the Transaction corresponding to a number of Options (the "**Affected Number of Options**") equal to the lesser of (x) the number of Affected Convertible Notes [*minus* the "Affected Number of Options" (as defined in the Base Call Option Confirmation), if any, that relate to such Affected Convertible Notes (and for the purposes of determining whether any Options under this Confirmation or under, and as defined in, the Base Call Option Confirmation will be among the Affected Number of Options hereunder or under, and as defined in, the Base Call Option Confirmation, such Affected Convertible Notes shall be allocated first to the Base Call Option Confirmation until all Options thereunder are exercised or terminated)]<sup>19</sup> and (y) the Number of Options as of the "Conversion Date" (as such term is defined in the Indenture) for such Early Conversion;

---

<sup>18</sup> Include in Additional Call Option Confirmation only.

<sup>19</sup> Include in Additional Call Option Confirmation only.

- (C) any payment hereunder with respect to such termination shall be calculated pursuant to Section 6 of the Agreement as if (x) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Transaction and a Number of Options equal to the Affected Number of Options, (y) Counterparty were the sole Affected Party with respect to such Additional Termination Event and (z) the terminated portion of the Transaction were the sole Affected Transaction; *provided* that the amount payable with respect to such termination shall not be greater than (1) the Applicable Percentage, *multiplied by* (2) the Affected Number of Options, *multiplied by* (3) (x) the sum of (i) the amount of cash paid (if any) to the “Holder” (as such term is defined in the Indenture) of an Affected Convertible Note upon conversion of such Affected Convertible Note (including any cash payable pursuant to Section 14.03 of the Indenture) and (ii) the number of Shares delivered (if any) to the “Holder” (as such term is defined in the Indenture) of an Affected Convertible Note upon conversion of such Affected Convertible Note (including any Shares deliverable pursuant to Section 14.03 of the Indenture), *multiplied by* the Applicable Limit Price on the date of delivery of such number of Shares upon settlement of the conversion of the relevant Affected Convertible Note (the “**Conversion Settlement Date**”), *minus* (y) the Synthetic Instrument Adjusted Issue Price per Affected Convertible Note, as determined by the Calculation Agent in good faith and in a commercially reasonable manner. “**Synthetic Instrument Adjusted Issue Price**” shall mean the amount determined by the Calculation Agent by reference to the table set forth below (the “**Synthetic Instrument AIP Table**”) based on the Conversion Settlement Date (the “**Unwind Date**”). If the relevant Unwind Date is not listed below, the amount in the preceding sentence shall be determined by the Calculation Agent by reference to the table below using a linear interpolation between the lower and higher Synthetic Instrument Adjusted Issue Prices for the Unwind Dates immediately preceding and immediately following the relevant Unwind Date. For the avoidance of doubt, any payment pursuant to this paragraph shall be subject to Section 9(k) of this Confirmation.

Unwind Date	Synthetic Instrument Adjusted Issue Price
[ ] <sup>20</sup>	USD [ ]
October 15, 2026	USD [ ]
April 15, 2027	USD [ ]
October 15, 2027	USD [ ]
April 15, 2028	USD [ ]
October 15, 2028	USD [ ]
April 15, 2029	USD [ ]
October 15, 2029	USD [ ]
April 15, 2030	USD [ ]
October 15, 2030	USD [ ]
April 15, 2031	USD 1,000.00

- (D) Counterparty shall notify Dealer (which notice may, for the avoidance of doubt, be by e-mail) of the amount of cash, if any, paid to the “Holder” (as such term is defined in the Indenture) and the number of Shares, if any, delivered to the “Holder” (as such term is defined in the Indenture), in each case as described in clause (3) of the foregoing Section 9(h)(i)(C), prior to the relevant Early Termination Date;
- (E) for the avoidance of doubt, in determining the amount payable in respect of such Affected Transaction pursuant to Section 6 of the Agreement, the Calculation Agent shall assume that (x) the relevant Early Conversion and any conversions, adjustments, agreements, payments, deliveries or acquisitions by or on behalf of Counterparty leading thereto had not occurred, (y) no adjustments to the “Conversion Rate” (as defined in the Indenture) have occurred pursuant to any Excluded Provision and (z) the corresponding Convertible Notes remain outstanding; and
- (F) the Transaction shall remain in full force and effect, except that, as of the “Conversion Date” (as such term is defined in the Indenture) for such Early Conversion, the Number of Options shall be reduced by the Affected Number of Options.

<sup>20</sup> Insert initial settlement date of the Convertible Notes.

- (ii) Within five Scheduled Trading Days following any Repayment Event (as defined below), Counterparty (x) in the case of a Repayment Event resulting from the repurchase of any Convertible Notes by Counterparty (1) upon the occurrence of a “Fundamental Change” (as defined in the Indenture), or (2) in connection with an “Optional Redemption” (as defined in the Indenture), shall notify Dealer in writing of such Repayment Event and (y) in the case of a Repayment Event not described in clause (x) above, may notify Dealer of such Repayment Event, in each case, including the aggregate principal amount of Convertible Notes subject to such Repayment Event (any such notice, a “**Repayment Notice**”); *provided* that no such Repayment Notice described in clause (x)(2) or (y) above shall be effective unless it contains the representation by Counterparty set forth in Section 8(f) as of the date of such Repayment Notice; *provided further* that any “Repayment Notice” as defined in, and delivered to Dealer pursuant to, the Base Call Option Confirmation shall be deemed to be a Repayment Notice pursuant to this Confirmation and the terms of such “Repayment Notice” shall apply, *mutatis mutandis*, to this Confirmation<sup>21</sup>. The receipt by Dealer from Counterparty of any Repayment Notice shall constitute an Additional Termination Event as provided in this Section 9(h)(ii). Upon receipt of any such Repayment Notice, Dealer shall designate an Exchange Business Day following receipt of such Repayment Notice as an Early Termination Date with respect to the portion of the Transaction corresponding to a number of Options (the “**Repayment Options**”) equal to the lesser of (A) [(x)]<sup>22</sup> the aggregate principal amount of such Convertible Notes specified in such Repayment Notice, *divided by* USD 1,000, [*minus* (y) the number of “Repayment Options” (as defined in the Base Call Option Confirmation), if any, that relate to such Convertible Notes (and for the purposes of determining whether any Options under this Confirmation or under, and as defined in, the Base Call Option Confirmation will be among the Repayment Options hereunder or under, and as defined in, the Base Call Option Confirmation, the Convertible Notes specified in such Repayment Notice shall be allocated first to the Base Call Option Confirmation until all Options thereunder are exercised or terminated)]<sup>23</sup> and (B) the Number of Options as of the date Dealer designates such Early Termination Date and, as of such date, the Number of Options shall be reduced by the number of Repayment Options. Any payment hereunder with respect to such termination (the “**Repayment Unwind Payment**”) shall be calculated pursuant to Section 6 of the Agreement as if (1) an Early Termination Date had been designated in respect of a Transaction having terms identical to the Transaction and a Number of Options equal to the number of Repayment Options, (2) Counterparty were the sole Affected Party with respect to such Additional Termination Event and (3) the terminated portion of the Transaction were the sole Affected Transaction; *provided* that, in the event of a Repayment Event resulting from a “Fundamental Change” (as defined in the Indenture) or in connection with an “Optional Redemption” (as defined in the Indenture), the Repayment Unwind Payment shall not be greater than (x) the number of Repayment Options *multiplied by* (y) the product of (A) the Applicable Percentage and (B) the excess of (I) the amount paid by Counterparty per Convertible Note in connection with such Repayment Event pursuant to the relevant sections of the Indenture over (II) the Synthetic Instrument Adjusted Issue Price per Convertible Note determined by the Calculation Agent by reference to the Synthetic Instrument AIP Table based on the date of the Repayment Event (the “**Repayment Unwind Date**”) as if such Repayment Unwind Date were the Unwind Date. If the Repayment Unwind Date is not listed in the Synthetic Instrument AIP Table, the amount in clause (II) of the preceding sentence shall be determined by the Calculation Agent by reference to the Synthetic Instrument AIP Table, using a linear interpolation between the lower and higher Synthetic Instrument Adjusted Issue Prices per Convertible Note for the dates immediately preceding and immediately following the Repayment Unwind Date. For the avoidance of doubt, any payment pursuant to this paragraph shall be subject to Section 9(k) of this Confirmation. “**Repayment Event**” means that (i) any Convertible Notes are repurchased (whether in connection with or as a result of a fundamental change, howsoever defined, or for any other reason) or redeemed by Counterparty or any of its subsidiaries, (ii) any Convertible Notes are delivered to Counterparty or any of its subsidiaries in exchange for delivery of any property or assets of such party (howsoever described), (iii) any principal of any of the Convertible Notes is repaid prior to the final maturity date of the Convertible Notes (for any reason other than as a result of an acceleration of the Convertible Notes that results in an Additional Termination Event pursuant to the following Section 9(h)(iii)), or (iv) any Convertible Notes are exchanged by or for the benefit of the “Holders” (as defined in the Indenture) thereof for any other securities of Counterparty or any of its subsidiaries (or any other property, or any combination thereof) pursuant to any exchange offer or similar transaction. For the avoidance of doubt, any conversion of Convertible Notes (whether into cash, Shares, “Reference Property” (as defined in the Indenture) or any combination thereof) pursuant to the terms of the Indenture shall not constitute a Repayment Event.

---

<sup>21</sup> Insert for Additional Call Option Confirmation.

<sup>22</sup> Insert for Additional Call Option Confirmation.

<sup>23</sup> Insert for Additional Call Option Confirmation.

(iii) Notwithstanding anything to the contrary in this Confirmation, if an event of default with respect to Counterparty occurs under the terms of the Convertible Notes as set forth in Section 6.01 of the Indenture and such event of default results in the Convertible Notes becoming or being declared due and payable pursuant to the terms of the Indenture, then such event of default shall constitute an Additional Termination Event applicable to the Transaction and, with respect to such Additional Termination Event, (A) Counterparty shall be deemed to be the sole Affected Party, (B) the Transaction shall be the sole Affected Transaction and (C) Dealer shall be the party entitled to designate an Early Termination Date pursuant to Section 6(b) of the Agreement.

(i) Amendments to Equity Definitions.

- (i) Section 11.2(e)(v) of the Equity Definitions is hereby amended by adding the phrase “, *provided* that, notwithstanding this Section 11.2(e)(v), the parties hereto agree that, with respect to the Transaction, the following repurchases of Shares by the Issuer or any of its subsidiaries shall not be considered Potential Adjustment Events: any repurchases of Shares in open-market transactions at prevailing market prices or privately negotiated accelerated Share repurchase (or similar) transactions that are entered into at prevailing market prices and in accordance with customary market terms for transactions of such type to repurchase the Shares, in each case, to the extent that, after giving effect to such transactions, the aggregate number of Shares repurchased during the term of the Transaction pursuant to all transactions described in this proviso would not exceed 20% of the number of Shares outstanding as of the Trade Date, as determined by the Calculation Agent” at the end of such Section.
- (ii) Section 11.2(e)(vii) of the Equity Definitions is hereby amended by deleting the words “that may have a diluting or concentrative effect on the theoretical value of the relevant Shares” and replacing them with the words “that is the result of a corporate event involving the Issuer or its securities that has, in the commercially reasonable judgment of the Calculation Agent, a material economic effect on the Shares or options on the Shares; *provided* that such event is not based on (a) an observable market, other than the market for the Issuer’s own stock or (b) an observable index, other than an index calculated and measured solely by reference to the Issuer’s own operations.”
- (iii) Section 12.1(d) of the Equity Definitions is hereby amended by replacing “10%” with “20%”.
- (iv) Section 12.6(a)(ii) of the Equity Definitions is hereby amended by (1) deleting from the fourth line thereof the word “or” after the word “official” and inserting a comma therefor, and (2) deleting the semi-colon at the end of subsection (B) thereof and inserting the following words therefor: “or (C) at Dealer’s option, the occurrence of any of the events specified in Section 5(a)(vii) (1) through (9) of the ISDA Master Agreement with respect to that Issuer;”.

(v) Section 12.9(b)(i) of the Equity Definitions is hereby amended by (1) replacing “either party may elect” with “Dealer may elect” and (2) replacing “notice to the other party” with “notice to Counterparty” in the first sentence of such section.

(j) No Collateral or Setoff. Notwithstanding any provision of the Agreement or any other agreement between the parties to the contrary, the obligations of Counterparty hereunder are not secured by any collateral. Obligations under the Transaction shall not be set off by either party against any other obligations of the parties, whether arising under the Agreement, this Confirmation or any other agreement between the parties hereto, by operation of law or otherwise. For the avoidance of doubt and notwithstanding anything to the contrary provided in this Section 9(j), in the event of bankruptcy or liquidation of either party, neither party shall have the right to set off any obligation that it may have to the other party under the Transaction against any obligation such other party may have to it, whether arising under the Agreement, this Confirmation or any other agreement between the parties hereto, by operation of law or otherwise.

(k) Alternative Calculations and Payment on Early Termination and on Certain Extraordinary Events. If (a) an Early Termination Date (whether as a result of an Event of Default or a Termination Event) occurs or is designated with respect to the Transaction or (b) the Transaction is cancelled or terminated upon the occurrence of an Extraordinary Event (except as a result of (i) a Nationalization, Insolvency or Merger Event in which the consideration to be paid to holders of Shares consists solely of cash, (ii) a Merger Event or Tender Offer that is within Counterparty’s control, or (iii) an Event of Default in which Counterparty is the Defaulting Party or a Termination Event in which Counterparty is the Affected Party other than an Event of Default of the type described in Section 5(a)(iii), (v), (vi), (vii) or (viii) of the Agreement or a Termination Event of the type described in Section 5(b) of the Agreement, in each case that resulted from an event or events outside Counterparty’s control), and if Dealer would owe any amount to Counterparty pursuant to Section 6(d)(ii) and Section 6(e) of the Agreement or any Cancellation Amount pursuant to Article 12 of the Equity Definitions (any such amount, a “**Payment Obligation**”), then Dealer shall satisfy the Payment Obligation by the Share Termination Alternative (as defined below), unless (a) Counterparty gives irrevocable telephonic notice to Dealer, confirmed in writing within one Scheduled Trading Day, no later than 12:00 p.m. (New York City time) on the Merger Date, Tender Offer Date, Announcement Date (in the case of a Nationalization, Insolvency or Delisting), Early Termination Date or date of cancellation, as applicable, of its election that the Share Termination Alternative shall not apply, (b) Counterparty remakes the representation set forth in Section 8(f) as of the date of such election and (c) Dealer agrees, in its sole discretion, to such election, in which case the provisions of Section 12.7 or Section 12.9 of the Equity Definitions, or the provisions of Section 6(d)(ii) and Section 6(e) of the Agreement, as the case may be, shall apply.

Share Termination Alternative:

If applicable, Dealer shall deliver to Counterparty the Share Termination Delivery Property on, or within a commercially reasonable period of time after, the date when the Payment Obligation would otherwise be due pursuant to Section 12.7 or 12.9 of the Equity Definitions or Sections 6(d)(ii) and 6(e) of the Agreement, as applicable, in satisfaction of the Payment Obligation in the manner reasonably requested by Counterparty free of payment.

Share Termination Delivery Property:

A number of Share Termination Delivery Units, as calculated by the Calculation Agent, equal to the Payment Obligation *divided by* the Share Termination Unit Price. The Calculation Agent shall adjust the Share Termination Delivery Property by replacing any fractional portion of a security therein with an amount of cash equal to the value of such fractional security based on the values used to calculate the Share Termination Unit Price.

Share Termination Unit Price: The value to Dealer of property contained in one Share Termination Delivery Unit, as determined by the Calculation Agent in its discretion by commercially reasonable means and notified by the Calculation Agent to Dealer at the time of notification of the Payment Obligation. For the avoidance of doubt, the parties agree that in determining the Share Termination Unit Price the Calculation Agent may consider the purchase price paid in connection with the purchase of Share Termination Delivery Property.

Share Termination Delivery Unit: One Share or, if all of the Shares have changed into cash or any other property or the right to receive solely cash or any other property as the result of a Nationalization, Insolvency or Merger Event (any such cash or other property, the “**Exchange Property**”), a unit consisting of the type and amount of such Exchange Property received by a holder of one Share (without consideration of any requirement to pay cash or other consideration in lieu of fractional amounts of any securities) in such Nationalization, Insolvency or Merger Event, as determined by the Calculation Agent.

Failure to Deliver: Applicable

Other Applicable Provisions: If Share Termination Alternative is applicable, the provisions of Sections 9.8, 9.9 and 9.11 (as modified above) of the Equity Definitions will be applicable, except that all references in such provisions to “Physically-settled” shall be read as references to “Share Termination Settled” and all references to “Shares” shall be read as references to “Share Termination Delivery Units”. “Share Termination Settled” in relation to the Transaction means that Share Termination Alternative is applicable to the Transaction.

- (l) *Registration.* Counterparty hereby agrees that if, in the good faith, reasonable judgment of Dealer based on the advice of counsel, the Shares (“**Hedge Shares**”) acquired by Dealer for the purpose of hedging its obligations pursuant to the Transaction cannot be sold in the public market by Dealer without registration under the Securities Act of 1933, as amended (the “**Securities Act**”), Counterparty shall, at its election, either (i) in order to allow Dealer to sell the Hedge Shares in a registered offering, make available to Dealer an effective registration statement under the Securities Act and (A) enter into an agreement, in form and substance reasonably satisfactory to Dealer, substantially in the form of an underwriting agreement for a registered secondary offering as is customary for registered secondary offerings of substantially similar size, (B) acting in good faith, use its commercially reasonable efforts to provide accountant’s “comfort” letters customary in form for registered offerings of equity securities, (C) provide disclosure opinions of nationally recognized outside counsel to Counterparty reasonably acceptable to Dealer, (D) provide other customary opinions, certificates and closing documents customary in form for registered offerings of equity securities and (E) afford Dealer a reasonable opportunity to conduct a due diligence investigation with respect to Counterparty customary in scope for underwritten offerings of equity securities; *provided, however*, that if Dealer, in its sole reasonable discretion, is not satisfied with access to due diligence materials, the results of its due diligence investigation, or the procedures and documentation for the registered offering referred to above, then clause (ii) or clause (iii) of this paragraph shall apply at the election of Counterparty, (ii) in order to allow Dealer to sell the Hedge Shares in a private placement, enter into and comply with a private placement agreement substantially similar to private placement purchase agreements customary for private placements of equity securities of substantially similar size by similar issuers, in form and substance reasonably satisfactory to Dealer (in which case, the Calculation Agent in good faith and in a commercially reasonable manner shall make any adjustments to the terms of the Transaction that are necessary, in its reasonable judgment, to compensate Dealer for any discount from the public market price of the Shares incurred on the sale of Hedge Shares in a private placement), or (iii) purchase the Hedge Shares from Dealer at the Relevant Price on such Exchange Business Days, and in the amounts, requested by Dealer.

- (m) Notice of Certain Other Events. Counterparty covenants and agrees that:
- (i) promptly following the public announcement of the results of any election by the holders of Shares with respect to the consideration due upon consummation of any Merger Event, Counterparty shall give Dealer written notice of the weighted average of the types and amounts of consideration actually received by holders upon consummation of such Merger Event (the date of such notification, the “**Consideration Notification Date**”); *provided* that in no event shall the Consideration Notification Date be later than the date on which such Merger Event is consummated; and
  - (ii) promptly following any adjustment to the Convertible Notes in connection with any Potential Adjustment Event, Merger Event or Tender Offer, Counterparty shall give Dealer written notice of the details of such adjustment.
- (n) Tax Disclosure. Effective from the date of commencement of discussions concerning the Transaction, Counterparty and each of its employees, representatives, or other agents may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the Transaction and all materials of any kind (including opinions or other tax analyses) that are provided to Counterparty relating to such tax treatment and tax structure.
- (o) Right to Extend. Dealer may postpone or add, in whole or in part, any Valid Day or Valid Days during the Settlement Averaging Period or any other date of valuation, payment or delivery by Dealer, with respect to some or all of the Options hereunder, if Dealer reasonably determines, based on advice of counsel, that such action is reasonably necessary or appropriate to preserve Dealer’s commercially reasonable hedging or hedge unwind activity hereunder in light of existing liquidity conditions or to enable Dealer to effect transactions with respect to Shares in connection with its commercially reasonable hedging, hedge unwind or settlement activity hereunder in a manner that would, if Dealer were Counterparty or an affiliated purchaser of Counterparty, be in compliance with applicable legal, regulatory or self-regulatory organization requirements, or with related policies and procedures applicable to Dealer; *provided* that no such Valid Day or other date of valuation, payment or delivery may be postponed or added more than 80 Valid Days after the original Valid Day or other date of valuation, payment or delivery, as the case may be.
- (p) Status of Claims in Bankruptcy. Dealer acknowledges and agrees that this Confirmation is not intended to convey to Dealer rights against Counterparty with respect to the Transaction that are senior to the claims of common stockholders of Counterparty in any United States bankruptcy proceedings of Counterparty; *provided* that nothing herein shall limit or shall be deemed to limit Dealer’s right to pursue remedies in the event of a breach by Counterparty of its obligations and agreements with respect to the Transaction; *provided, further,* that nothing herein shall limit or shall be deemed to limit Dealer’s rights in respect of any transactions other than the Transaction.
- (q) Securities Contract: Swap Agreement. The parties hereto agree and acknowledge that Dealer is a “financial institution,” “swap participant” and “financial participant” within the meaning of Sections 101(22), 101(53C) and 101(22A) of the Bankruptcy Code. The parties hereto further agree and acknowledge (A) that this Confirmation is (i) a “securities contract,” as such term is defined in Section 741(7) of the Bankruptcy Code, with respect to which each payment and delivery hereunder or in connection herewith is a “termination value,” “payment amount” or “other transfer obligation” within the meaning of Section 362 of the Bankruptcy Code and a “settlement payment” or a “transfer” within the meaning of Section 546 of the Bankruptcy Code, and (ii) a “swap agreement,” as such term is defined in Section 101(53B) of the Bankruptcy Code, with respect to which each payment and delivery hereunder or in connection herewith is a “termination value,” a “payment amount” or “other transfer obligation” within the meaning of Section 362 of the Bankruptcy Code and a “transfer” within the meaning of Section 546 of the Bankruptcy Code, and (B) that Dealer is entitled to the protections afforded by, among other sections, Section 362(b)(6), 362(b)(17), 362(b)(27), 362(o), 546(e), 546(g), 546(j), 548(d)(2), 555, 560 and 561 of the Bankruptcy Code.

- (r) Waiver of Jury Trial. Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to the Transaction. Each party (i) certifies that no representative, agent or attorney of either party has represented, expressly or otherwise, that such other party would not, in the event of such a suit, action or proceeding, seek to enforce the foregoing waiver and (ii) acknowledges that it and the other party have been induced to enter into the Transaction, as applicable, by, among other things, the mutual waivers and certifications provided herein.
- (s) Wall Street Transparency and Accountability Act. In connection with Section 739 of the Wall Street Transparency and Accountability Act of 2010 (“WSTAA”), the parties hereby agree that neither the enactment of WSTAA or any regulation under the WSTAA, nor any requirement under WSTAA or an amendment made by WSTAA, shall limit or otherwise impair either party’s otherwise applicable rights to terminate, renegotiate, modify, amend or supplement this Confirmation or the Agreement, as applicable, arising from a termination event, force majeure, illegality, increased costs, regulatory change or similar event under this Confirmation, the Equity Definitions incorporated herein, or the Agreement (including, but not limited to, rights arising from Change in Law, Hedging Disruption, an Excess Ownership Position, or Illegality (as defined in the Agreement)).
- (t) Agreements and Acknowledgements Regarding Hedging. Counterparty understands, acknowledges and agrees that: (A) at any time on and prior to the Expiration Date, Dealer and its affiliates may buy or sell Shares or other securities or buy or sell options or futures contracts or enter into swaps or other derivative securities in order to adjust its hedge position with respect to the Transaction; (B) Dealer and its affiliates also may be active in the market for Shares other than in connection with hedging activities in relation to the Transaction; (C) Dealer shall make its own determination as to whether, when or in what manner any hedging or market activities in securities of Counterparty shall be conducted and shall do so in a manner that it deems appropriate to hedge its price and market risk with respect to the Relevant Prices; and (D) any market activities of Dealer and its affiliates with respect to Shares may affect the market price and volatility of Shares, as well as the Relevant Prices, each in a manner that may be adverse to Counterparty.
- (u) Early Unwind. In the event the sale of the [“Underwritten Securities”]<sup>24</sup>[“Option Securities”]<sup>25</sup> (as defined in the Purchase Agreement) is not consummated with the Initial Purchasers for any reason, or Counterparty fails to deliver to Dealer the opinion of counsel required pursuant to Section 9(a), in each case, by 5:00 p.m. (New York City time) on the Premium Payment Date, or such later date as agreed upon by the parties (the Premium Payment Date or such later date, the “**Early Unwind Date**”), the Transaction shall automatically terminate (the “**Early Unwind**”) on the Early Unwind Date and (i) the Transaction and all of the respective rights and obligations of Dealer and Counterparty under the Transaction shall be cancelled and terminated and (ii) each party shall be released and discharged by the other party from and agrees not to make any claim against the other party with respect to any obligations or liabilities of the other party arising out of and to be performed in connection with the Transaction either prior to or after the Early Unwind Date. Each of Dealer and Counterparty represents and acknowledges to the other that, upon an Early Unwind, all obligations with respect to the Transaction shall be deemed fully and finally discharged.
- (v) Payment by Counterparty. In the event that, following payment of the Premium, (i) an Early Termination Date occurs or is designated with respect to the Transaction as a result of a Termination Event or an Event of Default (other than an Event of Default arising under Section 5(a)(ii) or 5(a)(iv) of the Agreement) and, as a result, Counterparty owes to Dealer an amount calculated under Section 6(e) of the Agreement, or (ii) Counterparty owes to Dealer, pursuant to Section 12.7 or Section 12.9 of the Equity Definitions, an amount calculated under Section 12.8 of the Equity Definitions, such amount shall be deemed to be zero.

---

<sup>24</sup> Include in Base Call Option Confirmation only.

<sup>25</sup> Include in Additional Call Option Confirmation only.

- (w) Other Adjustments Pursuant to the Equity Definitions. Notwithstanding anything to the contrary in this Confirmation, solely for purposes of this Section 9(w), the terms “Potential Adjustment Event,” “Merger Event,” and “Tender Offer” shall each have the meanings assigned to such term in the Equity Definitions (as amended by Section 9(i)(i), (ii) and (iii)), and upon the occurrence of a Merger Date, the occurrence of a Tender Offer Date, or declaration by Counterparty of the terms of any Potential Adjustment Event, respectively, as such terms are defined in the Equity Definitions (as amended by Section 9(i)(i), (ii) and (iii)), the Calculation Agent shall, acting in good faith and in a commercially reasonable manner, adjust the Cap Price as appropriate to account for the economic effect on the Transaction of such event, without duplication of any other adjustment hereunder or under the Agreement or the Equity Definitions in respect of such event; provided that in no event shall the Cap Price be less than the Strike Price. For purposes of this Section 9(w), the term “Extraordinary Dividend” means any cash dividend on the Shares.
- (x) Conduct Rules. Each party acknowledges and agrees to be bound by the Conduct Rules of the Financial Industry Regulatory Authority, Inc. applicable to transactions in options, and further agrees not to violate the position and exercise limits set forth therein.
- (y) Risk Disclosure Statement. Counterparty represents and warrants that it has received, read and understands the OTC Options Risk Disclosure Statement provided by Dealer and a copy of the most recent disclosure pamphlet prepared by The Options Clearing Corporation entitled “Characteristics and Risks of Standardized Options”.<sup>26</sup>
- (z) Counterparts. This Confirmation may be executed in several counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.
- (aa) Tax Matters.
- (i) Payer Tax Representations. For the purpose of Section 3(e) of the Agreement, each of Dealer and Counterparty makes the following representation:
- It is not required by any applicable law, as modified by the practice of any relevant governmental revenue authority, of any Relevant Jurisdiction to make any deduction or withholding for or on account of any Tax from any payment (other than any amounts treated as interest) to be made by it to the other party under the Agreement. In making this representation, it may rely on (i) the accuracy of any representations made by the other party pursuant to Section 3(f) of the Agreement, (ii) the satisfaction of the agreement contained in Section 4(a)(i) or 4(a)(iii) of the Agreement and the accuracy and effectiveness of any document provided by the other party pursuant to Section 4(a)(i) or 4(a)(iii) of the Agreement and (iii) the satisfaction of the agreement of the other party contained in Section 4(d) of the Agreement, except that it will not be a breach of this representation where reliance is placed on clause (ii) above and the other party does not deliver a form or document under Section 4(a)(iii) of the Agreement by reason of material prejudice to its legal or commercial position.
- (ii) Payee Tax Representations:
- (A) For the purpose of Section 3(f) of the Agreement, Counterparty makes the following representation to Dealer:
- Counterparty is a corporation and a “U.S. person” (as that term is defined in Section 7701(a)(30) of the Code and used in Section 1.1441-4(a)(3)(ii) of the United States Treasury Regulations) for U.S. federal income tax purposes.
- (B) For the purpose of Section 3(f) of the Agreement, Dealer makes the following representations to Counterparty:
- [Insert Dealer tax rep provided by Dealer.]<sup>27</sup>

---

<sup>26</sup> Include for relevant Dealers.

<sup>27</sup> If Dealer provides an IRS Form W-8BEN-E, Dealer to provide a standard tax treaty representation.

- (iii) *Tax Documentation.* For the purpose of Sections 4(a)(i) and (ii) of the Agreement, Counterparty agrees to deliver to Dealer one duly executed and completed U.S. Internal Revenue Service Form W-9 (or successor thereto) and Dealer agrees to deliver to Counterparty [one duly executed and completed U.S. Internal Revenue Service Form [W-9][insert applicable W-8][insert other applicable Dealer tax form] (or successor thereto)]. Such forms or documents shall be delivered (i) on or before the date of execution of this Confirmation, (ii) upon Counterparty or Dealer, as applicable, learning that any such tax form previously provided by it has become obsolete or incorrect and (iii) upon reasonable request of the other party.
- (iv) *Withholding Tax Imposed on Payments to Non-U.S. Counterparties under the United States Foreign Account Tax Compliance.* “Tax” as used in Section 9(aa)(i) above (*Payer Tax Representations*) and “Indemnifiable Tax”, as defined in Section 14 of the Agreement, shall not include any U.S. federal withholding tax imposed or collected pursuant to Sections 1471 through 1474 of the Code, any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code (a “**FATCA Withholding Tax**”). For the avoidance of doubt, a FATCA Withholding Tax is a Tax the deduction or withholding of which is required by applicable law for the purposes of Section 2(d) of the Agreement.
- (bb) *Section 871(m) Protocol.* “Tax” as used in Section 9(aa)(i) above (*Payer Tax Representations*) and “Indemnifiable Tax”, as defined in Section 14 of the Agreement, shall not include any tax imposed on payments treated as dividends from sources within the United States under Section 871(m) of the Code or any regulations issued thereunder. For the avoidance of doubt, any such tax imposed under Section 871(m) of the Code is a Tax the deduction or withholding of which is required by applicable law for the purposes of Section 2(d) of the Agreement.
- (cc) *Hedging Adjustment.* For the avoidance of doubt, whenever Dealer, the Determining Party or the Calculation Agent makes an adjustment or calculation, or the Determining Party or the Calculation Agent makes a determination, in each case, permitted or required to be made pursuant to the terms of this Confirmation or the Equity Definitions to take into account the effect of any event (other than an adjustment, calculation or determination made by reference to the Indenture), the Calculation Agent, the Determining Party or Dealer, as the case may be, shall make such adjustment, calculation or determination in a commercially reasonable manner and by reference to the effect of such event on Dealer assuming that Dealer maintains a commercially reasonable hedge position.
- (dd) *Electronic Signatures.* Delivery of an executed signature page by facsimile or electronic transmission (e.g., “pdf” or “tif”), or any electronic signature complying with the U.S. federal ESIGN Act of 2000, Uniform Electronic Transactions Act or other applicable law, e.g., www.docusign.com, shall be effective as delivery of a manually executed counterpart hereof.
- (ee) [Insert Dealer boilerplate, including applicable resolution stay protocol language, provided by Dealer:]

[Signature Pages Follow]

Counterparty hereby agrees to check this Confirmation and to confirm that the foregoing correctly sets forth the terms of the Transaction by signing in the space provided below and returning to Dealer the fully-executed Confirmation.

Very truly yours,

[\_\_\_\_\_]

By: \_\_\_\_\_  
Name:  
Title:

[By: \_\_\_\_\_  
Name:  
Title: ]

[[\_\_\_\_\_] as Agent

By: \_\_\_\_\_  
Name:  
Title:

[By: \_\_\_\_\_  
Name:  
Title: ]]

*[Signature Page to [Base][Additional] Capped Call Confirmation]*

---

Accepted and confirmed  
as of the Trade Date:

**ATLAS ENERGY SOLUTIONS INC.**

By: \_\_\_\_\_  
Name:  
Title:

*[Signature Page to [Base][Additional] Capped Call Confirmation]*

\_\_\_\_\_

*[Insert additional provisions as applicable.]*

Schedule I

---

**FIFTH AMENDMENT  
TO LOAN, SECURITY AND GUARANTY AGREEMENT**

This FIFTH AMENDMENT TO LOAN, SECURITY AND GUARANTY AGREEMENT (this “*Fifth Amendment*”) dated as of April 9, 2026, is by and among ATLAS SAND COMPANY, LLC, a Delaware limited liability company (the “*Company*” and a “*Borrower*”), certain of its Subsidiaries, as Guarantors, the financial institutions party hereto as Lenders, and BANK OF AMERICA, N.A., a national banking association, as agent for the Lenders (in such capacity, “*Agent*”).

**RECITALS:**

A. The Company, as a Borrower, the Guarantors, the Lenders and Agent are parties to that certain Loan, Security and Guaranty Agreement dated as of February 22, 2023 (as amended, supplemented or otherwise modified from time to time prior to the date hereof, the “*Loan Agreement*”), pursuant to which the Lenders have made certain credit available to Borrowers.

B. The Company has requested that the Lenders make certain changes to the Loan Agreement in order to accommodate the issuance by Parent of convertible notes, as more fully set forth herein.

C. NOW, THEREFORE, to induce Agent and the Lenders to enter into this Fifth Amendment and in consideration of the promises and the mutual covenants herein contained, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 1. Defined Terms. Unless otherwise indicated, each capitalized term used herein but not otherwise defined herein has the meaning given such term in the Loan Agreement, as amended by this Fifth Amendment.

Section 2. Amendments to Loan Agreement. Effective as of the Fifth Amendment Effective Date, the Loan Agreement is hereby amended to delete the red stricken text (indicated in the same manner as the following example: ~~stricken text~~) and to add the blue double underlined text (indicated in the same manner as the following example: underlined text) as and where indicated in *Annex A* attached hereto.

Section 3. Conditions Precedent to Fifth Amendment. The effectiveness of this Fifth Amendment shall be subject to the satisfaction (or waiver in accordance with *Section 14.1* of the Loan Agreement) of each of the following conditions (such date, the “*Fifth Amendment Effective Date*”):

- 3.1 This Fifth Amendment shall have been duly executed and delivered to Agent by each of the signatories thereto.
  - 3.2 Agent shall have received documentation reasonably satisfactory to it evidencing the Permitted Convertible Debt.
-

By providing counterparts to this Fifth Amendment to Agent as required under **Section 3.1**, each of the undersigned Obligors represents and warrants that, as of the Fifth Amendment Effective Date, the conditions set forth in this **Section 3** are satisfied assuming Agent's satisfaction with all matters that are subject to Agent's satisfaction.

Agent is authorized to declare this Fifth Amendment to be effective when it has received, to the reasonable satisfaction of Agent, the documents and deliverables satisfying the conditions set forth in this **Section 3** or the waiver of such conditions as permitted in **Section 14.1** of the Loan Agreement. Such declaration shall be final, conclusive and binding upon all parties to the Loan Agreement for all purposes.

Section 4. **Representations and Warranties.** As of the Fifth Amendment Effective Date, each Obligor hereby represents and warrants to Agent and Lenders as follows:

4.1 No Default or Event of Default has occurred and is continuing as of the Fifth Amendment Effective Date or would result from this Fifth Amendment becoming effective in accordance with its terms.

4.2 The representations and warranties set forth in Loan Agreement and the other Loan Documents are true and correct in all material respects (without duplication of any materiality qualification applicable thereto) on and as of the Fifth Amendment Effective Date (or, if stated to have been made expressly as of an earlier date, were true and correct in all material respects (without duplication of any materiality qualification applicable thereto) as of such earlier date).

4.3 The execution, delivery and performance of this Fifth Amendment, and the performance of the amended Loan Agreement, are within each Obligor's corporate, limited liability company or partnership powers and have been duly authorized by all necessary corporate, limited liability company or partnership and, if required, equityholder action (including, without limitation, any action required to be taken by any class of directors, whether interested or disinterested, of the Obligors or any other Person in order to ensure the due authorization of the Fifth Amendment). This Fifth Amendment has been duly executed and delivered by such Obligor and constitutes a legal, valid and binding obligation of such Obligor, enforceable in accordance with its terms, subject to applicable Debtor Relief Laws and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

4.4 The execution, delivery and performance of this Fifth Amendment, and the performance of the amended Loan Agreement, (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority or any other third Person (including equityholders, members, partners or any class of directors or managers, whether interested or disinterested, of the Obligors or any other Person), nor is any such consent, approval, registration, filing or other action necessary for the validity or enforceability of the Fifth Amendment or the consummation of the obligations hereunder, except such as have been obtained or made and are in full force and effect, other than (i) the recordations and filings necessary to perfect Agent's Liens in the Collateral and (ii) those third party approvals or consents which, if not made or obtained, would not cause a Default and would not reasonably be expected to result in a Material Adverse Effect, (b) will not violate any Applicable Law or any order of any Governmental Authority material to any Obligor's or its Restricted Subsidiary's business, (c) will not violate or result in a default under any Organic Documents of any Obligor or any indenture or other material agreement regarding Debt binding upon any Obligor or its Restricted Subsidiaries or its Properties (including the Term Loan Documents), or give rise to a right thereunder to require any payment to be made by any Obligor, and (d) will not result in the creation or imposition of any Lien on any Sand Property of any Obligor or its Restricted Subsidiaries (other than the Liens created by the Loan Documents).

Section 5. Miscellaneous.

5.1 Confirmation. The provisions of the Loan Agreement, as amended by this Fifth Amendment, shall remain in full force and effect following the effectiveness of this Fifth Amendment. This Fifth Amendment shall constitute a "Loan Document" for all purposes of the Loan Agreement and the other Loan Documents. On and after the Fifth Amendment Effective Date, the terms "Agreement", "this Agreement", "herein", "hereinafter", "hereto", "hereof" and words of similar import, as used in the Loan Agreement, shall, unless the context otherwise requires, mean the Loan Agreement, as amended by this Fifth Amendment. Each reference to the Loan Agreement in the other Loan Documents shall mean the Loan Agreement, as amended by this Fifth Amendment. The amendments contemplated by this Fifth Amendment are limited solely to the items expressly set forth herein and are subject to the conditions set forth herein.

5.2 Reservation of Rights. The execution, delivery and effectiveness of this Fifth Amendment shall not, except as expressly set forth herein, (a) constitute a consent to any action or inaction by Obligors, (b) be a consent to any other amendment, waiver or modification of any term or condition of the Loan Agreement or any other Loan Document, nor (c) prejudice, limit, impair or otherwise affect or operate as a waiver of any right, power or remedy which Agent or the Lenders may now have or may have in the future under or in connection with the Loan Agreement or any other Loan Document (after giving effect to this Fifth Amendment). Nothing in this Fifth Amendment shall be construed to imply any willingness on the part of Agent or the Lenders to grant any similar or future amendment (or any consent or waiver) of any of the terms and conditions of the Loan Agreement or the other Loan Documents.

5.3 Ratification and Affirmation. Each Obligor hereby ratifies and affirms its obligations under, and acknowledges its continued liability under, each Loan Document to which it is a party and agrees that each Loan Document to which it is a party remains in full force and effect as expressly amended hereby, including its guaranty under Section 5.10 of the Loan Agreement of the Obligations as modified by this Fifth Amendment. The amendments to the Loan Agreement contemplated hereby shall not limit or impair any Liens securing the Obligations, which Liens are hereby ratified and affirmed by each Obligor and shall continue to secure the Obligations as modified by this Fifth Amendment.

5.4 No Novation. Nothing herein contained shall be construed as a substitution or novation of the Obligations outstanding under the Loan Agreement or instruments securing the same, which shall remain in full force and effect, except as modified hereby.

5.5 Further Assurances. The Obligors shall execute any and all further documents, agreements and instruments, and take all further actions, as may be required under Applicable Law or as Agent may reasonably request, in order to effect the purposes of this Fifth Amendment.

5.6 Counterparts. This Fifth Amendment and any document, amendment, approval, consent, information, notice, certificate, request, statement, disclosure or authorization related to this Fifth Amendment (each a "**Communication**"), including Communications required to be in writing, may be in the form of an Electronic Record and may be executed using Electronic Signatures. Obligors agree that any Electronic Signature on or associated with any Communication shall be valid and binding on such Person to the same extent as a manual, original signature, and that any Communication entered into by Electronic Signature, will constitute the legal, valid and binding obligation of such Person, enforceable against such in accordance with the terms thereof to the same extent as if a manually executed original signature was delivered. Any Communication may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Communication. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance by Agent and each of the Lenders of a manually signed paper Communication which has been converted into electronic form (such as scanned into PDF format), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention. Agent and each of the Lenders may, at its option, create one or more copies of any Communication in the form of an imaged Electronic Record ("**Electronic Copy**"), which shall be deemed created in the ordinary course of such Person's business, and destroy the original paper document. All Communications in the form of an Electronic Record, including an Electronic Copy, shall be considered an original for all purposes, and shall have the same legal effect, validity and enforceability as a paper record. Notwithstanding anything contained herein to the contrary, Agent is under no obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by Agent pursuant to procedures approved by it; provided, further, without limiting the foregoing, (a) to the extent Agent has agreed to accept such Electronic Signature, Agent and each of the Lenders shall be entitled to rely on any such Electronic Signature purportedly given by or on behalf of any Obligor without further verification and (b) upon the request of Agent or any Lender, any Electronic Signature shall be promptly followed by such number of manually executed counterparts as reasonably requested. For purposes hereof, "Electronic Record" and "Electronic Signature" shall have the meanings assigned to them, respectively, by 15 USC §7006, as it may be amended from time to time.

5.7 Payment of Expenses. The Company agrees to pay or reimburse Agent for its reasonable and documented out-of-pocket costs and expenses incurred in connection with this Fifth Amendment, any other documents prepared herewith and the transactions contemplated hereby, including, without limitation, all reasonable and documented out-of-pocket fees and expenses of Haynes and Boone, LLP, counsel to Agent.

5.8 NO ORAL AGREEMENT. THIS FIFTH AMENDMENT, THE LOAN AGREEMENT AND THE OTHER LOAN DOCUMENTS EXECUTED IN CONNECTION HEREWITH AND THEREWITH REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS BETWEEN THE PARTIES. THERE ARE NO UNWRITTEN AGREEMENTS BETWEEN THE PARTIES.

5.9 GOVERNING LAW. THIS FIFTH AMENDMENT AND ALL CLAIMS SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ANY CONFLICT OF LAW PRINCIPLES EXCEPT FEDERAL LAWS RELATING TO NATIONAL BANKS.

5.10 CERTAIN MATTERS OF CONSTRUCTION; SEVERABILITY; CONSENT TO FORUM; WAIVERS BY OBLIGORS. The provisions of *Sections 1.4, 14.6, 14.15 and 14.16* of the Loan Agreement are hereby incorporated herein as though stated in their entirety herein, *mutatis mutandis*.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Fifth Amendment to be duly executed and delivered by their proper and duly authorized officers as of the day and year first above written.

**BORROWER:**

**ATLAS SAND COMPANY, LLC**

By: /s/Blake McCarthy  
Name: Blake McCarthy  
Title: Chief Financial Officer

**GUARANTORS:**

**ATLAS SAND EMPLOYEE COMPANY, LLC**

By: Atlas Sand Company, LLC, its sole member

By: /s/Blake McCarthy  
Name: Blake McCarthy  
Title: Chief Financial Officer

Signature Page to  
Fifth Amendment to Loan, Security and Guaranty Agreement

---

**ATLAS SAND CONSTRUCTION, LLC**

By: Atlas Sand Company, LLC, its sole member

By: /s/Blake McCarthy

Name: Blake McCarthy

Title: Chief Financial Officer

**FOUNTAINHEAD LOGISTICS, LLC**

By: Atlas Sand Company, LLC, its sole member

By: /s/Blake McCarthy

Name: Blake McCarthy

Title: Chief Financial Officer

Signature Page to  
Fifth Amendment to Loan, Security and Guaranty Agreement

---

**FOUNTAINHEAD TRANSPORTATION SERVICES, LLC**

By: Atlas Sand Company, LLC, its sole member

By: /s/Blake McCarthy

Name: Blake McCarthy

Title: Chief Financial Officer

**OLC KERMIT, LLC**

By: Atlas Sand Company, LLC, its sole manager

By: /s/Blake McCarthy

Name: Blake McCarthy

Title: Chief Financial Officer

**OLC MONAHANS, LLC**

By: Atlas Sand Company, LLC, its sole manager

By: /s/Blake McCarthy

Name: Blake McCarthy

Title: Chief Financial Officer

Signature Page to  
Fifth Amendment to Loan, Security and Guaranty Agreement

---

**FOUNTAINHEAD EQUIPMENT LEASING, LLC**

By: /s/Blake McCarthy  
Name: Blake McCarthy  
Title: Chief Financial Officer

**HI-CRUSH OPERATING, LLC**

By: /s/Blake McCarthy  
Name: Blake McCarthy  
Title: Chief Financial Officer

**HI-CRUSH LMS LLC**

By: /s/Blake McCarthy  
Name: Blake McCarthy  
Title: Chief Financial Officer

**HI-CRUSH INVESTMENTS LLC**

By: /s/Blake McCarthy  
Name: Blake McCarthy  
Title: Chief Financial Officer

**ONCORE PROCESSING LLC**

By: /s/Blake McCarthy  
Name: Blake McCarthy  
Title: Chief Financial Officer

---

**HI-CRUSH PERMIAN SAND LLC**

By: /s/Blake McCarthy  
Name: Blake McCarthy  
Title: Chief Financial Officer

**HI-CRUSH PODS LLC**

By: /s/Blake McCarthy  
Name: Blake McCarthy  
Title: Chief Financial Officer

**BULKTRACER HOLDINGS LLC**

By: /s/Blake McCarthy  
Name: Blake McCarthy  
Title: Chief Financial Officer

**PROPDISPATCH LLC**

By: /s/Blake McCarthy  
Name: Blake McCarthy  
Title: Chief Financial Officer

**PRONGHORN LOGISTICS HOLDINGS, LLC**

By: /s/Blake McCarthy  
Name: Blake McCarthy  
Title: Chief Financial Officer

---

**PRONGHORN LOGISTICS, LLC**

By: /s/Blake McCarthy  
Name: Blake McCarthy  
Title: Chief Financial Officer

**NEXSTAGE LLC**

By: /s/Blake McCarthy  
Name: Blake McCarthy  
Title: Chief Financial Officer

**FB LOGISTICS LLC**

By: /s/Blake McCarthy  
Name: Blake McCarthy  
Title: Chief Financial Officer

**PROPFLOW, LLC**

By: /s/Blake McCarthy  
Name: Blake McCarthy  
Title: Chief Financial Officer

**PROPFLOW OPERATING, LLC**

By: /s/Blake McCarthy  
Name: Blake McCarthy  
Title: Chief Financial Officer

**PROPFLOW INTERNATIONAL, LLC**

By: /s/Blake McCarthy  
Name: Blake McCarthy  
Title: Chief Financial Officer

---

**PROFLOW EMPLOYEE CO., LLC**

By: /s/Blake McCarthy  
Name: Blake McCarthy  
Title: Chief Financial Officer

**WYATT HOLDINGS, LLC**

By: /s/Blake McCarthy  
Name: Blake McCarthy  
Title: Chief Financial Officer

**WYATT OPERATING, LLC**

By: /s/Blake McCarthy  
Name: Blake McCarthy  
Title: Chief Financial Officer

**MOSER ACQUISITION, INC.**

By: /s/Blake McCarthy  
Name: Blake McCarthy  
Title: Chief Financial Officer

**MOSER ENGINE SERVICE, INC.**

By: /s/Blake McCarthy  
Name: Blake McCarthy  
Title: Chief Financial Officer

---

**AGENT AND LENDERS:**

**BANK OF AMERICA, N.A.**, as Agent and a Lender

By: /s/Matthew O'Keefe

Name: Matthew O'Keefe

Title: Senior Vice President

---

**GOLDMAN SACHS BANK USA, as a Lender**

By: /s/Dan Martis

Name: Dan Martis

Title: Authorized Signatory

---

**BARCLAYS BANK PLC**, as a Lender

By: /s/ Sydney G. Dennis  
Name: Sydney G. Dennis  
Title: Director

---

---

---

**LOAN, SECURITY AND GUARANTY AGREEMENT**

Dated as of February 22, 2023

---

---

**ATLAS SAND COMPANY, LLC,**  
as a Borrower,

AND CERTAIN OF ITS SUBSIDIARIES,  
as Guarantors,

---

---

**BANK OF AMERICA, N.A.,**  
as Agent

and

---

---

**BANK OF AMERICA, N.A.,**  
as Sole Lead Arranger and Sole Bookrunner

---

---

TABLE OF CONTENTS

	<u>Page</u>
<b>Section 1. DEFINITIONS; RULES OF CONSTRUCTION.</b>	<b>1</b>
1.1 Definitions	1
1.2 Accounting Terms	4548
1.3 Uniform Commercial Code	4548
1.4 Certain Matters of Construction	4548
1.5 Division	4649
<b>Section 2. CREDIT FACILITIES.</b>	<b>4851</b>
2.1 Loan Commitments	4851
2.2 Letter of Credit Facility.	4953
<b>Section 3. INTEREST, FEES AND CHARGES</b>	<b>5256</b>
3.1 Interest	5256
3.2 Fees.	5457
3.3 Computation of Interest, Fees, Yield Protection	5458
3.4 Reimbursement Obligations	5558
3.5 Illegality	5558
3.6 Inability to Determine Rates	5659
3.7 Increased Costs; Capital Adequacy	5761
3.8 Mitigation	5861
3.9 Funding Losses	5962
3.10 Maximum Interest	5962
<b>Section 4. LOAN ADMINISTRATION.</b>	<b>5962</b>
4.1 Manner of Borrowing and Funding Loans	5962
4.2 Defaulting Lender	6165
4.3 Number and Amount of Term SOFR Loans; Determination of Rate	6265
4.4 Borrower Agent	6266
4.5 One Obligation	6366
4.6 Effect of Termination	6366
<b>Section 5. PAYMENTS</b>	<b>6366</b>
5.1 General Payment Provisions	6366
5.2 Repayment of Loans	6367
5.3 Payment of Other Obligations	6467
5.4 Marshaling; Payments Set Aside	6467
5.5 Application and Allocation of Payments	6467
5.6 Dominion Account	6568
5.7 Account Stated	6569
5.8 Taxes.	6669
5.9 Lender Tax Information.	6771
5.10 Nature and Extent of Each Obligor's Liability.	6973
<b>Section 6. CONDITIONS PRECEDENT.</b>	<b>7275</b>
6.1 Conditions Precedent to Initial Loans	7275
6.2 Conditions Precedent to All Credit Extensions	7477

<b>Section 7.</b>	<b>COLLATERAL.</b>	<b>7477</b>
7.1	Grant of Security Interest	7477
7.2	Lien on Deposit Accounts; Cash Collateral.	7578
7.3	Pledged Collateral.	7579
7.4	Real Estate Collateral.	8083
7.5	Other Collateral.	8084
7.6	Limitations	8184
7.7	Further Assurances	8184
<b>Section 8.</b>	<b>COLLATERAL ADMINISTRATION.</b>	<b>8185</b>
8.1	Borrowing Base Reports	8185
8.2	Accounts.	8185
8.3	Inventory.	8386
8.4	[Reserved].	8386
8.5	Administration of Deposit Accounts and Securities Accounts.	8386
8.6	General Provisions.	8387
8.7	Power of Attorney	8488
<b>Section 9.</b>	<b>REPRESENTATIONS AND WARRANTIES.</b>	<b>8588</b>
9.1	General Representations and Warranties	8588
<b>Section 10.</b>	<b>COVENANTS AND CONTINUING AGREEMENTS.</b>	<b>9396</b>
10.1	Affirmative Covenants	9396
10.2	Negative Covenants	99103
10.3	Fixed Charge Coverage Ratio	110115
<b>Section 11.</b>	<b>EVENTS OF DEFAULT; REMEDIES ON DEFAULT.</b>	<b>110115</b>
11.1	Events of Default	110115
11.2	Remedies upon Default	112117
11.3	License	113118
11.4	Setoff	113118
11.5	Remedies Cumulative; No Waiver	114118
11.6	Right to Cure.	114119
<b>Section 12.</b>	<b>AGENT</b>	<b>115120</b>
12.1	Appointment, Authority and Duties of Agent.	115120
12.2	Agreements Regarding Collateral and Borrower Materials	116121
12.3	Reliance By Agent	117122
12.4	Action Upon Default	117122
12.5	Ratable Sharing	118122
12.6	Indemnification	118123
12.7	Limitation on Responsibilities of Agent	118123
12.8	Successor Agent and Co-Agents.	119123
12.9	Due Diligence and Non-Reliance	119124
12.10	Remittance of Payments and Collections.	120125
12.11	Individual Capacities	120125
12.12	Titles	121125
12.13	Certain ERISA Matters.	121126
12.14	Bank Product Providers	122126

12.15	No Third Party Beneficiaries	+22127
<b>Section 13.</b>	<b>BENEFIT OF AGREEMENT; ASSIGNMENTS.</b>	<b>+22127</b>
13.1	Successors and Assigns	+22127
13.2	Participations.	+22127
13.3	Assignments.	+23128
13.4	Replacement of Certain Lenders	+24129
<b>Section 14.</b>	<b>MISCELLANEOUS.</b>	<b>+25129</b>
14.1	Consents, Amendments and Waivers	+25129
14.2	Indemnity	+26131
14.3	Notices and Communications	+26131
14.4	Performance of Obligors' Obligations	+28133
14.5	Credit Inquiries	+28133
14.6	Severability	+29133
14.7	Cumulative Effect; Conflict of Terms	+29134
14.8	Execution	+29134
14.9	Entire Agreement	+29134
14.10	Relationship with Lenders	+29134
14.11	No Advisory or Fiduciary Responsibility	+30135
14.12	Confidentiality	+30135
14.13	[Reserved]	+31136
14.14	<b>GOVERNING LAW</b>	<b>+31136</b>
14.15	Consent to Forum	+31136
14.16	Waivers	+31136
14.17	Acknowledgement Regarding Supported QFCs	+32137
14.18	Acknowledgement and Consent to Bail-In of Affected Financial Institutions	+33138
14.19	Patriot Act Notice	+33138
14.20	Intercreditor Agreement.	+33138
14.21	<b>NO ORAL AGREEMENT</b>	<b>+34139</b>

**LIST OF EXHIBITS AND SCHEDULES**

EXHIBIT A	Assignment
EXHIBIT B	Compliance Certificate
SCHEDULE 1.1(a)	Commitments of Lenders
SCHEDULE 1.1(b)	Specified Foreign Account Debtors
SCHEDULE 6.1(o)	Closing Date Mortgaged Properties
SCHEDULE 7.3	Pledged Collateral
SCHEDULE 7.5	Commercial Tort Claims
SCHEDULE 8.2.1	Borrowing Base Reporting
SCHEDULE 8.5	Deposit Accounts and Securities Accounts
SCHEDULE 8.6.1	Business Locations
SCHEDULE 9.1.6	Environmental Matters
SCHEDULE 9.1.14(a)	Obligors and Subsidiaries

SCHEDULE 9.1.14(b)	Capitalization
SCHEDULE 9.1.15	Entity Information
SCHEDULE 9.1.16(b)	Sand Mines
SCHEDULE 9.1.20	Swap Obligations
SCHEDULE 9.1.23	Major Material Contracts
SCHEDULE 9.1.27	Credit Card Agreements
SCHEDULE 10.1.11	Post-Closing Obligations
SCHEDULE 10.2.1	Existing Debt
SCHEDULE 10.2.2	Existing Liens
SCHEDULE 10.2.3	Restrictive Agreements
SCHEDULE 10.2.4	Existing Investments
SCHEDULE 10.2.14	Existing Affiliate Transactions

## LOAN, SECURITY AND GUARANTY AGREEMENT

**THIS LOAN, SECURITY AND GUARANTY AGREEMENT** is dated as of February 22, 2023 (as amended, modified or supplemented from time to time, this "Agreement"), among **ATLAS SAND COMPANY, LLC**, a Delaware limited liability company (the "Company" and a "Borrower", and together with any Restricted Subsidiary of the Company that becomes party to this Agreement as an additional Borrower after the date hereof, collectively, "Borrowers"), and certain of their Subsidiaries, as Guarantors, the financial institutions party to this Agreement from time to time as Lenders, and **BANK OF AMERICA, N.A.**, a national banking association ("Bank of America"), as agent for the Lenders (in such capacity, "Agent").

### RECITALS:

Borrowers have requested that Lenders provide a credit facility to Borrowers to finance their mutual and collective business enterprise. Lenders are willing to provide the credit facility on the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, for valuable consideration hereby acknowledged, the parties agree as follows:

#### **Section 1. DEFINITIONS; RULES OF CONSTRUCTION.**

**1.1 Definitions.** As used herein, the following terms have the meanings set forth below:

ABL Priority Collateral: as defined in the Intercreditor Agreement.

Accounts Formula Amount: the sum of (a) 90% of the Value of Eligible Accounts and (b) the lesser of (i) 80% of the Value of Eligible Unbilled Accounts and (ii) 15% of the Borrowing Base.

Acquisition: a transaction or series of transactions resulting in (a) the acquisition of (i) a business, division or substantially all assets of a Person or (ii) record or beneficial ownership of 50% or more of the Equity Interests of a Person or (b) the merger, consolidation or combination of an Obligor or Restricted Subsidiary with another Person.

Affected Financial Institution: any EEA Financial Institution or UK Financial Institution.

Affiliate: with respect to a specified Person, any other Person that directly, or indirectly through intermediaries, Controls, is Controlled by or is under common Control with the specified Person. Without limitation to the foregoing, any Person that directly or indirectly holds 10% or more of the Equity Interests of another Person shall be deemed to be an Affiliate of that Person for purposes of this Agreement.

Agent: as defined in the introductory paragraph hereof.

Agent Indemnitees: Agent and its officers, directors, employees, Affiliates and Agent Professionals.

---

Agent Professionals: attorneys, accountants, appraisers, auditors, advisors, consultants, agents, service providers, business valuation experts, environmental engineers or consultants, turnaround consultants, and other professionals, experts and representatives retained or used by Agent.

Agreement: as defined in the introductory paragraph hereof.

Allocable Amount: as defined in **Section 5.10.3**.

Anti-Corruption Law: any law relating to bribery or corruption, including the U.S. Foreign Corrupt Practices Act of 1977, UK Bribery Act 2010 and Patriot Act.

Anti-Terrorism Law: any law relating to terrorism or money laundering, including the Patriot Act.

Applicable Law: all laws, rules, regulations and governmental guidelines applicable to the Person or matter in question, including statutory law, common law and equitable principles, as well as provisions of constitutions, treaties, statutes, rules, regulations, orders and decrees of Governmental Authorities.

Applicable Margin: the margin set forth below, as determined by the average daily Availability as a percentage of the Borrowing Base for the last Fiscal Quarter:

<u>Level</u>	<u>Average Daily Availability as a Percentage of the Borrowing Base</u>	<u>Base Rate Loans</u>	<u>Term SOFR Loans</u>
I	$\geq 67\%$	0.50%	1.50%
II	$\geq 33\% < 67\%$	0.75%	1.75%
III	$< 33\%$	1.00%	2.00%

Until March 31, 2023, margins shall be determined as if Level I were applicable. Thereafter, margins shall be subject to increase or decrease by Agent on the first day of the calendar month following each Fiscal Quarter end. If Agent is unable to calculate average daily Availability for a Fiscal Quarter due to Borrowers' failure to deliver a Borrowing Base Report when required hereunder, then, at the option of Agent or Required Lenders, margins shall be determined as if Level III were applicable until the first day of the calendar month following its receipt.

Applicable Reporting Entity: the public Parent Entity of the Company; provided that the calculations of Consolidated Net Income, Consolidated Net Tangible Assets, the Consolidated Leverage Ratio, Consolidated Total Debt, Consolidated Total Net Debt, Consolidated Interest Expense, EBITDA, Fixed Charges, the Fixed Charge Coverage Ratio and any component of the foregoing shall only include amounts attributable to the Company and its Restricted Subsidiaries.

Applicable Trigger: the greater of \$12,500,000 or 12.5% of the Borrowing Base.

Approved Fund: any entity owned or Controlled by a Lender or Affiliate of a Lender, if such entity is engaged in making or investing in commercial bank asset based revolving loans in its ordinary course of activities.

Assignment: an assignment agreement between a Lender and Eligible Assignee, in the form of **Exhibit A** or otherwise satisfactory to Agent.

Availability: the Borrowing Base minus Revolver Usage.

Availability Reserve: the sum (without duplication) of (a) the Inventory Reserve; (b) the Rent and Charges Reserve; (c) the Bank Product Reserve; (d) the aggregate amount of liabilities secured by Liens on Collateral that are senior to Agent's Liens (but imposition of any such reserve shall not waive an Event of Default arising therefrom); (e) the Dilution Reserve; (f) reserves for taxes; (g) royalty reserves; (h) the Hercules Seller Note Reserve; and (i) additional reserves in amounts and with respect to matters as Agent may establish from time to time in its Permitted Discretion (including in respect of the Hercules Assets based on the results of the field examination and appraisal conducted in connection with the Hercules Acquisition) upon, so long as no Event of Default is continuing, two (2) Business Days' prior written notice (which may be by email) to Borrower Agent (which notice shall include a reasonably detailed description of such reserve being established). During such two (2) Business Day period, (i) Agent shall, if requested by Borrower Agent, discuss any such reserve or change with Borrower Agent and Borrower Agent may take such action as may be required so that the event, condition or matter that is the basis for such reserve or change no longer exists or exists in a manner that would result in the establishment of a lower reserve or result in a lesser change, in each case, in a manner and to the extent satisfactory to Agent in its Permitted Discretion and (ii) no Loan or Letter of Credit may be requested if an Overadvance would result therefrom assuming implementation of such reserve or change. Notwithstanding anything to the contrary herein, (x) the amount of any such reserve shall have a reasonable relationship to the event, condition or other matter that is the basis for such reserve, (y) no reserves shall be duplicative of reserves already accounted for through eligibility criteria, and (z) no notice shall be required for changes in the amount of existing reserves resulting solely from mathematical calculations.

Available Equity Amount: as of any date of determination, an amount equal to, without duplication, but only to the extent Not Otherwise Applied, the amount of any capital contributions or proceeds from issuances of Equity Interests, in each case, received in cash by the Company after the Closing Date (excluding any Pass-Through Equity Contribution) and either (a) substantially contemporaneously applied upon receipt as a usage of the Available Equity Amount or (b) deposited into and continuously maintained in a segregated Deposit Account until applied as a usage of the Available Equity Amount, but excluding, in each case, all proceeds from the issuance of Disqualified Equity Interests, proceeds from the issuance of Permitted Convertible Debt, proceeds from any IPO Event and Cure Amounts; provided that during a Trigger Period the Available Equity Amount shall not be available to be used.

Bail-In Action: the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

Bail-In Legislation: with respect to (a) any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule, or (b) the United Kingdom, Part I of the United Kingdom Banking Act 2009 and any other law applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

Bank of America: as defined in the introductory paragraph hereof.

Bank of America Indemnitees: Bank of America and its officers, directors, employees, Affiliates, agents, advisors, attorneys, consultants, service providers and other representatives.

Bank Product: any of the following products or services extended to an Obligor or Restricted Subsidiary of an Obligor by a Lender or any of its Affiliates: (a) Cash Management Services; (b) Swaps; (c) commercial credit card and merchant card services; and (d) other banking products or services, other than Letters of Credit.

Bank Product Reserve: the aggregate amount of reserves established by Agent from time to time in its Permitted Discretion with respect to Secured Bank Product Obligations.

Bankruptcy Code: Title 11 of the United States Code.

Base Rate: for any day, a per annum rate equal to the greater of (a) the Prime Rate for such day; (b) the Federal Funds Rate for such day, plus 0.50%; or (c) Term SOFR for a one month interest period as of such day, plus 1.0%; provided, that in no event shall the Base Rate be less than 1.0%.

Base Rate Loan: a Loan that bears interest based on the Base Rate.

Beneficial Ownership Certification: a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation, in form and substance satisfactory to Agent.

Beneficial Ownership Regulation: as defined in 31 C.F.R. §1010.230.

Benefit Plan: any (a) employee benefit plan (as defined in ERISA) subject to Title I of ERISA, (b) plan (as defined in and subject to Section 4975 of the Code), or (c) Person whose assets include (for purposes of ERISA Section 3(42) or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such employee benefit plan or plan.

Borrowed Money: with respect to any Obligor or Subsidiary, without duplication, (a) any obligation that (i) arises from the lending of money by any Person to such Obligor or Subsidiary, (ii) is evidenced by notes, loan agreements, drafts, bonds, debentures, credit documents or similar instruments, (iii) accrues interest or is a type upon which interest charges are customarily paid (excluding trade payables owing in the Ordinary Course of Business and not more than 90 days past due), or (iv) was issued or assumed as full or partial payment for Property or services; (b) Capital Leases; (c) non-contingent letter of credit reimbursement obligations; and (d) guaranties of any of the foregoing owing by another Person.

Borrower Agent: as defined in **Section 4.4**.

Borrower Materials: Borrowing Base Reports, Compliance Certificates, Notices of Borrowing, Notices of Conversion/Continuation, and other information, reports, financial statements and materials delivered by Obligors under the Loan Documents, as well as Reports and other information provided by Agent to Lenders in connection with the credit facility established by this Agreement.

**Borrowers:** as defined in the introductory paragraph hereof, together with any additional borrower joined following the Closing Date pursuant to **Section 10.1.9**.

**Borrowing:** Loans made or converted together on the same day, with the same interest option and, if applicable, Interest Period.

**Borrowing Base:** on any date of determination and based on the most recent Borrowing Base Report (as it may be adjusted hereunder), an amount equal to the lesser of (a) the aggregate Commitments; or (b) the sum of the Accounts Formula Amount, plus the Inventory Formula Amount, plus the Hercules Formula Amount, minus the Availability Reserve.

**Borrowing Base Report:** a report of the Borrowing Base, in form and substance reasonably satisfactory to Agent, by which Borrowers certify as to the calculation of the Borrowing Base.

**Brigham Exploration:** any of (a) Brigham Exploration Company, LLC, (b) BEXP I GP, LLC and/or (c) BEXP I, LP.

**Brigham Family:** collectively: (a) the lineal descendants by blood or adoption of Bud Brigham ("descendants"), and the spouses and surviving spouses of such descendants, (b) any estate, trust, guardianship, custodian or other fiduciary arrangement for the primary benefit of any one or more individuals described in clause (a) of this definition, and (c) any corporation, partnership, limited liability company or other business organization so long as (i) one or more individuals or entities described in clause (a) or (b) of this definition possess, directly or indirectly, the power to direct or cause the direction of the management and policies of such corporation, partnership, limited liability company or other business organization, and (ii) substantially all of the ownership, beneficial or other Equity Interests in such corporation, partnership, limited liability company or other business organization are owned, directly or indirectly, by one or more individuals or entities described in clause (a) or clause (b) of this definition (any such corporation, partnership, limited liability company or other business organization, the "Eligible Affiliates").

**Business Day:** any day except a Saturday, Sunday or other day on which commercial banks are authorized to close under the laws of, or are in fact closed in, North Carolina or New York City.

**Capital Expenditures:** for any period of determination, the sum of (a) the aggregate of all expenditures incurred by the Company and its Restricted Subsidiaries during such period for purchases of property, plant and equipment or similar items (other than repairs in the Ordinary Course of Business that are expensed as income statement items) which, in accordance with GAAP, are or should be included in the statement of cash flows of the Company and its Restricted Subsidiaries during such period, net of (b) proceeds received by the Company or its Restricted Subsidiaries from dispositions of property, plant and equipment or similar items reflected in the statement of cash flows of the Company and its Restricted Subsidiaries during such period; provided that the term "Capital Expenditures" shall not include:

(i) expenditures made in connection with the replacement, substitution, restoration or repair of assets to the extent financed from insurance proceeds or compensation or condemnation awards paid on account of a casualty or condemnation event,

(ii) the purchase price of equipment that is purchased simultaneously with the trade-in of existing equipment to the extent that the gross amount of such purchase price is reduced by the credit granted by the seller of such equipment for the equipment being traded in at such time,

(iii) the purchase of property, plant or equipment to the extent financed with the proceeds of dispositions of assets outside the Ordinary Course of Business,

(iv) expenditures that constitute any part of consolidated lease expense to the extent relating to operating leases,

(v) any expenditures made as payments of the consideration for a Permitted Acquisition (or Investments similar to those made for a Permitted Acquisition and Permitted Parent Entity Investments), and

(vi) expenditures to the extent the Company or any of its Restricted Subsidiaries has received reimbursement in cash from a Person that is not an Affiliate of any of the Obligors and for which neither the Company nor any of its Restricted Subsidiaries has provided or is required to provide or incur, directly or indirectly, any consideration or obligation to such Person or any other Person.

Capital Lease: any financing lease or lease required to be capitalized for financial reporting purposes in accordance with GAAP, subject to **Section 1.2**.

Cash Collateral: cash delivered to Agent to Cash Collateralize any Obligations, and all interest, dividends, earnings and other proceeds relating thereto.

Cash Collateralize: the delivery of cash to Agent, as security for the payment of Obligations, in an amount equal to (a) 103% of LC Obligations, and (b) with respect to any inchoate, contingent or other Obligations (including fees, expenses, indemnification obligations and Secured Bank Product Obligations), Agent's good faith estimate of the amount due or to become due. "Cash Collateralization" has a correlative meaning.

Cash Equivalents: (a) marketable obligations issued or unconditionally guaranteed by, and backed by the full faith and credit of, the U.S. government, maturing within 12 months of the date of acquisition; (b) certificates of deposit, time deposits and bankers' acceptances maturing within 12 months of the date of acquisition, and overnight bank deposits, in each case which are issued by Bank of America or a commercial bank organized under the laws of the United States or any state or district thereof, rated A-1 (or better) by S&P or P-1 (or better) by Moody's at the time of acquisition, and (unless issued by a Lender) not subject to offset rights; (c) repurchase obligations with a term of not more than 30 days for underlying investments of the types described in clauses (a) and (b) entered into with any bank described in clause (b); (d) commercial paper issued by Bank of America or rated A-1 (or better) by S&P or P-1 (or better) by Moody's, and maturing within one year of the date of acquisition; and (e) shares of any money market fund that has not less than 90% of its assets invested continuously in the types of investments referred to above.

Cash Management Services: services relating to operating, collections, payroll, trust, or other depository or disbursement accounts, including automated clearinghouse, e-payable, electronic funds transfer, wire transfer, controlled disbursement, overdraft, depository, information reporting, blocked account, lockbox and stop payment services.

Casualty Event: means any loss, casualty or other insured damage to, or any nationalization, taking under power of eminent domain or by condemnation or similar proceeding of, any Property of any Obligor.

CERCLA: the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. §9601 et seq.).

Change in Law: the occurrence, after the date hereof, of (a) the adoption, taking effect or phasing in of any law, rule, regulation or treaty; (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof; or (c) the making, issuance or application of any request, guideline, requirement or directive (whether or not having the force of law) by any Governmental Authority; provided, that “Change in Law” shall include, regardless of the date enacted, adopted or issued, all requests, rules, guidelines, requirements or directives (i) under or relating to the Dodd-Frank Wall Street Reform and Consumer Protection Act, or (ii) promulgated pursuant to Basel III by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any similar authority) or any other Governmental Authority.

Change of Control: (a) any Person, entity or “group” (within the meaning of Section 13(d) or 14(d) of the Securities Exchange Act of 1934, as amended), that does not include Bud Brigham or the Brigham Family, shall at any time have acquired, beneficially or of record, direct or indirect ownership (as defined in SEC Rules 13(d)-3 and 13(d)-5 under the Securities Exchange Act of 1934, as amended) of 50% or more of the economic and/or voting interest in the Equity Interests in the Company (other than as a result of the direct or indirect acquisition by a Parent Entity of additional Equity Interests in the Company); (b) the Company ceases to own and control, beneficially and of record, directly or indirectly, all Equity Interests in all other Borrowers; or (c) a “change of control”, “fundamental change” or similar event occurs under any Permitted Convertible Debt, the Term Loan Agreement or any other Material Debt.

Claims: subject to the Legal Expenses Limitation, all claims, liabilities, obligations, losses, damages, penalties, judgments, proceedings, interest, costs and expenses of any kind (including remedial response costs, reasonable out-of-pocket attorneys’ fees and Extraordinary Expenses) at any time (including after Full Payment of the Obligations or exit of Agent or any Lender) incurred by or asserted against any Indemnitee by an Obligor or other Person, relating to any (a) Loan, Letter of Credit, Loan Document, Borrower Materials or related transaction, (b) action taken or omitted in connection with this credit facility, (c) existence or perfection of Liens or realization on Collateral, (d) exercise of rights or remedies under a Loan Document or Applicable Law, (e) failure by an Obligor to perform or observe any term of a Loan Document, or (f) reliance by an Indemnitee on an electronic signature, record or Communication, in each case including all reasonable and documented out-of-pocket costs and expenses relating to any investigation, litigation, arbitration or other proceeding (including an appeal or Insolvency Proceeding), whether or not an Indemnitee or Obligor is a party.

Closing Date: as defined in **Section 6.1**.

CME: CME Group Benchmark Administration Limited.

Code: the Internal Revenue Code of 1986.

Collateral: all Property described in **Section 7.1**, all Property described in any Security Documents as security for any Obligations, and all other Property that now or hereafter secures (or is intended to secure) any Obligations.

Commitment: for any Lender, its obligation to make Loans and to participate in LC Obligations up to the maximum principal amount shown on **Schedule 1.1**, as hereafter modified pursuant to **Section 2.1.7** or an Assignment to which it is a party. "Commitments" means the aggregate amount of all Lenders' Commitments. As of the Increase Effective Date, the aggregate amount of the Commitments will be \$125,000,000 (if the Increase Effective Date occurs, and otherwise the Commitments will remain \$75,000,000 until the Commitments are otherwise increased or decreased in accordance with the terms of this Agreement).

Commodity Exchange Act: the Commodity Exchange Act (7 U.S.C. §1 *et seq.*).

Communication: any notice, request, election, representation, certificate, report, disclosure, statement, authorization, approval, consent, waiver, document, amendment or transmittal of information of any kind in connection with a Loan Document, including any Borrower Materials or Modification of a Loan Document.

Compliance Certificate: a certificate, in the form of **Exhibit B** or otherwise reasonably satisfactory to Agent, by which Obligors (a) make certain representations and warranties and (b) certify (i) compliance with **Section 10.3**, (ii) that no Default or Event of Default has occurred and is continuing, and (iii) certain financial statements.

Conforming Changes: with respect to use, administration of or conventions associated with SOFR, Term SOFR or any proposed Successor Rate, as applicable, any conforming changes to the definitions of Base Rate, SOFR, Term SOFR and Interest Period, timing and frequency of determining rates and making payments of interest and other technical, administrative or operational matters (including, for the avoidance of doubt, the definitions of Business Day and U.S. Government Securities Business Day, timing of borrowing requests or prepayment, conversion or continuation notices, and length of lookback periods) as may be appropriate, in Agent's discretion, to reflect the adoption and implementation of such applicable rate(s) and to permit the administration thereof by Agent in a manner substantially consistent with market practice (or, if Agent determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such rate exists, in such other manner of administration as Agent determines is reasonably necessary in connection with the administration of any Loan Document).

Connection Income Taxes: Other Connection Taxes that are imposed on or measured by net income (however denominated) or are franchise or branch profits Taxes.

Consolidated Interest Expense: for any period of determination, total interest expense of the Company and its Restricted Subsidiaries on a consolidated basis with respect to all of the outstanding Debt of the Company and its Restricted Subsidiaries (excluding interest paid-in-kind, amortization of financing fees, and other non-cash interest expense and net of cash interest income).

Consolidated Leverage Ratio: as of any date of determination, the ratio of (a) Consolidated Total Net Debt to (b) EBITDA for the four Fiscal Quarter period most recently ended, in each case calculated based on the financial statements most recently delivered whether as Historical Financial Statements or pursuant to **Section 10.1.2(a)** or **10.1.2(b)**.

Consolidated Net Income: for any period of determination, the consolidated net income (or loss) of the Company and the Restricted Subsidiaries on a consolidated basis in accordance with GAAP; provided, that there shall be excluded the income (or deficit) of any Person accrued prior to the date it becomes a Restricted Subsidiary or is merged into or consolidated with Company or any of its Restricted Subsidiaries. For the avoidance of doubt, Consolidated Net Income shall exclude the income or loss of Unrestricted Subsidiaries (including by equity method accounting) other than to the extent set forth in the last sentence of the definition of EBITDA.

Consolidated Net Tangible Assets: at any date of determination, the total amount of consolidated assets of the Company and its Restricted Subsidiaries on a consolidated basis (including the Sand Reserves Value) after deducting, without duplication, therefrom: (a) all current liabilities (excluding (i) any current liabilities that by their terms are extendable or renewable at the option of the obligor thereon to a time more than 12 months after the time as of which the amount thereof is being computed and (ii) current maturities of long-term debt) and (b) the value (net of any applicable reserves) of all goodwill, trade names, trademarks, patents and other like intangible assets, all as set forth, or on a pro forma basis would be set forth, on the consolidated balance sheet of the Company and its Restricted Subsidiaries on a consolidated basis for the most recently completed Fiscal Quarter, prepared in accordance with GAAP.

Consolidated Total Debt: as of any date of determination, without duplication, all of the consolidated Debt of the Company and its Restricted Subsidiaries (a) described in clauses (a), (b), (c), (d) and (e) of the definition herein of "Debt" and (b) described in clause (f) of the definition herein of "Debt" to the extent such Debt is comprised of guaranty obligations in respect of Debt of others of the type described in clause (a), (b), (c), (d) or (e) of the definition herein of "Debt", excluding, in each case, any Debt with respect to letters of credit to the extent such letters of credit have not been drawn.

Consolidated Total Net Debt: as of any date of determination, the remainder of (a) Consolidated Total Debt minus (b) the aggregate amount of all Unrestricted Cash of the Company and its Restricted Subsidiaries on such date.

Contingent Obligation: any obligation of a Person arising from a guaranty, indemnity or other assurance of payment or performance of any Debt, lease, dividend or other obligation (“primary obligation”) of another obligor (“primary obligor”) in any manner, whether directly or indirectly, including any obligation of such Person under any (a) guaranty, endorsement, co-making or sale with recourse of an obligation of a primary obligor; (b) obligation to make take-or-pay or similar payments regardless of nonperformance by any other party to an agreement; or (c) arrangement (i) to purchase any primary obligation or security therefor, (ii) to supply funds for the purchase or payment of any primary obligation, (iii) to maintain or assure working capital, equity capital, net worth or solvency of the primary obligor, (iv) to purchase Property or services for the purpose of assuring the ability of the primary obligor to perform a primary obligation, or (v) otherwise to assure or hold harmless the holder of any primary obligation against loss in respect thereof. The amount of any Contingent Obligation shall be deemed to be the stated or determinable amount of the primary obligation (or, if less, the maximum amount for which such Person may be liable under the instrument evidencing the Contingent Obligation) or, if not stated or determinable, the maximum reasonably anticipated liability with respect thereto.

Control: possession, directly or indirectly, of the power to direct or cause direction of a Person’s management or policies, whether through the ability to exercise voting power, by contract or otherwise.

Covenant Trigger Period: the period (a) commencing on any day that (i) an Event of Default occurs, (ii) if no Loans or Letters of Credit (other than Letters of Credit that have been Cash Collateralized) are outstanding, Liquidity is less than the Applicable Trigger, or (iii) if any Loan or Letter of Credit (other than Letters of Credit that have been Cash Collateralized) is outstanding, Specified Availability is less than the Applicable Trigger; and (b) continuing until, during each of the preceding 30 consecutive days, (i) no Event of Default has existed, (ii) in the case of a Covenant Trigger Period arising as a result of clause (a)(ii) above, Liquidity has been more than the Applicable Trigger at all times, and (iii) in the case of a Covenant Trigger Period arising as a result of clause (a)(iii) above, Specified Availability has been more than the Applicable Trigger at all times in each case during such 30 day period.

Covered Entity: (a) a “covered entity,” as defined and interpreted in accordance with 12 C.F.R. §252.82(b); (b) a “covered bank,” as defined in and interpreted in accordance with 12 C.F.R. §47.3(b); or (c) a “covered FSI,” as defined in and interpreted in accordance with 12 C.F.R. §382.2(b).

Credit Card Agreements: with respect to the Obligors, all agreements now or hereafter entered into by any Obligor with any Credit Card Issuer or any Credit Card Processor, as the same now exist or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced, including, without limitation, the agreements set forth on **Schedule 9.1.27**.

Credit Card Issuer: any Person (other than any Obligor) who issues or whose members issue credit or debit cards, including, MasterCard or VISA bank credit or debit cards or other bank credit or debit cards issued through MasterCard International, Inc., VISA, U.S.A., Inc. or Visa International and American Express, Discover, Diners Club, Carte Blanche and other non-bank credit or debit cards.

Credit Card Processor: with respect to each Obligor, any servicing or processing agent or any factor or financial intermediary who facilitates, services, processes or manages the credit authorization, billing transfer and/or payment procedures with respect to any of such Obligor’s sales transactions involving credit card or debit card purchases by customers using credit cards or debit cards issued by any Credit Card Issuer.

**Credit Card Receivables Account:** one or more deposit accounts established in connection with a Credit Card Agreement and which is maintained in accordance with **Section 10.1.12**.

**Cure Amount:** as defined in **Section 11.6.1**.

**Cure Deadline:** as defined in **Section 11.6.1**.

**Cure Right:** as defined in **Section 11.6.1**.

**Daily Simple SOFR:** with respect to any applicable determination date, the secured overnight financing rate published on the FRBNY website (or any successor source satisfactory to Agent).

**Debt:** as applied to any Person, without duplication, (a) all Borrowed Money; (b) all obligations of such Person (whether contingent or otherwise) in respect of letters of credit, surety or other bonds and similar instruments; (c) all accrued expenses, liabilities or other obligations of such Person to pay the deferred purchase price of Property or services; (d) all obligations of such Person under Capital Leases, conditional sales or title retention agreements; (e) all Debt (as defined in the other clauses of this definition) of others secured by (or for which the holder of such Debt has an existing right, contingent or otherwise, to be secured by) a Lien on any Property of such Person, whether or not such Debt is assumed by such Person (provided, however, if such Person has not assumed or otherwise become liable in respect of such Debt, such Debt shall be deemed to be in an amount equal to the Fair Market Value of the property subject to such Lien at the time of determination); (f) all Debt (as defined in the other clauses of this definition) of others guaranteed by such Person or in respect of which such Person otherwise has a Contingent Obligation to the extent of the lesser of the amount of such Debt and the maximum stated amount of such guarantee or assurance against loss; (g) any Debt (as defined in the other clauses of this definition) of a partnership for which such Person is liable either by agreement, by operation of law or by a governmental requirement but only to the extent of such liability; (h) obligations of such Person with respect to Disqualified Equity Interests and (i) all net obligations of such Person in respect of any Swaps; provided, however, that "Debt" does not include (i) obligations with respect to surety or performance bonds and similar instruments entered into in the Ordinary Course of Business in connection with the operation of the Sand Mines or with respect to appeal bonds, (ii) accounts payable and accrued expenses, liabilities or other obligations to pay the deferred purchase price of Property or services, from time to time incurred in the Ordinary Course of Business which are not greater than 90 days past the date of invoice or which are being contested in good faith by appropriate action and for which adequate reserves have been maintained in accordance with GAAP, or (iii) endorsements of negotiable instruments for collection. The Debt of a Person shall include any recourse Debt of any partnership in which such Person is a general partner or joint venturer. The Debt of any Person shall include all obligations of such Person of the character described above to the extent such Person remains legally liable in respect thereof notwithstanding that any such obligation is not included as a liability of such Person under GAAP.

**Debtor Relief Laws:** the Bankruptcy Code and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect.

Default: an event or condition that, with the lapse of time or giving of notice, would constitute an Event of Default.

Default Rate: for any Obligation (including, to the extent permitted by law, interest not paid when due), 2% plus the interest rate or fee (including margin) otherwise applicable thereto.

Defaulting Lender: any Lender that (a) has failed to comply with its funding obligations hereunder, and such failure is not cured within two Business Days; (b) has notified Agent or any Borrower that such Lender does not intend to comply with its funding obligations hereunder or under any other credit facility, or has made a public statement to that effect; (c) has failed, within three Business Days following request by Agent or any Borrower, to confirm in a manner satisfactory to Agent and Borrowers that such Lender will comply with its funding obligations hereunder; or (d) has, or has a direct or indirect parent company that has, become the subject of an Insolvency Proceeding (including reorganization, liquidation, or appointment of a receiver, custodian, administrator or similar Person by the Federal Deposit Insurance Corporation or any other regulatory authority) or Bail-In Action; provided, that a Lender shall not be a Defaulting Lender solely by virtue of a Governmental Authority's ownership of an equity interest in such Lender or parent company unless the ownership provides immunity for such Lender from jurisdiction of courts within the United States or from enforcement of judgments or writs of attachment on its assets, or permits such Lender or Governmental Authority to repudiate or otherwise to reject such Lender's agreements.

Deposit Account Control Agreement: control agreement reasonably satisfactory to Agent executed by an institution maintaining a Deposit Account for an Obligor, to perfect Agent's Lien on such account.

Designated Non-Cash Consideration: the Fair Market Value of non-cash or Cash Equivalent consideration received by any Obligor or its Restricted Subsidiaries in connection with a sale, disposition or transfer pursuant to **Section 10.2.5(n)** that is designated as "Designated Non-Cash Consideration" pursuant to a certificate of a Senior Officer of Borrower Agent delivered to Agent, setting forth the basis of such valuation.

Dilution Percent: the percent, determined for Obligors' most recent Fiscal Quarter, equal to (a) bad debt write-downs or write-offs, discounts, returns, credits, credit memos and other dilutive items with respect to Accounts, divided by (b) gross sales.

Dilution Reserve: a reserve determined by Agent in its Permitted Discretion to the extent that the Dilution Percent exceeds 2.5%.

Disposition: the sale, transfer, license, lease, consignment or other disposition (in one transaction, a series of transactions or otherwise) of property of a Person, including a sale-leaseback transaction, synthetic lease, issuance of Equity Interests by a subsidiary, Division, or sale, assignment, transfer or other disposal, with or without recourse, of any notes, accounts receivable or related rights.

Disqualified Equity Interests: any Equity Interest which, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, (a) matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable (other than for Equity Interests which would not constitute Disqualified Equity Interests), pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part, on or prior to 91 days after the Termination Date, (b) is convertible into or exchangeable (unless at the sole option of the issuer thereof) for (i) debt or (ii) any Equity Interests referred to in clause (a) above, in each case at any time on or prior to 91 days after the Termination Date, or (c) contains any mandatory repurchase obligation which may come into effect prior to Full Payment of all Obligations; provided, that any Equity Interests that would not constitute Disqualified Equity Interests but for provisions thereof giving holders thereof (or the holders of any security into or for which such Equity Interests is convertible, exchangeable or exercisable) the right to require the issuer thereof to redeem such Equity Interests upon the occurrence of a change in control or an asset sale occurring prior to the 91 days after the Termination Date shall not constitute Disqualified Equity Interests if such Equity Interests provide that the issuer thereof will not redeem any such Equity Interests pursuant to such provisions prior to the Full Payment of the Obligations.

Distribution: any (a) declaration or payment of a distribution, interest or dividend on any Equity Interest (other than payment-in-kind); or (b) purchase, redemption, or other acquisition or retirement for value of any Equity Interest.

Division: the division of assets, liabilities and/or obligations of a Person among two or more Persons (whether pursuant to a “plan of division” or similar arrangement, including under Texas law with respect to a divisive merger), which may or may not include the original dividing Person and pursuant to which the original dividing Person may or may not survive.

Dollars: lawful money of the United States.

Dominion Account: a special account established by Obligors at Bank of America or another bank acceptable to Agent, over which Agent has exclusive or springing control for withdrawal purposes; provided, that such Deposit Account is a collection account only and not also an operating or disbursement account.

**EBITDA:** for any fiscal period and determined on a consolidated basis for Obligors and Restricted Subsidiaries in accordance with GAAP, the result of (a) Consolidated Net Income, **plus** (b) without duplication, the sum of the following to the extent deducted from Consolidated Net Income: (i) Consolidated Interest Expense, **plus** (ii) Taxes based on income, profits or capital gains thereto, including any franchise Taxes, margin Taxes and foreign withholding Taxes paid or accrued during such period, including penalties and interest related to such Taxes or arising from any Tax examination, **plus** (iii) depreciation, amortization, depletion and accretion expense, **plus** (iv) losses arising from the sale of capital assets, **plus** (v) any documented out-of-pocket fees, costs and expenses incurred in connection with negotiating and documenting the Loan Documents and any required amendments to the Term Loan Documents (whether occurring on or prior to the Closing Date), **plus** (vi) stock-based compensation expense and other non-cash items, including any non-cash losses or negative adjustments under ASC 815 as a result of changes in the fair market value of derivatives or otherwise resulting from fair value accounting required under GAAP (unless representing a reserve for a cash item in a future period), **plus** (vii) reasonable and customary fees, expenses and costs relating to any IPO Event, Permitted Parent Entity Investment, the Hercules Acquisition, Permitted Acquisition (including the determination of any related earnout and similar obligations in connection with a Permitted Acquisition), Disposition outside of the Ordinary Course of Business, Investments (other than Investments in Unrestricted Subsidiaries), equity issuances and debt issuances (including refinancings) permitted under the Loan Documents (in each case whether or not consummated), **plus** (viii) fees, expenses and costs incurred during such period in connection with any amendment, modification, consent or waiver (whether or not consummated) of or under the Loan Documents and/or the Term Loan Documents, **plus** (ix) any extraordinary, unusual or non-recurring items, and **minus** (c) without duplication, the sum of the following to the extent included in Consolidated Net Income: (i) gains arising from the sale of capital assets, **plus** (ii) any extraordinary, unusual or non-recurring gains, **plus** (iii) the amount of all non-cash items increasing net income for such period, including any non-cash gains or positive adjustments under ASC 815 as a result of changes in the fair market value of derivatives or otherwise resulting from fair value accounting required under GAAP (excluding any such non-cash item to the extent it represents the reversal of an accrual or reserve for a potential cash item in any prior period). For the purposes of calculating EBITDA for any period, if at any time during such period, any Obligor or any Restricted Subsidiary of an Obligor shall have made any Material Acquisition or Material Disposition, then EBITDA for such period shall be calculated after giving pro forma effect thereto (including pro forma adjustments arising out of events which are directly attributable to such Material Acquisition or Material Disposition, are factually supportable, and are expected to have a continuing impact, in each case as determined by the Obligors and approved by Agent in its reasonable discretion) or in such other manner acceptable to Borrower Agent and Agent as if any such Material Acquisition, Material Disposition or adjustment occurred on the first day of such period. For the avoidance of doubt, EBITDA shall exclude the results of (A) Power SPV and (B) Unrestricted Subsidiaries (including by equity method accounting) other than an amount equal to, but not less than zero, the amount of cash dividends or distributions received by the Company and its Restricted Subsidiaries from Unrestricted Subsidiaries during the applicable period minus the amount of cash investments received by the Unrestricted Subsidiaries from the Company and its Restricted Subsidiaries during such period; provided, that cash proceeds attributable to any incurrence of Debt or issuance of (or contribution to) Equity Interests will not be included in any calculation of investments, dividends, or distributions referenced above.

**EEA Financial Institution:** (a) any credit institution or investment firm established in an EEA Member Country that is subject to the supervision of an EEA Resolution Authority; (b) any entity established in an EEA Member Country that is a parent of an institution described in clause (a) above; or (c) any financial institution established in an EEA Member Country that is a subsidiary of an institution described in the foregoing clauses and is subject to consolidated supervision with its parent.

**EEA Member Country:** any of the member states of the European Union, Iceland, Liechtenstein and Norway.

**EEA Resolution Authority:** any public administrative authority or any Person entrusted with public administrative authority of an EEA Member Country (including any delegatee) having responsibility for the resolution of any EEA Financial Institution.

**Electronic Copy:** as defined in **Section 14.8**.

**Electronic Record and Electronic Signature:** as defined in 15 U.S.C. §7006.

Eligible Account: an Account owing to an Obligor that arises in the Ordinary Course of Business from the sale of Sand Inventory or rendition of services, is payable in Dollars, and has been invoiced. Notwithstanding the foregoing, no Account shall be an Eligible Account if (a) (i) it is unpaid for more than 60 days after the original due date or (ii) the Account Debtor has failed to pay (A) if the payment terms offered to such Account Debtor is 60 days or less, within 120 days of original invoice date, or (B) otherwise, within 90 days of the original invoice date, in each case, unless the Account is supported by an irrevocable letter of credit reasonably satisfactory to Agent (as to form, substance, and issuer or domestic confirming bank) that has been delivered to Agent and is directly drawable by Agent; (b) 50% or more of the Accounts owing by the Account Debtor are not Eligible Accounts under the foregoing clause unless the Account is supported by an irrevocable letter of credit reasonably satisfactory to Agent (as to form, substance, and issuer or domestic confirming bank) that has been delivered to Agent and is directly drawable by Agent; (c) when aggregated with other Accounts owing by the Account Debtor and its Affiliates, it exceeds (i) in the case of an Account Debtor that is not an Investment Grade Account Debtor, 20% of the aggregate Eligible Accounts (or such higher percentage as Agent may establish for the Account Debtor from time to time) or (ii) in the case of an Account Debtor that is an Investment Grade Account Debtor, 35% of the aggregate Eligible Accounts (or such higher percentage as Agent may establish for the Account Debtor from time to time); (d) it does not conform with a covenant or representation herein; (e) it is owing by a creditor or supplier, or is otherwise subject to an asserted or presently existing offset, counterclaim, dispute, deduction, discount, recoupment, reserve, defense, chargeback, credit or allowance (but ineligibility shall be limited to the amount thereof); (f) an Insolvency Proceeding has been commenced by or against the Account Debtor; or the Account Debtor has failed, has suspended or ceased doing business, is liquidating, dissolving or winding up its affairs, is not Solvent (provided, that Agent may, in its Permitted Discretion, include Accounts from such Account Debtors if, and to the extent that, (i) such Account is supported by an irrevocable letter of credit reasonably satisfactory to Agent (as to form, substance, and issuer or domestic confirming bank) that has been delivered to Agent and is directly drawable by Agent, (ii) such Account is covered by credit insurance in form, substance, and amount, and by an insurer, reasonably satisfactory to Agent or (iii) such Account is an Account that was created on a post-petition basis of an Account Debtor that is a debtor in a Chapter 11 Insolvency Proceeding under the U.S. federal bankruptcy law that has “debtor in possession” financing in effect (or other court orders in effect) that is reasonably satisfactory to Agent and Agent shall have reasonably determined that the timely payment and collection of such Account will not be impaired), or is the target of a Sanction; or the applicable Obligor is not able to bring suit or enforce remedies against the Account Debtor through judicial process; (g) the Account Debtor is organized or has its principal offices or assets outside the United States or Canada, unless the Account is supported by a letter of credit (delivered to and directly drawable by Agent) or credit insurance satisfactory to Agent in all respects (in Agent’s Permitted Discretion) and assigned to it; provided that this **clause (g)** shall not exclude any Accounts of (x) any Investment Grade Account Debtor organized or headquartered in the United Kingdom, Austria, Belgium, Canada, Denmark, Finland, Germany, Holland, Ireland, Luxembourg, Norway, Sweden, or Switzerland (or any other country requested to be included in this list from time to time by the Borrower Agent and approved in writing by Agent in its Permitted Discretion), in each case, which has significant assets and operations in the United States (as reasonably determined by Agent) or (y) any Person listed on **Schedule 1.1(a)**, as such list may be supplemented by the Borrower Agent from time to time in writing to Agent and agreed to in writing by Agent; (h) it is owing by a Governmental Authority, unless the Account Debtor is (i) the United States or any department, agency or instrumentality thereof and the Account has been assigned to Agent in compliance with the federal Assignment of Claims Act or (ii) any state (or political subdivision thereof) and the Obligors have complied, to the reasonable satisfaction of Agent, with any applicable state legislation similar to the federal Assignment of Claims Act for the creation and perfection of security interests in such Account, if applicable, and Agent shall have determined that no immunity or other impediment exists to the enforcement of such Account; (i) it is not subject to a duly perfected, first priority Lien in favor of Agent, or is subject to any other Lien (other than (i) the subordinate Lien in favor of the Term Loan Agent permitted by **Section 10.2.2(b)** and (ii) other Permitted Liens that do not have priority over the Lien in favor of Agent); (j) the goods giving rise to it have not been delivered to the Account Debtor, the services giving rise to it have not been accepted by the Account Debtor, or it otherwise does not represent a final sale; (k) it is evidenced by Chattel Paper or an Instrument of any kind, or has been reduced to judgment; (l) its payment has been extended or the Account Debtor has made a partial payment; (m) it arises from a sale to an Affiliate (other than Eligible Affiliate Accounts), from a sale on a cash-on-delivery, bill-and-hold, sale or return, sale on approval, consignment, or other repurchase or return basis, or from a sale for personal, family or household purposes; (n) it represents a progress billing or retainage, or relates to services for which a performance, surety or completion bond or similar assurance has been issued; (o) it is a credit card sale or an amount due from a Credit Card Issuer or Credit Card Processor; (p) [reserved]; (q) it includes a billing for interest, fees or late charges, but ineligibility shall be limited to the extent thereof; (r) it is a comingled invoice with a Person that is not an Obligor (it being understood that an invoice that is otherwise payable solely to an Obligor shall not be deemed ineligible under this clause (r) as a result of any separate obligation of Obligors to pay any Unrestricted Subsidiary for services rendered by such Unrestricted Subsidiary for, or on behalf of, an Obligor in the Ordinary Course of Business); or (s) Agent determines that such Account is otherwise ineligible for inclusion in the Borrowing Base in its Permitted Discretion. In calculating delinquent portions of Accounts under clauses (a) and (b), credit balances more than 90 days old will be excluded.

Eligible Affiliate Accounts: Accounts owed to an Obligor by Eligible Affiliates and/or Brigham Exploration; provided that (a) such Accounts are on arm's-length terms and arise out of the Ordinary Course of Business of such Obligor and any such Eligible Affiliate or Brigham Exploration, as applicable, and are administered in accordance with the customary collection and credit policies of the Obligors and (b) the aggregate amount of all such Accounts included in the calculation of Eligible Accounts shall not exceed 5.0% of Eligible Accounts.

Eligible Affiliates: as defined in the definition of "Brigham Family"; provided, that neither Power SPV nor any Unrestricted Subsidiary may be an Eligible Affiliate.

Eligible Assignee: (a) a Lender, Affiliate of a Lender or Approved Fund that satisfies **Section 12.13**; (b) an assignee approved by Borrower Agent (which approval shall not be unreasonably withheld or delayed, and shall be deemed given if no objection is made within 10 Business Days after notice of the proposed assignment) and Agent; or (c) during the continuance of an Event of Default under **Section 11.1(a), (i), (j) or (k)**, any Person acceptable to Agent in its discretion.

Eligible Inventory: Sand Inventory owned by an Obligor. Notwithstanding the foregoing, no Inventory shall be Eligible Inventory unless it (a) is finished goods, work-in-process or raw materials, and not packaging or shipping materials, labels, samples, display items, bags, replacement parts or manufacturing supplies; (b) is not held on consignment, nor subject to any deposit or down payment; (c) is in saleable condition and is not unfit for sale; (d) is not slow-moving, perishable, obsolete or unmerchantable, and does not constitute returned or repossessed goods; (e) meets all standards imposed by any Governmental Authority in all material respects, has not been acquired from a Person that is the target of a Sanction, and does not constitute hazardous materials under any applicable Environmental Law; (f) conforms with the covenants and representations herein in all material respects; (g) is subject to Agent's duly perfected, first priority Lien, and no other Lien (other than the subordinate Lien in favor of the Term Loan Agent permitted by **Section 10.2.2(b)** and other Permitted Liens that do not have priority over Agent's Lien); (h) is within the continental United States, is not in transit except between locations of Obligors, and is not consigned to any Person; (i) is not subject to any warehouse receipt or negotiable Document; (j) is not subject to any License or other arrangement that restricts such Obligor's or Agent's right to dispose of such Inventory, unless Agent has received an appropriate Lien Waiver; (k) is not located on leased premises or in the possession of a customer, warehouseman, processor, repairman, mechanic, shipper, freight forwarder or other Person, unless the lessor or such Person has delivered a Lien Waiver or an appropriate Rent and Charges Reserve has been established; (l) is reflected in the details of a current perpetual inventory report; and (m) is otherwise determined by Agent in its Permitted Discretion to be eligible for inclusion in the Borrowing Base.

Eligible Unbilled Account: an Account owing to an Obligor that would otherwise qualify as an Eligible Account except that such Account has not yet been billed to the applicable Account Debtor; provided that an Account shall cease to be an Eligible Unbilled Account upon the earlier of (a) the date such Account is billed to the applicable Account Debtor and (b) 30 days after the goods giving rise to such Account have been delivered to the applicable Account Debtor or the applicable service has been performed.

Enforcement Action: any action to enforce any Obligations (other than Secured Bank Product Obligations) or Loan Documents or to exercise any rights or remedies relating to any Collateral, whether by judicial action, self-help, notification of Account Debtors, setoff or recoupment, credit bid, deed in lieu of foreclosure, action in an Insolvency Proceeding or otherwise.

Environmental Laws: Applicable Laws (including programs, permits and guidance promulgated by regulators) relating to public health (other than occupational safety and health regulated by OSHA) or the protection or pollution of the environment, including the Resource Conservation and Recovery Act (42 U.S.C. §§6991-6991i), Clean Water Act (33 U.S.C. §1251 et seq.) and CERCLA.

Environmental Permit: any permit, registration, license, approval, consent, exemption, variance, or other authorization required under or issued pursuant to applicable Environmental Laws.

Environmental Release: a release as defined in CERCLA or under any other Environmental Law.

Equity Interest: the interest of any (a) shareholder in a corporation; (b) partner in a partnership (whether general, limited, limited liability or joint venture); (c) member in a limited liability company; or (d) other Person having any other form of equity security or ownership interest, including without limitation, warrants, options, or other rights to purchase or acquire, and securities convertible into or exchangeable for, an equity security or ownership interest; provided that instruments evidencing Debt that by their terms are convertible or exchangeable into or for Equity Interests and/or cash or any combination thereof shall not constitute Equity Interests under this definition prior to the settlement, conversion, exchange or exercise thereof into or for interests that would otherwise constitute Equity Interests under this definition.

ERISA: the Employee Retirement Income Security Act of 1974.

ERISA Affiliate: any trade or business (whether or not incorporated) under common control with an Obligor within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

ERISA Event: (a) a Reportable Event with respect to a Pension Plan; (b) withdrawal of an Obligor or ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) complete or partial withdrawal of an Obligor or ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is insolvent; (d) filing of a notice of intent to terminate, treatment of a Pension Plan amendment as a termination under Section 4041 or 4041A of ERISA, or institution of proceedings by the PBGC to terminate a Pension Plan; (e) determination that a Pension Plan is considered an at-risk plan or a plan in critical or endangered status under the Code or ERISA; (f) an event or condition that constitutes grounds under Section 4042 of ERISA for termination of, or appointment of a trustee to administer, any Pension Plan; (g) imposition of any liability on an Obligor or ERISA Affiliate under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA; or (h) failure by an Obligor or ERISA Affiliate to meet all applicable requirements under the Pension Funding Rules in respect of a Pension Plan, whether or not waived, or to make a required contribution to a Multiemployer Plan.

EU Bail-In Legislation Schedule: the EU Bail-In Legislation Schedule published by the Loan Market Association, as in effect from time to time.

Event of Default: as defined in **Section 11**.

Exam Trigger Period: the period (a) commencing on any day that (i) an Event of Default occurs or (ii) Specified Availability is less than the Applicable Trigger for five consecutive Business Days; and (b) continuing until, during each of the preceding 30 consecutive days, no Event of Default has existed and Specified Availability has been more than the Applicable Trigger at all times, in each case during such 30 day period.

Excepted Liens: (a) Liens for Taxes, assessments or other governmental charges or levies which are not delinquent or which are being contested in good faith by appropriate action and for which adequate reserves have been maintained in accordance with GAAP; (b) Liens in connection with workers' compensation, unemployment insurance or other social security, old age pension or public liability obligations which are not delinquent or which are being contested in good faith by appropriate action and for which adequate reserves have been maintained in accordance with GAAP; (c) landlords' liens, operators', vendors', carriers', warehousemen's, repairmen's, mechanics', suppliers', workers', materialmen's, construction or other like Liens, in each case, arising in the Ordinary Course of Business or incident to the excavation, development, operation and maintenance of the Sand Mines or the Sand Properties each of which is in respect of obligations that are not delinquent or which are being contested in good faith by appropriate action and for which adequate reserves have been maintained in accordance with GAAP; (d) contractual Liens which arise in the Ordinary Course of Business under operating agreements, joint venture agreements, mineral leases, contracts for the sale, transportation or exchange of sand or minerals, area of mutual interest agreements, overriding royalty agreements, marketing agreements, processing agreements, net profits agreements, development agreements, seismic or other geophysical permits or agreements, and other similar agreements which are usual and customary in the sand extracting, producing, processing, developing and/or marketing business and are for claims which are not delinquent or which are being contested in good faith by appropriate action and for which adequate reserves have been maintained in accordance with GAAP; (e) Liens arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of set-off or similar rights and remedies and burdening only deposit accounts or other funds maintained with a creditor depository institution; provided that no such deposit account is a dedicated cash collateral account or is subject to restrictions against access by the depositor in excess of those set forth by regulations promulgated by the Board and no such deposit account is intended by the Obligors to provide collateral to the depository institution; (f) Liens in favor of the depository bank arising under documentation governing deposit accounts or in any Deposit Account Control Agreement or Liens of a collecting bank arising in the ordinary course of business under Section 4-208 of the UCC, which Liens secure the payment of returned items, settlement item amounts, bank fees, or similar items or fees; (g) Immaterial Title Deficiencies and easements, restrictions, servitudes, permits, conditions, covenants, exceptions, reservations, zoning and land use requirements in any Property of the Borrowers or any of the other Obligors for the purpose of roads, pipelines, transmission lines, transportation lines, distribution lines and other means of ingress and egress for the removal of gas, oil, coal, other minerals or sand or timber, and other like and/or usual and customary purposes, or for the joint or common use of real estate, rights of way, facilities and equipment, and leases or subleases of real property and any interest or title of a lessee or sublessee under any such lease or sublease, in each case, that do not secure any Debt and which in the aggregate do not materially impair the use of such Property for the purposes of which such Property is held by the Borrowers or any of the other Obligors or materially impair the value of such Property subject thereto; (h) Liens on cash or securities pledged to secure (either directly, or indirectly by securing letters of credit that in turn secure) performance of tenders, surety and appeal bonds, government contracts, performance and return of money bonds, bids, trade contracts, leases, statutory obligations, regulatory obligations and other obligations of a like nature incurred in the Ordinary Course of Business; (i) title and ownership interests of lessors (including sub-lessors) of Property leased by such lessors to any Obligor or any Restricted Subsidiary of any Obligor, Liens and encumbrances encumbering such lessors' titles and interests in such Property and to which the applicable Obligor's or any Restricted Subsidiary's leasehold interests may be subject or subordinate, in each case whether or not evidenced by UCC financing statement filings or other documents of record, provided that such Liens do not secure Debt of any Obligor or its Restricted Subsidiaries and do not encumber Property of any Obligor or its Restricted Subsidiaries other than the Property that is the subject of such leases and items located thereon; provided, further, that any such Lien referred to in this clause does not materially impair the use of the Property covered by such Lien for the purposes for which such Property is held by the applicable Obligor or any Restricted Subsidiary of any Obligor or materially impair the value of such Property subject thereto; (j) judgment and attachment Liens not giving rise to an Event of Default; provided that 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 proceeding may be initiated shall not have expired and no action to enforce such Lien has been commenced; (k) a Lien existing on any Property prior to the acquisition thereof by any Obligor or any Subsidiary or existing on any Property of any Person that becomes an Obligor or a Subsidiary of any Obligor after the date hereof prior to the time such Person becomes an Obligor or a Subsidiary of any Obligor; provided that (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming an Obligor or a Subsidiary of an Obligor, as applicable, (ii) such Lien shall not apply to any other Property of such Obligor or Subsidiary and (iii) such Lien shall secure only those obligations which it secures on the date of such acquisition or the date such Person becomes an Obligor or Subsidiary, as applicable, and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof and (l) nonexclusive licenses of intellectual property rights granted in the Ordinary Course of Business, which in the aggregate do not materially impair the use of any Property owned by any of the Obligors or their Restricted Subsidiaries for the purposes of which such Property is held by any of the Obligors or their Restricted Subsidiaries or materially impair the value of such Property subject thereto; provided, that (x) Liens described in clauses (a) through (e) shall remain "Excepted Liens" only for so long as no action to enforce such Lien has been commenced and no intention to subordinate the Lien granted in favor of Agent for the benefit of the Secured Parties is to be hereby implied or expressed by the permitted existence of such Excepted Liens and (y) the term "Excepted Liens" shall not include any Lien securing Debt for Borrowed Money other than the Obligations.

Excluded Account: any Deposit Account (a) exclusively used for payroll, payroll taxes or employee benefits, (b) constituting zero-balance disbursement accounts through which disbursements are made and settled on a daily basis with no uninvested balance remaining overnight, (c) exclusively used for escrow arrangements, fiduciary arrangements, or trust arrangements, in each case for the benefit of unaffiliated third parties and (d) other accounts containing not more than \$500,000 on deposit therein at any time (but no more than \$2,000,000 for all such accounts in the aggregate); provided, that so long as the Term Loan Debt is outstanding, no Deposit Account described above shall constitute an Excluded Account hereunder unless it also constitutes an “Excluded Account” under and as defined in the applicable Term Loan Documents; provided, further that in no event shall a Credit Card Receivables Account be an “Excluded Account”.

Excluded Property: each of the following: (a) Equity Interests of (i) any Foreign Subsidiary in excess of 65% of the voting stock of such Foreign Subsidiary, (ii) any FSHCO in excess of 65% of the voting stock of such FSHCO, (iii) any Subsidiary of a Foreign Subsidiary and (iv) any Unrestricted Subsidiary, (b) any Obligor's right, title or interest in any lease, license or agreement (other than customer contracts, customer leases or work orders, Chattel Paper and Accounts) existing on the Closing Date if and to the extent that a security interest therein is prohibited by or in violation of a term, provision or condition of any such lease, license or agreement (unless in each case, such term, provision or condition has been waived or would be rendered ineffective with respect to the creation of such security interest pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the Uniform Commercial Code (or any successor provision or provisions) of any relevant jurisdiction or any other Applicable Law or principles of equity), provided, however, that the foregoing shall cease to be treated as "Excluded Property" (and shall constitute Collateral) immediately at such time as the contractual prohibition shall no longer be applicable and to the extent severable, such security interest shall attach immediately to any portion of such lease, license or agreement not subject to the prohibitions specified above, provided, further, that Excluded Property shall not include any proceeds of any such lease, license or agreement or any goodwill of Obligors' business associated therewith or attributable thereto, (c) Deposit Accounts described in clauses (a) and (c) of the definition of "Excluded Accounts", (d) Property owned by any Obligor on the date hereof or hereafter acquired that is subject to a Lien permitted to be incurred pursuant to **Section 10.2.2(c)**, for so long as the contract or other agreement in which such Lien is granted (or the documentation governing such Lien or the obligations secured thereby) validly prohibits the creation of any other Lien on such Property (and, in the case of Property hereafter acquired, so long as such prohibition was not entered into in contemplation of such acquisition) (unless in each case, such prohibition would be rendered ineffective with respect to the creation of such security interest pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the Uniform Commercial Code (or any successor provision or provisions) of any relevant jurisdiction or any other Applicable Law or principles of equity), (e) applications filed in the United States Patent and Trademark Office to register trademarks or service marks on the basis of any Obligor's "intent to use" such trademarks or service marks unless and until the filing of a "Statement of Use" or "Amendment to Allege Use" has been filed and accepted, whereupon such applications shall be automatically subject to the Lien granted herein and deemed included in the Collateral, (f) vehicles and other assets subject to certificates of title (except to the extent the security interest in such assets can be perfected by the filing of an "all assets" financing statement), (g) Property with respect to which the cost to the Obligors of pledging such Property and perfecting Agent's Lien thereon is excessive (as determined by Agent in its reasonable discretion and confirmed by it in writing) in relation to the benefits to the Secured Parties of the security to be afforded thereby, (h) Real Estate (other than fixtures and as-extracted collateral) that is not required to be subject to a Mortgage pursuant to **Section 7.4**, and (i) any Property to the extent that such grant of a security interest is prohibited by any Applicable Law or requires a consent not obtained of any Governmental Authority pursuant to such Applicable Law (unless in each case, such Applicable Law, term, provision or condition has been waived or would be rendered ineffective with respect to the creation of such security interest pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the Uniform Commercial Code (or any successor provision or provisions) of any relevant jurisdiction or any other Applicable Law or principles of equity); provided, that, notwithstanding the foregoing in each case, "Excluded Property" shall not include any proceeds, products, substitutions or replacements of Excluded Property, including monies due or to become due to an Obligor (unless such proceeds, products, substitutions or replacements would otherwise constitute Excluded Property).

Excluded Swap Obligation: with respect to an Obligor, each Swap Obligation as to which, and only to the extent that, such Obligor's guaranty of or grant of a Lien as security for such Swap Obligation is or becomes illegal under the Commodity Exchange Act because the Obligor does not constitute an "eligible contract participant" as defined in the act (determined after giving effect to any keepwell, support or other agreement for the benefit of such Obligor and all guarantees of Swap Obligations by other Obligors) when such guaranty or grant of Lien becomes effective with respect to the Swap Obligation. If a hedging agreement governs more than one Swap Obligation, only the Swap Obligation(s) or portions thereof described in the foregoing sentence shall be Excluded Swap Obligation(s) for the applicable Obligor.

Excluded Taxes: (a) Taxes imposed on or measured by a Recipient's net income (however denominated), franchise Taxes and branch profits Taxes (i) as a result of such Recipient being organized under the laws of, or having its principal office or applicable Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof), or (ii) constituting Other Connection Taxes; (b) U.S. federal withholding Taxes imposed on amounts payable to or for the account of a Lender with respect to its interest in a Loan or Commitment pursuant to a law in effect on the date on which the Lender acquires such interest (except pursuant to an assignment request by Borrower Agent under **Section 13.4**) or changes its Lending Office, unless such Taxes were payable pursuant to **Section 5.8** to its assignor immediately prior to such assignment or to the Lender immediately prior to its change in Lending Office; (c) Taxes attributable to a Recipient's failure to comply with **Section 5.9**; and (d) withholding Taxes imposed pursuant to FATCA.

Extraordinary Expenses: all documented out-of-pocket costs, expenses or advances incurred by any Agent Indemnitee during an Event of Default or Obligor's Insolvency Proceeding, including those relating to any (a) audit, inspection, repossession, storage, repair, appraisal, insurance, processing, preparation or advertising for sale, sale, collection, or other preservation of or realization upon Collateral; (b) action, arbitration or other proceeding (whether instituted by or against Agent, any Lender, any Obligor, any creditor(s) of an Obligor or any other Person) in any way relating to any Collateral, Agent's Liens, Loan Documents, Letters of Credit or Obligations, including any lender liability or other Claims; (c) Enforcement Action or exercise of any rights or remedies in, or the monitoring of, an Insolvency Proceeding; (d) settlement or satisfaction of Taxes, charges or Liens with respect to any Collateral; and (e) negotiation and documentation of any Modification, workout, restructuring, forbearance, liquidation or collection with respect to any Loan Document, Collateral or Obligations. Such costs, expenses and advances include transfer fees, Other Taxes, storage and insurance costs, permit fees, utility expenses, legal and accounting fees and expenses, appraisal costs, brokers' and auctioneers' commissions, environmental study costs, wages and salaries paid to employees of any Obligor or independent contractors in liquidating Collateral, and travel expenses.

Fair Market Value: with respect to any asset or group of assets on any date of determination, the value of the consideration obtainable in a sale of such asset at such date of determination assuming a sale by a willing seller to a willing purchaser dealing at arm's length and arranged in an orderly manner over a reasonable period of time having regard to the nature and characteristics of such asset.

FATCA: Sections 1471 through 1474 of the Code (including any amended or successor version if substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b)(1) of the Code, and any intergovernmental agreement, treaty or convention among Governmental Authorities (and related fiscal or regulatory legislation, or related official rules or practices) entered into in connection with implementing the foregoing.

Federal Funds Rate: for any day, the per annum rate calculated by FRBNY based on such day's federal funds transactions by depository institutions (as determined in such manner as FRBNY shall set forth on its public website from time to time) and published on the next Business Day by FRBNY as the federal funds effective rate; provided, that in no event shall the Federal Funds Rate be less than zero.

Financed Capital Expenditures: with respect to the Company and its Restricted Subsidiaries and for any period, Capital Expenditures of the Company and its Restricted Subsidiaries during such period that are financed with, without duplication, (a) the net proceeds of any incurrence of Debt (other than Loans) or (b) the proceeds of any issuance of Equity Interests (other than Disqualified Equity Interests or any other issuance of Equity Interests which increases any available basket hereunder). For the period from the Closing Date through and including June 30, 2025 (and, for the avoidance of doubt, but subject to the proviso below, all Fiscal Quarters ending during such period) (such period, the "CapEx Period"), the Company may deem Unfinanced Capital Expenditures made or incurred during the CapEx Period in an aggregate amount of up to the lesser of (i) \$150,000,000 and (ii) the actual amount of Unfinanced Capital Expenditures made in support of the Dune Express project during the CapEx Period, to constitute Financed Capital Expenditures; provided, that for the four consecutive Fiscal Quarter period ending September 30, 2025 and any four consecutive Fiscal Quarter period ending thereafter, no Unfinanced Capital Expenditures may be deemed to be Financed Capital Expenditures.

First Amendment: that certain First Amendment to Loan, Security and Guaranty Agreement dated as of the First Amendment Effective Date, among the Obligors, Agent and the Lenders.

First Amendment Effective Date: February 26, 2024.

Fiscal Quarter: each period of three months, commencing on the first day of a Fiscal Year.

Fiscal Year: the fiscal year of Obligors and Subsidiaries for accounting and tax purposes, ending on December 31 of each year.

Fixed Charge Coverage Ratio: as of any date of determination, the ratio, determined on a consolidated basis for the Obligors and their Restricted Subsidiaries for the most recent four Fiscal Quarter period ended on or prior to such date for which financial statements have been delivered whether as Historical Financial Statements or pursuant to **Section 10.1.2(a)** or **10.1.2(b)**, of (a) EBITDA minus Unfinanced Capital Expenditures and cash Taxes of the Obligors and their Restricted Subsidiaries (including Permitted Tax Distributions) paid or required to be paid during such period, to (b) Fixed Charges. In the event that EBITDA is being calculated on a pro forma basis as a result of any Material Acquisition or Material Disposition during the relevant period, Unfinanced Capital Expenditures, cash Taxes and Fixed Charges shall also be determined on a pro forma basis for such Material Acquisition or Material Disposition, as applicable, by the Borrower Agent in good faith and approved by Agent in its reasonable discretion.

Fixed Charges: the sum of Consolidated Interest Expense, scheduled principal payments made on Borrowed Money (other than the Loans), and Distributions made in cash (excluding Permitted Tax Distributions and other than Distributions solely among Obligors).

FLSA: the Fair Labor Standards Act of 1938.

Flood Laws: the National Flood Insurance Act of 1968, Flood Disaster Protection Act of 1973 and related laws.

Foreign Lender: any Lender that is not a U.S. Person.

Foreign Plan: any employee benefit plan or arrangement (a) maintained or contributed to by any Obligor or Subsidiary that is not subject to the laws of the United States; or (b) mandated by a government other than the United States for employees of any Obligor or Subsidiary.

Foreign Subsidiary: a Subsidiary that is a “controlled foreign corporation” under Section 957 of the Code.

Fourth Amendment Effective Date: December 26, 2025.

FRBNY: the Federal Reserve Bank of New York.

Fronting Exposure: a Defaulting Lender’s interest in LC Obligations, Swingline Loans and Protective Advances, except to the extent Cash Collateralized by the Defaulting Lender or allocated to other Lenders hereunder.

FSHCO: any Subsidiary substantially all of whose assets consist of Equity Interests or Debt of one or more direct or indirect Foreign Subsidiaries.

Full Payment: with respect to any Obligations, (a) other than with respect to LC Obligations described in clause (b) of the definition thereof and Secured Bank Product Obligations, the full cash payment thereof, including any interest, fees and other charges accruing during an Insolvency Proceeding (whether or not allowed in the proceeding); (b) with respect to LC Obligations described in clause (b) of the definition thereof, the Cash Collateralization thereof (or delivery of standby letter(s) of credit acceptable to Agent in its discretion, in the amount of required Cash Collateral); (c) if such Obligations consist of indemnification or contingent obligations for which a claim has been made or asserted, the Cash Collateralization thereof or other arrangements reasonably acceptable to the Agent; and (d) with respect to Secured Bank Product Obligations, the termination thereof and full cash payment of all amounts thereof that are then due and payable (other than Secured Bank Products allowed to remain outstanding by Bank Product providers).

Full Payment of the Obligations or Full Payment of all Obligations: Full Payment of all Obligations has occurred and all Commitments have been terminated.

GAAP: generally accepted accounting principles in effect in the United States from time to time, subject to **Section 1.2**.

Governmental Approvals: all authorizations, consents, approvals, licenses and exemptions of, registrations and filings with, and required reports to, all Governmental Authorities.

Governmental Authority: any federal, state, local, foreign or other agency, authority, body, commission, court, instrumentality, political subdivision, central bank, or other entity or officer exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions for any governmental, judicial, investigative, regulatory or self-regulatory authority (including the Financial Conduct Authority, the Prudential Regulation Authority and any supra-national bodies such as the European Union or European Central Bank).

Guarantor Payment: as defined in **Section 5.10.3**.

Guarantors: each Person that guarantees payment or performance of Obligations. As of the Fourth Amendment Effective Date, the Guarantors include each Borrower (in respect of the obligations of the other Borrowers), Atlas Sand Employee Company, LLC, Atlas Sand Employee Holding Company, LLC, Atlas Sand Construction, LLC, Atlas Construction Employee Company, LLC, Fountainhead Logistics Employee Company, LLC, Fountainhead Logistics, LLC, Fountainhead Transportation Services, LLC, OLC Kermit, LLC, OLC Monahans, LLC, Atlas OLC Employee Company, LLC, Fountainhead Equipment Leasing, LLC, Hi-Crush Operating, LLC, Hi-Crush LMS LLC, Hi-Crush Investments LLC, Oncore Processing LLC, Hi-Crush Permian Sand LLC, Hi-Crush Pods LLC, Bulktracer Holdings LLC, PropDispatch LLC, Pronghorn Logistics Holdings, LLC, Pronghorn Logistics, LLC, NexStage LLC, FB Logistics LLC, PropFlow, LLC, PropFlow Operating, LLC, PropFlow International, LLC, PropFlow Employee Co., LLC, Wyatt Holdings, LLC, Wyatt Operating, LLC, Moser Acquisition, Inc. and Moser Engine Service, Inc.

Guaranty: each guaranty agreement executed by a Guarantor in favor of Agent, including this Agreement.

Hazardous Material: any substance regulated or as to which liability might arise under any Environmental Law, or any other Applicable Law related to pollution or protection of the environment or human health through exposure to the environment, including: (a) any chemical, compound, material, product, byproduct, substance or waste defined as or included in the definition or meaning of “hazardous substance,” “hazardous material,” “hazardous waste,” “solid waste,” “toxic waste,” “extremely hazardous substance,” “toxic substance,” “contaminant,” “pollutant,” or words of similar meaning or import found in any applicable Environmental Law; (b) hydrocarbons, petroleum products, petroleum substances, natural gas, oil, oil and gas waste, crude oil, and any components, fractions, or derivatives thereof; and (c) radioactive materials, explosives, asbestos or asbestos containing materials, polychlorinated biphenyls, radon, infectious or medical wastes.

Hercules Acquisition: the direct or indirect Acquisition by the Company of substantially all of the assets (other than Excluded Assets (as defined in the Hercules Acquisition Agreement)) of Hi-Crush Inc., a Delaware corporation, in accordance with the terms of the Hercules Acquisition Agreement.

Hercules Acquisition Agreement: that certain Agreement and Plan of Merger dated as of the First Amendment Effective Date, among Atlas Energy Solutions, Inc., the Company, certain Subsidiaries of the Company, Hi-Crush Inc., the stockholders of Hi-Crush Inc. and the other Persons named therein.

Hercules Assets: the assets directly or indirectly acquired by the Company pursuant to the Hercules Acquisition.

Hercules Formula Amount: on and following the Increase Effective Date with respect to Eligible Accounts and Eligible Unbilled Accounts that are Hercules Assets (including Accounts derived from the Hercules Assets following the Increase Effective Date (collectively, "Hercules Accounts")), the sum of:

(a) 80% of the Value of such Eligible Accounts, plus

(b) the lesser of (i) 50% of the Value of such Eligible Unbilled Accounts and (ii) 15% of the Hercules Formula Amount;

provided, that, (i) the Hercules Formula Amount may not exceed 50% of the sum of the Accounts Formula Amount, the Inventory Formula Amount and the Hercules Formula Amount (prior to giving effect to the foregoing 50% limitation), (ii) from and after the date that Agent receives a reasonably satisfactory field examination with respect to the Hercules Accounts, the value of Hercules Accounts for purposes of the Borrowing Base shall be determined in accordance with the definition of Accounts Formula Amount, and (iii) from and after the Hercules Formula Termination Date, the Hercules Formula Amount shall be \$0. For the avoidance of doubt, (A) Hercules Accounts may not be included in the Accounts Formula Amount until completion by Agent of a reasonably satisfactory field exam with respect to the Hercules Accounts, which Agent shall use commercially reasonable efforts to cause to be completed promptly following the Increase Effective Date, and (B) no Inventory relating to the Hercules Assets may be eligible for inclusion in the Borrowing Base until completion of a field exam and appraisal with respect to the Hercules Assets, which Agent shall use commercially reasonable efforts to cause to be completed promptly following the Increase Effective Date.

Hercules Formula Termination Date: the date that is the earlier of (a) the date that a satisfactory (determined in Agent's Permitted Discretion) field examination with respect to the Hercules Assets is received by Agent and (b) the date that is 90 days following the Increase Effective Date.

Hercules Intercreditor Agreement: that certain intercreditor agreement in substantially the form attached to the Hercules Acquisition Agreement on the First Amendment Effective Date or otherwise reasonably satisfactory to Agent, among the Company, Hi-Crush Permian Sand LLC, Agent, Term Loan Agent and Hercules Note Agent, pursuant to which, among other things, (a) Hercules Note Agent agrees to provide Agent with certain access rights to the Hercules Assets and (b) Agent subordinates its Lien on the Real Estate (other than as-extracted collateral) securing the Hercules Seller Note.

Hercules Note Agent: U.S. Bank Trust Company, National Association and its successors and assigns and any replacement administrative agent or collateral agent with respect to the Hercules Seller Note.

Hercules Note Documents: the Hercules Seller Note, the Hercules Seller Mortgage and the other "Note Documents" or similar term under (and as defined in) the Hercules Seller Note.

Hercules Seller Mortgage: that certain Deed of Trust, Security Agreement, Financing Statement, Fixture Filing and Assignment of Rents and Leases dated as of the date of the Hercules Acquisition in substantially the form attached to the Hercules Acquisition Agreement on the First Amendment Effective Date or otherwise reasonably satisfactory to Agent, from Hi-Crush Permian Sand LLC for the benefit of Hercules Note Agent.

Hercules Seller Note: that certain Secured Seller Note dated as of the date of the Hercules Acquisition in substantially the form attached to the Hercules Acquisition Agreement on the First Amendment Effective Date or otherwise reasonably satisfactory to Agent, by the Company in favor of Hercules Note Agent in the original principal amount of up to \$125,000,000, as amended, restated or otherwise modified from time to time (subject to **Section 10.2.16**).

Hercules Seller Note Reserve: a reserve in an amount not to exceed, at any time of determination, the outstanding principal balance and accrued and unpaid interest on the Hercules Seller Note at such time, which may be implemented by Agent beginning on the date that is 91 days prior to the maturity date of the Hercules Seller Note if at such time or at any time thereafter until the Hercules Seller Note is paid in full Borrowers fail to maintain at least \$225,000,000 of Liquidity. For purposes of this definition, Liquidity shall be determined based upon the Liquidity Certificate most recently delivered pursuant to **Section 10.1.2(n)**; provided that Agent may impose the Hercules Seller Note Reserve if Borrowers fail to timely deliver any Liquidity Certificate in accordance with **Section 10.1.2(n)**.

Historical Financial Statements: as defined in **Section 9.1.4**.

Immaterial Title Deficiencies: minor defects or deficiencies in title which do not diminish by more than 2.0% the aggregate value of the Sand Properties.

Increase Effective Date: as defined in the First Amendment.

Indemnified Taxes: (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment of an Obligation (excluding any Secured Bank Product Obligation); and (b) to the extent not otherwise described in clause (a), Other Taxes.

Indemnitees: Agent Indemnitees, Lender Indemnitees, Issuing Bank Indemnitees and Bank of America Indemnitees.

Insolvency Proceeding: any case or proceeding commenced by or against a Person under any state, federal or foreign law for, or any agreement of such Person to, (a) the entry of an order for relief under the Bankruptcy Code, or any other insolvency, debtor relief or debt adjustment law; (b) the appointment of a receiver, trustee, liquidator, administrator, conservator or other custodian for such Person or any part of its Property; or (c) an assignment or trust mortgage for the benefit of creditors.

Intellectual Property: all intellectual and similar Property of a Person, including inventions, designs, patents, copyrights, trademarks, service marks, trade names, trade secrets, confidential or proprietary information, customer lists, know-how, software and databases; all embodiments or fixations thereof and all related documentation, applications, registrations and franchises; all licenses or other rights to use any of the foregoing; and all books and records relating to the foregoing.

**Intellectual Property Claim:** any claim or assertion (whether in writing, by suit or otherwise) that an Obligor's or Restricted Subsidiary's ownership, use, marketing, sale or distribution of any Inventory, Equipment, Intellectual Property or other Property violates another Person's Intellectual Property.

**Intercreditor Agreement:** that certain Second Amended and Restated ABL/Term Intercreditor Agreement dated as of the Closing Date, among each Obligor from time to time party thereto, Agent, as the ABL Agent, and the Term Loan Agent, as the Term Representative, as the same may be amended, restated, supplemented or otherwise modified from time to time (including by that certain Reaffirmation of Intercreditor Agreement dated as of July 31, 2023).

**Interest Payment Date:** (a) for each Term SOFR Loan, the last day of the applicable Interest Period and, if the Interest Period is more than three months, each three month anniversary of the beginning of the Interest Period; and (b) for all other Loans, the first day of each calendar quarter.

**Interest Period:** as defined in **Section 3.1.3**.

**Inventory:** as defined in the UCC, including all goods intended for sale, lease, display or demonstration; all work in process; and all raw materials, and other materials and supplies of any kind that are or could be used in connection with the manufacture, printing, packing, shipping, advertising, sale, lease or furnishing of such goods, or otherwise used or consumed in an Obligor's business (but excluding Equipment).

**Inventory Formula Amount:** the least of (i) 70% of the Value of Eligible Inventory; (ii) 85% of the NOLV Percentage of the Value of Eligible Inventory; or (iii) 20% of the Borrowing Base (without giving effect to clause (a) of the definition therefor).

**Inventory Reserve:** reserves established by Agent in its Permitted Discretion to reflect factors that may negatively impact the Value of Inventory, including change in salability, obsolescence, seasonality, theft, shrinkage, imbalance, change in composition or mix, markdowns and vendor chargebacks.

**Investment:** an Acquisition, an acquisition of record or beneficial ownership of any Equity Interests or Debt of a Person, or an advance, loan or capital contribution to or other investment in a Person, including any Contingent Obligation in respect of Debt of another Person.

**Investment Grade Account Debtor:** any Account Debtor that has a long term issuer rating of no less than Baa3 from Moody's and BBB- from S&P.

**IP Assignment:** a collateral assignment or security agreement pursuant to which an Obligor grants a Lien on its Intellectual Property to Agent, as security for any Obligations.

**IPO Event:** the initial public offering and sale of common stock of Atlas Energy Solutions Inc. (or its predecessor issuer) pursuant to an effective registration statement filed with the SEC under the Securities Act, which offering and sale occurred on or about March 9, 2023.

IRS: the United States Internal Revenue Service.

Issuing Bank: Bank of America (including any Lending Office of Bank of America), or any replacement issuer appointed pursuant to **Section 2.2.4**.

Issuing Bank Indemnitees: Issuing Bank and its officers, directors, employees, Affiliates, agents, advisors, attorneys, consultants, service providers and other representatives.

Junior Debt: Subordinated Debt, Borrowed Money secured by a Lien that is junior to Agent's Liens (excluding the Term Loan Debt) and unsecured Borrowed Money.

Kermit Facility: the Sand Mine(s) located in or around Kermit, Texas (including those acquired in the Hercules Acquisition).

LC Application: an application by Borrower Agent to Issuing Bank for issuance of a Letter of Credit, in form and substance reasonably satisfactory to Issuing Bank and Agent.

LC Conditions: upon giving effect to any issuance or modification of a Letter of Credit, (a) the conditions in **Section 6** are satisfied; (b) total LC Obligations do not exceed the Letter of Credit Subline and Revolver Usage does not exceed the Borrowing Base; (c) the Letter of Credit and payments thereunder are denominated in Dollars or other currency satisfactory to Agent and Issuing Bank; (d) the form of the Letter of Credit is satisfactory to Agent and Issuing Bank in their reasonable discretion; and (e) the Letter of Credit would not violate any policy or procedure of the Issuing Bank applicable to letters of credit generally.

LC Documents: all documents, instruments and agreements (including requests and applications) delivered by any Borrower or other Person to Issuing Bank or Agent in connection with a Letter of Credit.

LC Obligations: the sum of (a) all amounts owing by Obligor for draws under Letters of Credit; and (b) the Stated Amount of all outstanding Letters of Credit.

LC Request: a request by Borrower Agent for issuance of a Letter of Credit, in form reasonably satisfactory to Agent and Issuing Bank.

Legal Expenses Limitation: (a) with respect to any obligation in any Loan Document of an Obligor to pay or reimburse any legal fees or expenses of Agent, that such obligation shall be limited to the documented out-of-pocket fees and expenses of one primary counsel, one local counsel for each relevant jurisdiction as may be necessary in the reasonable judgment of Agent, and one specialty counsel acting in each reasonably necessary specialty area as determined in the reasonable judgment of Agent and (b) with respect to any obligation in any Loan Document of an Obligor to pay or reimburse any legal fees or expenses of the Lenders or any other Indemnitee (other than Agent acting in its capacity as such), that such obligation shall be limited to the documented out-of-pocket fees and expenses of one primary counsel and one local counsel for each relevant jurisdiction for all such Persons as a whole; provided, that if such legal counsel determines in good faith that representing all such Persons would or could result in a conflict of interest under laws or ethical principles applicable to such legal counsel or that a defense or counterclaim is available to one such Person that is not available to all such Persons, then to the extent reasonably necessary to avoid such a conflict of interest or to permit unqualified assertion of such a defense or counterclaim, each group of affected similarly situated Persons shall be entitled to separate representation by legal counsel selected by such group of similarly situated Persons.

Lender Indemnitees: Lenders and Secured Bank Product Providers, and their officers, directors, employees, Affiliates, agents, advisors, attorneys, consultants, service providers and other representatives.

Lenders: lenders party to this Agreement (including Agent in its capacity as provider of Swingline Loans or Protective Advances) and any Person who hereafter becomes a "Lender" pursuant to an Assignment, including any Lending Office of the foregoing.

Lending Office: the office (including any domestic or foreign Affiliate or branch) designated as such by Agent, a Lender or Issuing Bank by notice to Borrower Agent and, if applicable, Agent.

Letter of Credit: any standby or documentary letter of credit, foreign guaranty, documentary bankers acceptance, indemnity, reimbursement agreement or similar instrument issued by Issuing Bank for the account or benefit of an Obligor.

Letter of Credit Subline: \$25,000,000.

License: any license or agreement under which an Obligor is authorized to use Intellectual Property in connection with any manufacture, marketing, distribution or disposition of Collateral, any use of Property or any other conduct of its business.

Licensor: any Person from whom an Obligor obtains the right to use any Intellectual Property.

Lien: an interest in Property securing an obligation or claim, including any lien, security interest, pledge, hypothecation, assignment, trust, reservation, assessment right, encroachment, easement, right-of-way, covenant, condition, restriction, lease, or other title exception or encumbrance.

Lien Waiver: an agreement, in form and substance reasonably satisfactory to Agent, by which (a) for any material Collateral located on leased premises, the lessor waives or subordinates any Lien it may have on the Collateral, and allows Agent to enter the premises and remove, store and dispose of Collateral; (b) for any Collateral held by a warehouseman, processor, shipper, customs broker or freight forwarder, such Person waives or subordinates any Lien it may have on the Collateral, agrees to hold any Documents in its possession relating to the Collateral as agent for Agent, and agrees to deliver Collateral to Agent upon request; (c) for any Collateral held by a repairman, mechanic or bailee, such Person acknowledges Agent's Lien, waives or subordinates any Lien it may have on the Collateral, and agrees to deliver Collateral to Agent upon request; and (d) for any Collateral subject to a Licensor's Intellectual Property rights, the Licensor grants to Agent the right, vis-à-vis such Licensor, to enforce Agent's Liens with respect to the Collateral, including the right to dispose of it with the benefit of the Intellectual Property, whether or not a default exists under any applicable License.

Liquidity: at any time of determination, the sum of (a) Availability, *plus* (b) Unrestricted Cash.

Liquidity Certificate: as defined in **Section 10.1.2(n)**.

Loan: a loan made by Agent or a Lender under the credit facility established by this Agreement.

Loan Documents: this Agreement, Other Agreements and Security Documents.

Major Material Contract: (a) any contract or agreement (other than any Loan Document or Term Loan Document) entered into in respect of a Sand Facility pursuant to which any Obligor or any of Subsidiary of any Obligor pays, receives or incurs liabilities (or could reasonably be expected to pay, receive or incur liabilities during the term thereof) in excess of \$40,000,000, and (b) any real property lease necessary for the operation of any Sand Facility to which any Obligor or any Subsidiary of any Obligor is the tenant, lessee, subtenant, licensee or other similar party thereunder for which breach, nonperformance, cancellation, or failure to renew would reasonably be expected to result in a Material Adverse Effect, together, in each case, with all amendments, modifications, replacements, extensions and rearrangements of the foregoing made in accordance with the terms of this Agreement.

Major Material Contract EOD: an event or circumstance occurred with respect to a Major Material Contract which, after giving effect to the expiration of any applicable grace period or the giving of notice, or both, provided in such Major Material Contract, entitles any party thereto to terminate such Major Material Contract prior to its scheduled termination.

Margin Stock: as defined in Regulation U of the Federal Reserve Board of Governors.

Material Acquisition: any acquisition of Property or series of related acquisitions of Property (including by way of merger or consolidation) that involves the payment of consideration by one or more of the Obligors in excess of \$40,000,000.

Material Adverse Effect: the effect of any event or circumstance that, taken alone or in conjunction with other events or circumstances, (a) has or could be reasonably expected to have a material adverse effect on (i) the business, operations, Properties or financial condition of the Obligors taken as a whole, (ii) the enforceability of any Loan Document, or (iii) the rights and remedies of or benefits available to, taken as a whole, Agent or any Lender under any Loan Document; or (b) impairs the ability of (i) the Borrowers to perform their payment obligations under any Loan Document or (ii) the Obligors, taken as a whole, to perform any of their obligations under any Loan Document.

Material Debt: means Debt (other than the Obligations), or obligations in respect of one or more Swaps, of any one or more of the Obligors or Restricted Subsidiaries in an aggregate principal amount exceeding \$40,000,000. For purposes of determining Material Debt, the "principal amount" of the obligations of any Obligor or Restricted Subsidiary of any Obligor in respect of any Swap at any time shall be the Swap Termination Value of such Swap.

Material Disposition: any Disposition of Property or series of related Dispositions of Property outside of the Ordinary Course of Business that yields gross proceeds to one or more of the Obligors or Restricted Subsidiaries in excess of \$40,000,000.

Modification: any amendment, supplement, extension, approval, consent, waiver, change or other modification of a Loan Document, including any waiver of a Default or Event of Default.

Monahans Facility: the Sand Mine located in or around Monahans, Texas.

Moody's: Moody's Investors Service, Inc. or any successor acceptable to Agent.

Mortgage: a mortgage, deed of trust or other Lien on Real Estate granted to Agent by an Obligor to secure any Obligations.

Mortgaged Property: means any Property owned or leased by any Obligor that is subject to the Liens under the terms of any Mortgage.

Multiemployer Plan: any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which an Obligor or ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

Multiple Employer Plan: a Plan with two or more contributing sponsors, including an Obligor or ERISA Affiliate, at least two of whom are not under common control, as described in ERISA Section 4064.

Net Proceeds: with respect to a Disposition, proceeds (including, when received, any deferred or escrowed payments) received by an Obligor or Restricted Subsidiary in cash from such disposition, net of (a) reasonable and customary costs and expenses actually incurred in connection therewith, including legal fees and sales commissions; (b) amounts applied to repayment of Debt secured by a Permitted Lien senior to Agent's Liens on Collateral sold; (c) Taxes paid or reasonably estimated to be payable as a result thereof and any Permitted Tax Distributions in connection therewith; and (d) reserves for indemnities, until such reserves are no longer needed.

NOLV Percentage: the net orderly liquidation value of Inventory, expressed as a percentage, expected to be realized at an orderly, negotiated sale held within a reasonable period of time, net of all liquidation expenses, as determined from the most recent appraisal of Borrowers' Inventory performed by an appraiser and on terms reasonably satisfactory to Agent.

Not Otherwise Applied: with reference to any amount otherwise for inclusion in the Available Equity Amount or as a Pass-Through Equity Contribution, as applicable, that such amount (a) was not previously applied to prepay the Obligations, (b) was not previously utilized (meaning such funds remain available for application as part of the Available Equity Amount or as a Pass-Through Equity Contribution, as applicable) for some other purpose (including to make any Investments, Distributions or purchases, redemptions, defeasements and satisfaction in respect of Debt, as applicable), and (c) that such amount was not committed to be applied for any other purpose, provided that such commitment remains outstanding or has not otherwise terminated or expired for some other reason.

Notice of Borrowing: notice by Borrower Agent of a Borrowing, in form reasonably satisfactory to Agent.

Notice of Conversion/Continuation: notice by Borrower Agent for conversion or continuation of a Loan as a Term SOFR Loan, in form reasonably satisfactory to Agent.

Obligations: all (a) principal of and premium, if any, on the Loans, (b) LC Obligations and other obligations of Obligor with respect to Letters of Credit, (c) interest, expenses, fees, indemnification obligations, Claims and other amounts payable by Obligor under the Loan Documents, (d) Secured Bank Product Obligations, and (e) other Debts, obligations and liabilities of any kind owing by Obligor pursuant to the Loan Documents, in each case whether now existing or hereafter arising, whether evidenced by a note or other writing, whether allowed in any Insolvency Proceeding, whether arising from an extension of credit, issuance of a letter of credit, acceptance, loan, guaranty, indemnification or otherwise, and whether direct or indirect, absolute or contingent, due or to become due, primary or secondary, or joint or several; provided, that Obligations of an Obligor shall not include its Excluded Swap Obligations.

Obligor: each Borrower and each Guarantor.

Ordinary Course of Business: the ordinary course of business of any Obligor or Subsidiary, undertaken in good faith and consistent in all material respects with Applicable Law.

Organic Documents: with respect to any Person, its charter, certificate or articles of incorporation, bylaws, articles of organization, limited liability agreement, operating agreement, members agreement, shareholders agreement, partnership agreement, certificate of partnership, certificate of formation, voting trust agreement, or similar agreement or instrument governing the formation or operation of such Person.

OSHA: the Occupational Safety and Hazard Act of 1970.

Other Agreement: the Intercreditor Agreement, the Hercules Intercreditor Agreement, and each LC Document, fee letter, Lien Waiver, Related Real Estate Document, Borrower Material, Communication, note, assignment, document, instrument or agreement of any kind (other than this Agreement or a Security Document) now or hereafter delivered by an Obligor or other Person to Agent or a Lender in connection with any transaction relating hereto.

Other Connection Taxes: Taxes imposed on a Recipient due to a present or former connection between it and the taxing jurisdiction (other than connections arising from the Recipient having executed, delivered, become party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to, enforced, or sold or assigned an interest in, any Loan or Loan Document).

Other Taxes: all present or future stamp, court, documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to **Section 13.4(c)**).

Overadvance: the amount of Revolver Usage in excess of the Borrowing Base.

Parent: the collective reference to all Parent Entities of the Company.

Parent Entity: any Person that is or becomes a direct or indirect parent company of the Company. For the avoidance of doubt, (a) (i) Atlas Energy Solutions Inc. and (ii) any other Person that is the direct or indirect managing member of or that directly or indirectly owns a majority of the voting Equity Interests of the Company, in each case, shall be deemed to constitute a Parent Entity of the Company and (b) the term Parent Entity shall exclude (i) the Brigham Family and (ii) any Person that is a parent company to the public entity or that is a direct or indirect non-managing member of the Company.

Participant: as defined in **Section 13.2**.

Participant Register: as defined in **Section 13.2.3**.

Pass-Through Equity Contribution: as defined in **Section 10.2.4(m)**.

Patriot Act: the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001).

Payment Conditions: with respect to any designation made pursuant to **Section 1.6**, Distribution made pursuant to **Section 10.2.3(a)(v)**, Permitted Acquisition made pursuant to **Section 10.2.4(g)**, Investment made pursuant to **Section 10.2.4(j)**, Debt payment made pursuant to **Section 10.2.6** or other reference to the Payment Conditions:

- (a) no Event of Default shall have occurred and be continuing on the date of such transaction or would result after giving effect to such transaction;
- (b) (I) if no Loans or Letters of Credit (other than Letters of Credit that have been Cash Collateralized and other Letters of Credit having an aggregate Stated Amount of not more than \$7,500,000) are outstanding, Liquidity exceeds \$30,000,000 after giving effect to and at all times during the 30 consecutive day period immediately prior to such transaction on a pro forma basis as if the payment were made at the beginning of such period; or

(II) if any Loans or Letters of Credit (other than Letters of Credit that have been Cash Collateralized and other Letters of Credit having an aggregate Stated Amount of not more than \$7,500,000) are outstanding or Borrower Agent otherwise elects, either (i) Specified Availability shall be higher than the greater of (A) \$20,000,000 and (B) 20.0% of the Borrowing Base then in effect after giving effect to and at all times during the 30 consecutive day period immediately prior to such transaction on a pro forma basis as if the payment were made at the beginning of such period or (ii) both (A) Specified Availability shall be higher than the greater of (x) \$15,000,000 and (y) 15.0% of the Borrowing Base then in effect after giving effect to and at all times during the 30 consecutive day period immediately prior to such transaction on a pro forma basis as if the payment were made at the beginning of such period and (B) the Fixed Charge Coverage Ratio for the most recently ended Fiscal Quarter for which financial statements have been delivered, calculated on a pro forma basis by including such transactions in the denominator as Fixed Charges, as and to the extent applicable, shall be greater than 1.00 to 1.00 (whether or not the financial covenant is being tested at such time); and

(c) in the case of any such transaction or series of related transactions exceeding \$1,000,000 (but in any event if the total of all such transactions in a month exceeds \$5,000,000), at least two Business Days prior to (but in no event more than five Business Days prior to) such transaction, Agent shall have received a certificate of a Senior Officer of Borrower Agent (i) certifying satisfaction of the foregoing conditions concurrently with any such transaction and (ii) setting forth in reasonable detail the pro forma calculations of the Fixed Charge Coverage Ratio, Specified Availability and Liquidity, as applicable (along with evidence supporting such pro forma calculations, including, in the case of any determination of Liquidity, bank statements or such other evidence as may be reasonably acceptable to Agent).

For the avoidance of doubt, a pro forma calculation in respect of any Distribution shall account for any mandatory prepayment of the Term Loan Debt required in connection therewith.

Payment Item: each check, draft or other item of payment payable to an Obligor, including those constituting proceeds of any Collateral.

PBGC: the Pension Benefit Guaranty Corporation.

Pension Funding Rules: Code and ERISA rules regarding minimum required contributions (including installment payments) to Pension Plans set forth in Sections 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

Pension Plan: any employee pension benefit plan (as defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by any Obligor or ERISA Affiliate or to which the Obligor or ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the preceding five plan years.

Permitted Acquisition: any Acquisition as long as (a) no Default or Event of Default exists or is caused thereby; (b) the Acquisition is consensual; (c) the assets, business or Person being acquired is useful or engaged in the business of Obligors and Restricted Subsidiaries and is located or organized within the United States; (d) the Payment Conditions are satisfied with respect thereto; and (e) Borrowers deliver to Agent, at least five Business Days prior to the Acquisition, copies of all material agreements relating thereto and a certificate, in form and substance reasonably satisfactory to Agent, stating that the Acquisition is a "Permitted Acquisition" and demonstrating compliance with the foregoing requirements.

Permitted Capped Call Transaction: one or more customary capped call share option(s) (or substantively equivalent derivative transaction(s)) relating to the Equity Interests of Parent (or other securities or property following a merger event or other change of the Equity Interests of Parent) entered into and purchased by Parent in connection with the issuance of any Permitted Convertible Debt and settled in Equity Interests (other than Disqualified Equity Interests) of Parent (or such other securities or property), cash or a combination thereof (with the amount of such cash or such combination determined by reference to the market price of such Equity Interests of Parent or such other securities), and cash in lieu of any fractional share; *provided* that the purchase of any such Permitted Capped Call Transaction is made in full with the net proceeds received in connection with the issuance of such Permitted Convertible Debt; *provided further* that the other terms, conditions and covenants of such transaction are customary for transactions of such type (as determined by Parent in good faith).

Permitted Contingent Obligations: Contingent Obligations (a) arising from endorsements of Payment Items for collection or deposit in the Ordinary Course of Business; (b) arising from customary indemnification obligations in favor of purchasers in connection with dispositions of Equipment permitted hereunder; and (c) arising under the Loan Documents.

Permitted Convertible Debt: unsecured Debt of Parent that is convertible into a fixed number (subject to customary anti-dilution adjustments, “make-whole” increases and other customary changes thereto) of shares of Equity Interests (other than Disqualified Equity Interests) of Parent (or other securities or property following a merger event or other change of the Equity Interests of Parent), cash or any combination thereof (with the amount of such cash or such combination determined by reference to the market price of such Equity Interests of Parent or such other securities), together with cash in lieu of any fractional share; *provided* that such Debt shall (a) be unsecured, (b) not require any scheduled amortization or otherwise require payment of principal prior to, or have a scheduled maturity date earlier than, 91 days following February 26, 2029, (c) be on terms and conditions customary for Debt of such type, as determined in good faith by Parent, (d) not be guaranteed by any Obligor or Subsidiary, and (e) to the extent that any proceeds thereof are received by the Company or any Subsidiary, they are received in the form of a contribution to Equity Interests (other than Disqualified Equity Interests) of the Company; *provided further* that (i) a customary noteholder repurchase right pursuant to a “fundamental change” (as such term is customarily used in convertible securities of the type of such Debt), customary acceleration rights after an event of default and customary settlement upon conversion (in Equity Interests of Parent, cash and/or any combination thereof) shall be permitted notwithstanding clause (b) above, and (ii) such “fundamental change” repurchase right, together with a customary issuer provisional redemption right and a customary conditional conversion right shall all be considered customary terms and conditions for the purposes of clause (c) above.

Permitted Discretion: a determination made in good faith, using reasonable business judgment (from the perspective of a secured, asset-based lender).

Permitted Disposition: a Disposition permitted by **Section 10.2.5**.

Permitted Intercompany Activities: shared administrative, overhead, technology or licensing arrangements entered into in the Ordinary Course of Business or consistent with customary industry practices between or among Parent, the Borrowers and their Subsidiaries, in each case that (i) are, in the good faith judgment of the Borrowers, necessary or advisable in connection with the ownership or operation of the business of the Borrowers and their Subsidiaries and (ii) do not interfere in any material respect with the ordinary conduct of business of any Borrower or any Restricted Subsidiary; provided, that there is a reasonable allocation of any material costs and expenses for such arrangements as between Borrowers and their Restricted Subsidiaries, on the one hand, and the Unrestricted Subsidiaries, on the other hand.

Permitted Lien: as defined in **Section 10.2.2**.

Permitted Parent Entity Investment: as defined in **Section 10.2.3(a)(x)**.

Permitted Refinancing Debt: with respect to any outstanding Debt (the "Original Debt"), any Debt incurred to refinance, refund or replace such Original Debt; provided that (a) the principal amount (or accreted value, if applicable) of such Debt is not increased at the time of such refinancing or refunding or replacement from the principal amount (or accreted value, if applicable) of the Original Debt outstanding immediately prior to such refinancing, refunding or replacement, except by an amount equal to any unpaid accrued interest, fees, expenses and premiums paid in respect of the Original Debt and other amounts paid, and fees and expenses incurred, in connection with such refinancing, refunding or replacement, (b) the final stated maturity and the average life to maturity of any refinancing or refunding or replacement of such Debt is not less than the final stated maturity and then average life to maturity, as applicable, of the Original Debt so refinanced, refunded or replaced, (c) the terms of such Debt shall be not be materially more restrictive to the Obligors (taken as a whole), than the Original Debt being refinanced, refunded or replaced, (d) such Debt shall not be recourse to any Obligor or any Subsidiary of an Obligor other than those Persons which were obligated with respect to the Original Debt that is being so refinanced, refunded or replaced (provided that the foregoing shall not prohibit the guarantee of such Debt by Subsidiaries formed or acquired after the incurrence of such Debt if such Subsidiaries also guarantee the Obligations), (e) if secured, the Liens securing such Debt shall have the same or lesser collateral priority as the Liens securing the Original Debt and such Debt shall not be secured by any categories of assets or property of any Obligor or any Subsidiary of an Obligor that does not secure the Original Debt that is being so refinanced, refunded or replaced unless such assets or property also secure the Obligations, and (f) if the Original Debt was subordinated in right of payment to the Obligations, then the refinancing Debt shall include subordination terms and conditions that are no less favorable to the Lenders in all material respects as those that were applicable to the Original Debt.

Permitted Tax Distributions: without duplication, (i) dividends or distributions by the Company to Parent in an amount required for Parent to pay franchise, excise and similar taxes, (ii) with respect to any taxable period (or portion thereof) for which the Company and any of its subsidiaries are members of a consolidated, combined, affiliated, unitary or similar income tax group for U.S. federal and/or applicable foreign, state or local income tax purposes (each, a “Tax Group”) of which a direct or indirect parent of the Company is the common parent, or for which the Company is a partnership or disregarded entity for U.S. federal or applicable foreign, state or local income tax purposes that is wholly-owned (directly or indirectly) by an entity that is taxable as a corporation for such income tax purposes, dividends or distributions by the Company to any direct or indirect parent of the Company in an amount not to exceed the amount of any U.S. federal, foreign, state and/or local income taxes that the Company and/or its subsidiaries that are members of the relevant Tax Group, as applicable, would have paid for such taxable period had the Company and/or such subsidiaries, as applicable, been a stand-alone corporate taxpayer or a stand-alone corporate group, and (iii) with respect to any taxable period (or portion thereof) beginning at or after an IPO Event for which the Company is a passthrough entity (including a partnership or disregarded entity) for U.S. federal income tax purposes and is not wholly owned (directly or indirectly) by an entity that is taxable as a corporation for U.S. federal income tax purposes, dividends or distributions by the Company to any member or partner of the Company, on or prior to each estimated tax payment date as well as each other applicable due date, on a pro rata basis, such that each such member or partner (or its direct or indirect members or partners, if applicable) receives, in the aggregate for such period, payments or distributions sufficient to equal such member’s or partner’s U.S. federal, state and/or local income taxes (as applicable) attributable to its direct or indirect ownership of the Company and its subsidiaries with respect to such taxable period (assuming that such member or partner is subject to tax at the highest combined marginal U.S. federal, state, and/or local income tax rates (including any tax rate imposed on “net investment income” by Section 1411 of the Code)) applicable to an individual or, if higher, a corporation, resident in New York, New York, determined by taking into account (A) the deductibility of state and local income taxes for U.S. federal income tax purposes (disregarding any deduction that is subject to a dollar limitation), (B) the alternative minimum tax, (C) any U.S. federal, state and/or local (as applicable) loss carryforwards of such member or partner available from losses of such member or partner attributable to its direct or indirect ownership of the Company and its subsidiaries for prior taxable periods beginning at or after an IPO Event to the extent such loss is of a character that would allow such loss to be available to reduce taxes in the current taxable period (taking into account any limitations on the utilization of such loss to reduce such taxes and to the extent such loss had not already been utilized), (D) the character (e.g., long-term or short-term capital gain or ordinary or exempt) of the applicable income, and (E) any adjustment to such member or partner’s taxable income attributable to its direct or indirect ownership of the Company and its subsidiaries as a result of any tax examination, audit or adjustment with respect to any period (or portion thereof). Notwithstanding the foregoing, no Permitted Tax Distributions may be made in respect of taxable income of (x) Power SPV or (y) Unrestricted Subsidiaries except to the extent that a like amount is received by the Obligors in cash from such Unrestricted Subsidiaries during the most recent twelve (12) calendar month period.

Person: any individual, corporation, limited liability company, partnership, joint venture, association, trust, unincorporated organization, Governmental Authority or other entity of any kind.

Plan: any Benefit Plan maintained for employees of an Obligor or ERISA Affiliate, or to which an Obligor or ERISA Affiliate is required to contribute on behalf of its employees.

Platform: as defined in **Section 14.3.3**.

Pledged Collateral: as defined in **Section 7.3**.

Pledged Debt Securities: as defined in **Section 7.3**.

Pledged Equity Interests: as defined in **Section 7.3**.

Power SPV: Galt Power Solutions LLC, a Texas limited liability company, and its subsidiaries.

Prime Rate: the rate of interest announced by Bank of America from time to time as its prime rate. Such rate is set by Bank of America on the basis of various factors, including its costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above or below such rate. Any change in such rate publicly announced by Bank of America shall take effect at the opening of business on the day specified in the announcement.

Pro Rata: with respect to any Lender, a percentage (rounded to the ninth decimal place) determined (a) by dividing the amount of such Lender's Commitment by the aggregate outstanding Commitments; or (b) following termination of the Commitments, by dividing the amount of such Lender's Loans and LC Obligations by the aggregate outstanding Loans and LC Obligations or, if all Loans and LC Obligations have been paid in full and/or Cash Collateralized, by dividing such Lender's and its Affiliates' remaining Obligations by the aggregate remaining Obligations.

Properly Contested: with respect to any obligation of an Obligor or Subsidiary, (a) the obligation is being properly contested in good faith by appropriate proceedings promptly instituted and diligently pursued; (b) appropriate reserves have been established in accordance with GAAP; (c) while any such contest is pending, there is no material impairment of the enforceability, validity, or priority of any of the Agent's Liens in and to the collateral affected thereby; and (d) the failure to make any payment while any such protest is pending could not reasonably be expected to result in a Material Adverse Effect.

Property: any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

Protective Advances: as defined in **Section 2.1.6**.

PTE: a prohibited transaction class exemption issued by the U.S. Department of Labor, as amended from time to time.

Qualified ECP: an Obligor with total assets exceeding \$10,000,000, or that constitutes an "eligible contract participant" under the Commodity Exchange Act and can cause another Person to qualify as an "eligible contract participant" under Section 1a(18)(A)(v)(II) of such act.

Real Estate: all right, title and interest (whether as owner, lessor or lessee) in any real Property or any buildings, structures, parking areas or other improvements thereon, including sand or mineral mining leases.

Recipient: Agent, Issuing Bank, any Lender or any other recipient of a payment to be made by an Obligor under a Loan Document or on account of an Obligation (excluding any Secured Bank Product Obligation).

Redemption or Redeem: with respect to any Debt, the repurchase, redemption, prepayment, repayment, satisfaction and discharge or defeasance or any other acquisition or retirement for value (or the segregation of funds with respect to any of the foregoing) of any such Debt.

Register: as defined in **Section 13.3.4**.

Reimbursement Certificate: as defined in **Section 3.3**.

Reimbursement Date: as defined in **Section 2.2.2**.

Related Real Estate Documents: with respect to any Real Estate required to be subject to a Mortgage pursuant to **Section 7.4.1**, the following, in form and substance reasonably satisfactory to Agent and received by Agent for review: (a) at least 45 days prior to the effective date of the Mortgage, all information requested by any Lender for its due diligence pursuant to Flood Laws; and (b) at least 15 days prior to the effective date of the Mortgage, (i) such assignments of leases, estoppel letters, attornment agreements, consents, waivers and releases as Agent may reasonably require with respect to other Persons having an interest in the Real Estate; (ii) a current, as-built survey of the Real Estate, containing a metes-and-bounds property description to the extent in the possession of an Obligor; (iii) a life-of-loan flood hazard determination and, if any Real Estate is located in a special flood hazard zone, flood insurance documentation and coverage in accordance with Flood Laws or as otherwise satisfactory to each Lender; and (iv) such other information, documents, instruments or agreements as Agent may reasonably request.

Release Event: as defined in **Section 7.4.3**.

Relevant Governmental Body: the Federal Reserve Board and/or FRBNY, or a committee officially endorsed or convened by the Federal Reserve Board and/or FRBNY.

Rent and Charges Reserve: the aggregate of (a) all past due rent and other amounts owing by an Obligor to any landlord, warehouseman, processor, repairman, mechanic, shipper, freight forwarder, broker or other Person who possesses any Collateral or could assert a Lien on any Collateral; and (b) a reserve equal to three months' rent and other charges that could be payable to any such Person, unless it has executed a reasonably satisfactory Lien Waiver.

Report: as defined in **Section 12.2.3**.

Reportable Event: any event set forth in Section 4043(c) of ERISA, other than an event for which the 30 day notice period has been waived.

Required Lenders: two or more unaffiliated Lenders holding more than 50% of (a) the aggregate outstanding Commitments; or (b) after termination of the Commitments, the aggregate outstanding Loans and LC Obligations or, upon Full Payment of all Loans and LC Obligations, the aggregate remaining Obligations; provided, that (i) Commitments, Loans and other Obligations held by a Defaulting Lender and its Affiliates shall be disregarded in making such calculation, but any related Fronting Exposure shall be deemed held as a Loan or LC Obligation by the Lender (including in its capacity as Issuing Bank) that funded the applicable Loan or issued the applicable Letter of Credit and (ii) in the event there is only one Lender at any time, such Lender shall constitute Required Lenders.

Required Real Estate Collateral: Real Estate of an Obligor that is or was subject to a Lien in favor of the Term Loan Agent to secure the Term Loan Debt or a Lien securing Debt permitted under **Section 10.2.1(n)**; provided, that no item of Real Estate shall constitute Required Real Estate Collateral upon the occurrence of a Release Event with respect to such Real Estate (unless such Real Estate is later subject to a Lien described above following such Release Event).

Rescindable Amount: as defined in **Section 4.1.3(c)**.

Resolution Authority: an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

Restricted Subsidiary: any Subsidiary of an Obligor that is not an Unrestricted Subsidiary.

Restrictive Agreement: an agreement (other than a Loan Document) that conditions or restricts the right of any Borrower, Restricted Subsidiary or other Obligor to incur or repay Borrowed Money, to grant Liens on any assets, to declare or make Distributions, to modify, extend or renew any agreement evidencing Borrowed Money, or to repay any intercompany Debt.

Revolver Usage: the aggregate amount of outstanding LC Obligations (net of Cash Collateral posted with respect to the Stated Amount of Letters of Credit) and Loans.

S&P: Standard & Poor's Financial Services LLC, a subsidiary of S&P Global Inc., or any successor acceptable to Agent.

Sanction: a sanction administered or enforced by the U.S. government, UN Security Council, European Union, U.K. government or other applicable sanctions authority, including restrictions imposed with respect to the specially designated nationals list maintained by the U.S. Treasury Office of Foreign Assets Control (OFAC).

Sand Facility: each of the Kermit Facility and the Monahans Facility.

Sand Facility Improvements: any improvements to the Sand Facilities.

Sand Interests: with respect to any Sand Facility, all rights, titles, interests and estates of any Obligor or any Restricted Subsidiary of any Obligor now or hereafter acquired in and to Real Estate related to such Sand Facility (a) that contains or may contain silica, sand, silica sand, gravel, or minerals or similar substances, and (b) used to excavate, produce, mine, extract or recover such silica, sand, silica sand, gravel, or minerals or similar substances, including any mining lease, license, mineral lease, mineral fee interests, overriding royalty and royalty interests, net profit interests and production payment interests, including any reserved or residual interests of whatever nature, in each case with respect to such silica, sand, silica sand, gravel, or minerals or similar substances, or otherwise used in the mining, transportation, or processing thereof or in the operation of any Obligor's or any Restricted Subsidiary's businesses.

Sand Inventory: Inventory consisting of wet or dry sand, silica or silica sand that has been mined, extracted, or otherwise severed from the land; provided, however, that "Sand Inventory" shall not include any Sand Reserves.

Sand Mine: any excavation or opening into the earth now or hereafter made from which sand, silica, silica sand, gravel or any mineral or similar substance is or can be extracted on or from any Real Estate, now owned or hereafter acquired, to which any Obligor or any Restricted Subsidiary of any Obligor has any right, title, interest or estate.

Sand Properties: (a) Sand Interests; (b) all operating agreements, production sales or other contracts, equipment leases and other agreements that relate to any of the Sand Interests or any interests therein or to the production, sale, purchase, exchange, processing, handling, storage, transporting or marketing of the sand, silica, silica sand, gravel or minerals or similar substances from or attributable to such Sand Interests; (c) all sand, silica, silica sand, gravel and minerals and similar substances in and under and which may be produced and saved or attributable to the Sand Interests, including all work in process and sand, silica, silica sand, gravel and minerals and similar substances extracted from and/or processed from the Sand Interests and in storage, and all rents, issues, profits, proceeds, products, revenues and other incomes from or attributable to the Sand Interests; (d) all tenements, hereditaments, appurtenances and Properties in any manner appertaining, belonging, affixed or incidental to the Sand Interests and (e) all Property, real or personal, now owned or hereinafter acquired and situated upon, used, held for use or useful in connection with the operating, working or development of any of such Sand Interests (excluding personal Property which may be on such premises for temporary uses) and including any and all buildings, structures, plants, compressors, pumps, conveyors, dryers, silos and other storage facilities, transloading equipment, rail equipment, infrastructure, tanks and tank batteries, fixtures, valves, fittings, machinery and parts, engines, boilers, meters, apparatus, equipment, appliances, tools, implements, cables, wires, surface leases, rights-of-way, easements and servitudes together with all additions, substitutions, replacements, accessions and attachments to any and all of the foregoing. Unless otherwise expressly provided herein, all references in this Agreement to "Sand Properties" refer to Sand Properties owned at the time in question by the Obligors or any of their Subsidiaries.

Sand Reserves: collectively, sand reserves that, in accordance with SEC's Industry Guide 7, are classified as "Probable (Indicated) Reserves" or "Proven (Measured) Reserves". Unless otherwise expressly provided herein, all of the references in this Agreement to "Sand Reserves" refer to the Sand Reserves attributable to the Sand Properties of the Obligors.

Sand Reserves Value: as of any date of determination, the present value of the estimated future net revenues, discounted at a rate of 9% per annum, from forecasted sales of Inventory during the remaining expected economic lives of the reserves related thereto.

Scheduled Unavailability Date: as defined in **Section 3.6.2**.

Secured Bank Product Obligations: Debt, obligations and other liabilities with respect to Bank Products owing by an Obligor or Restricted Subsidiary of an Obligor to a Secured Bank Product Provider; provided, that Secured Bank Product Obligations of an Obligor shall not include its Excluded Swap Obligations.

Secured Bank Product Provider: (a) Bank of America or any of its Affiliates; and (b) any other Lender or Affiliate of a Lender that is providing a Bank Product, provided such provider delivers written notice to Agent, in form and substance reasonably satisfactory to Agent, (i) describing the Bank Product and setting forth the maximum amount to be secured by the Collateral and the methodology to be used in calculating such amount, and (ii) agreeing to be bound by **Section 12.14**.

Secured Parties: Agent, Issuing Bank, Lenders and Secured Bank Product Providers.

Securities Account Control Agreement: a control agreement reasonably satisfactory to Agent executed by an institution maintaining a Securities Account for an Obligor, to perfect Agent's Lien on such account.

Securities Act: the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

Security Documents: the Guaranties, IP Assignments, Deposit Account Control Agreements, Securities Account Control Agreements, Credit Card Acknowledgments, Mortgages and all other documents, instruments and agreements now or hereafter securing (or given with the intent to secure) any Obligations.

Senior Officer: the chairman of the board, president, chief executive officer or chief financial officer of the applicable Obligor.

Senior Secured Leverage Ratio: as of any date of determination, the ratio of (a) Consolidated Total Net Debt that is secured by a Lien on any asset or property of the Company or any Restricted Subsidiaries to (b) EBITDA for the four Fiscal Quarter period most recently ended, in each case calculated based on the financial statements most recently delivered whether as Historical Financial Statements or pursuant to **Section 10.1.2(a)** or **Section 10.1.2(b)**.

Settlement Report: a report summarizing Loans and participations in LC Obligations outstanding as of a settlement date, allocated to Lenders on a Pro Rata basis in accordance with their Commitments.

SOFR: the secured overnight financing rate as administered by FRBNY (or a successor administrator).

SOFR Adjustment: 0.10%.

Solvent: as to any Person, such Person (a) owns Property whose fair salable value is greater than the amount required to pay all of its debts (including contingent, subordinated, unmatured and unliquidated liabilities); (b) owns Property whose present fair salable value (as defined below) is greater than the probable total liabilities (including contingent, subordinated, unmatured and unliquidated liabilities) of such Person as they become absolute and matured; (c) is able to pay all of its debts as they mature; (d) has capital that is not unreasonably small for its business and is sufficient to carry on its business and transactions and all business and transactions in which it is about to engage; (e) is not "insolvent" within the meaning of Section 101(32) of the Bankruptcy Code; and (f) has not incurred (by way of assumption or otherwise) any obligations or liabilities (contingent or otherwise) under any Loan Documents, or made any conveyance in connection therewith, with actual intent to hinder, delay or defraud either present or future creditors of such Person or any of its Affiliates. "Fair salable value" means the amount that could be obtained for assets within a reasonable time, either through collection or through sale under ordinary selling conditions by a capable and diligent seller to an interested buyer who is willing (but under no compulsion) to purchase.

Specified Availability: at any time of determination, the sum of (a) Availability and (b) Suppressed Availability (provided, that during any period that the Hercules Formula Amount is in effect, this *clause (b)* shall be deemed to be zero).

Specified Event of Default: an Event of Default under **Section 11.1(a)**, **Section 11.1(b)** (solely to the extent related to the breach of any representation or warranty set forth in a Borrowing Base Report), **Section 11.1(c)** (solely to the extent arising from a breach of **Section 8.1**, **Section 8.2.4**, **Section 8.2.5**, **Section 8.5** or **Section 10.3**), **Section 11.1(i)**, **Section 11.1(j)** or **Section 11.1(k)**.

Specified Obligor: an Obligor that is not then an “eligible contract participant” under the Commodity Exchange Act (determined prior to giving effect to **Section 5.10**).

Stated Amount: the outstanding undrawn amount of a Letter of Credit, including any automatic increase or tolerance (whether or not then in effect) provided by the Letter of Credit or related LC Documents.

Subordinated Debt: Debt incurred by an Obligor that is expressly subordinate and junior in right of payment to Full Payment of all Obligations, and is on terms (including maturity, interest, fees, repayment, covenants and subordination) satisfactory to Agent.

Subsidiary: any entity at least 50% of whose voting securities or Equity Interests is owned by an Obligor or combination of Obligors (including indirect ownership through other entities in which an Obligor directly or indirectly owns 50% of the voting securities or Equity Interests).

Successor Rate: as defined in **Section 3.6.2**.

Super Majority Lenders: two or more unaffiliated Lenders holding more than 66-2/3% of (a) the aggregate outstanding Commitments; or (b) after termination of the Commitments, the aggregate outstanding Loans and LC Obligations or, upon Full Payment of all Loans and LC Obligations, the aggregate remaining Obligations; provided, that (i) Commitments, Loans and other Obligations held by a Defaulting Lender and its Affiliates shall be disregarded in making such calculation, but any related Fronting Exposure shall be deemed held as a Loan or LC Obligation by the Lender (including in its capacity as Issuing Bank) that funded the applicable Loan or issued the applicable Letter of Credit and (ii) in the event there is only one Lender at any time, such Lender shall constitute the Super Majority Lenders.

Suppressed Availability: at any time of determination, the lesser of (i) the amount by which *clause (b)* of the definition of “Borrowing Base” exceeds the aggregate Commitments and (ii) an amount equal to 5.0% of the aggregate Commitments.

Swap: as defined in §1a(47) of the Commodity Exchange Act.

Swap Obligations: obligations under an agreement relating to a Swap.

Swap Termination Value: in respect of any one or more Swaps, after taking into account the effect of any legally enforceable netting agreement relating to such Swaps, (a) for any date on or after the date such Swaps have been closed out and settlement amounts, early termination amounts or termination value(s) determined in accordance therewith, such settlement amounts, early termination amounts or termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swaps, as determined based upon one or more commercially reasonable mid-market or other readily available quotations provided by any dealer which is a party to such Swap or any other recognized dealer in such Swaps.

Swingline Loan: any Borrowing of Base Rate Loans funded with Agent's funds, until such Borrowing is settled among Lenders or repaid by Borrowers.

Taxes: all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

Term Loan Agent: Stonebriar Commercial Finance LLC and its successors and assigns or any replacement administrative agent with respect to the Term Loan Debt.

Term Loan Agreement: that certain Credit Agreement dated as of February 21, 2025, among the Company, as borrower, the Term Loan Agent, and the lenders from time to time party thereto, as amended, restated, replaced or otherwise modified from time to time (subject to **Section 10.2.16**).

Term Loan Debt: as defined in **Section 10.2.1(b)**.

Term Loan Documents: the "Loan Documents" or similar term under (and as defined in) the Term Loan Agreement.

Term Priority Collateral: as defined in the Intercreditor Agreement.

Term SOFR: (a) for any Interest Period relating to a Loan (other than a Base Rate Loan), a per annum rate equal to the Term SOFR Screen Rate two U.S. Government Securities Business Days prior to such Interest Period, with a term equivalent to such Interest Period (or if such rate is not published prior to 11:00 a.m. on the determination date, the applicable Term SOFR Screen Rate on the U.S. Government Securities Business Day immediately prior thereto), plus the SOFR Adjustment for such Interest Period; and (b) for any interest calculation relating to a Base Rate Loan on any day, a fluctuating rate of interest equal to the Term SOFR Screen Rate with a term of one month commencing that day; provided, that in no event shall Term SOFR be less than zero.

Term SOFR Loan: a Loan that bears interest based on clause (a) of the definition of Term SOFR.

Term SOFR Screen Rate: the forward-looking SOFR term rate administered by CME (or any successor administrator satisfactory to Agent) and published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by Agent from time to time).

**Termination Date:** the earliest of (a) February 22, 2028 (but if the Increase Effective Date occurs, such date shall be automatically extended to February 26, 2029); (b) the date that is 91 days prior to the maturity date for any portion of the Term Loan Debt; or (c) any date on which the aggregate Commitments terminate hereunder.

**Transferee:** any actual or potential Eligible Assignee, Participant or other Person acquiring an interest in any Obligations.

**Trigger Period:** the period (a) commencing on any day that (i) an Event of Default occurs, (ii) if no Loans or Letters of Credit (other than Letters of Credit that have been Cash Collateralized) are outstanding, Liquidity is less than the Applicable Trigger for five consecutive Business Days, or (iii) if any Loan or Letter of Credit (other than Letters of Credit that have been Cash Collateralized) is outstanding, Specified Availability is less than the Applicable Trigger for five consecutive Business Days; and (b) continuing until, during each of the preceding 30 consecutive days, (i) no Event of Default has existed, (ii) in the case of a Trigger Period arising as a result of clause (a)(ii) above, Liquidity has been more than the Applicable Trigger at all times, and (iii) in the case of a Trigger Period arising as a result of clause (a)(iii) above, Specified Availability has been more than the Applicable Trigger at all times.

**UCC:** the Uniform Commercial Code as in effect in the State of New York or, when used in reference to a Lien for which the laws of another jurisdiction govern perfection or enforcement, the Uniform Commercial Code of such other jurisdiction, as applicable.

**UK Financial Institution:** any BRRD Undertaking (as defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any Person subject to IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

**UK Resolution Authority:** the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

**Unfinanced Capital Expenditures:** means, with respect to the Company and its Restricted Subsidiaries and for any period, Capital Expenditures of the Company and its Restricted Subsidiaries during such period that are not Financed Capital Expenditures (or deemed to be Financed Capital Expenditures pursuant to the final sentence of the definition of “Financed Capital Expenditures”).

**Unfunded Pension Liabilities:** has the meaning assigned to such term in **Section 9.1.10(f)**.

**Unrestricted Cash:** unrestricted cash and Cash Equivalents of Obligors in each case that are (i) free and clear of all Liens other than Liens in favor of Agent, Liens permitted under **Section 10.2.2(b)** (other than any Term Cash Collateral Account (as defined in the Intercreditor Agreement)), and Liens permitted under clauses (e) and (f) of the definition of Excepted Liens and (ii) subject to a control agreement in favor of Agent (it being understood that cash and Cash Equivalents of the Obligors that are subject to control agreements or Liens in favor of Agent shall, in each case, not be deemed “restricted” under this definition unless constituting Cash Collateral).

Notwithstanding the foregoing, cash and Cash Equivalents constituting part of the Available Equity Amount at the relevant time of determination or Pass-Through Equity Contributions shall not be treated as Unrestricted Cash.

Unrestricted Subsidiary: any Subsidiary of an Obligor designated as such on **Schedule 9.1.14(a)** or which the Borrower Agent has designated in writing to Agent to be an Unrestricted Subsidiary pursuant to **Section 1.6** and any Subsidiary of an Unrestricted Subsidiary. Notwithstanding the foregoing, on and following the First Amendment Effective Date there are no, and shall not be, any Unrestricted Subsidiaries.

Unused Line Fee Rate: a per annum rate equal to (a) 0.50%, if average daily Revolver Usage was less than 50% of the Commitments during the preceding calendar month, or (b) 0.375%, if average daily Revolver Usage was 50% or more of the Commitments during such month.

Upstream Payment: a Distribution by a Subsidiary of an Obligor to such Obligor.

U.S. Government Securities Business Day: any Business Day, except any day on which the Securities Industry and Financial Markets Association, New York Stock Exchange or FRBNY is not open for business because the day is a legal holiday under New York law or U.S. federal law.

U.S. Person: “United States Person” as defined in Section 7701(a)(30) of the Code.

U.S. Tax Compliance Certificate: as defined in **Section 5.9.2(b)(iii)**.

Value: (a) for Inventory, its value determined on the basis of the lower of cost or market, calculated in accordance with GAAP, and excluding any portion of cost attributable to intercompany profit among Obligors and their Affiliates, provided, that, with respect to any Inventory that is anticipated to be sold pursuant to a fixed price contract, the value of such Inventory shall equal such contract price; and (b) for an Account, its face amount, net of any prepayments, deposits, returns, rebates, discounts (calculated on the shortest terms), credits, allowances or sales, excise or other similar Taxes.

Write-Down and Conversion Powers: (a) the write-down and conversion powers of the applicable EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which powers are described in the EU Bail-In Legislation Schedule; or (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that Person or any other Person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

**1.2 Accounting Terms.** Under the Loan Documents (except as otherwise specified therein), all accounting terms shall be interpreted, all accounting determinations shall be made, and all financial statements shall be prepared, in accordance with GAAP applied on a basis consistent with the most recent audited financial statements of the Applicable Reporting Entity delivered to Agent before the Closing Date and using the same inventory valuation method as used in such financial statements; provided, that the Applicable Reporting Entity may adopt a change required or permitted by GAAP after the Closing Date as long as the Applicable Reporting Entity's certified public accountants concur in such change, it is disclosed to Agent and the Loan Documents are amended in a manner satisfactory to Required Lenders to address the change. Upon request by Agent in connection with any such change, the Applicable Reporting Entity's financial statements and Borrower Materials shall set forth a reconciliation between calculations made before and after giving effect to any such change in GAAP. In addition, all accounting terms shall be interpreted, all accounting determinations shall be made and all financial statements shall be prepared without giving effect to any election under *FASB Accounting Standards Codification Topic 825, Financial Instruments*, or any successor thereto (including pursuant to the Accounting Standards Codification), to value any Debt at "fair value", as defined therein. Notwithstanding any changes in GAAP after December 31, 2017, any lease of the Obligors or their Restricted Subsidiaries that would be characterized as an operating lease under GAAP in effect on December 31, 2017 (whether such lease is entered into before or after December 31, 2017) shall not constitute a Capital Lease under this Agreement or any other Loan Document as a result of such changes in GAAP unless otherwise agreed to in writing by the Borrower Agent and the Agent (it being understood and agreed that, for the avoidance of doubt, any future effectiveness of ASC 842 after December 31, 2017 shall be disregarded for purposes of this Agreement).

**1.3 Uniform Commercial Code.** As used herein, the following terms are defined in accordance with the UCC in effect in the State of New York: "Account," "Account Debtor," "As-Extracted Collateral," "Chattel Paper," "Commercial Tort Claim," "Deposit Account," "Document," "Equipment," "Fixtures," "General Intangibles," "Goods," "Instrument," "Investment Property," "Letter-of-Credit Right," "Payment Intangibles," "Securities Account" and "Supporting Obligation."

**1.4 Certain Matters of Construction.** The rules of construction and interpretation included in this Section apply to all Loan Documents. The terms "herein," "hereof," "hereunder" and other words of similar import refer to the applicable document as a whole and not to any particular section, paragraph or subdivision. Any pronoun used shall be deemed to cover all genders. In the computation of periods of time from a specified date to a later date, "from" means "from and including," and "to" and "until" each mean "to but excluding." The terms "including" and "include" mean "including, without limitation", "or" includes "and/or", and the rule of *ejusdem generis* does not apply. Section titles appear as a matter of convenience only and will not affect the interpretation of a Loan Document. Reference to any (a) law includes all related regulations, interpretations, supplements, amendments and successor provisions; (b) document, instrument or agreement includes any amendment, extension, supplement, waiver, replacement and other modification thereto (to the extent permitted by the Loan Documents and except as otherwise specified herein); (c) section means, unless the context otherwise requires, a section of the applicable document; (d) exhibit or schedule means, unless the context otherwise requires, an exhibit or schedule to the applicable document, which is thereby incorporated by reference; (e) Person includes its permitted successors and assigns; (f) time of day means the time at Agent's notice address under **Section 14.3.1**; or (g) discretion or satisfaction of Agent, Issuing Bank or any Lender means the sole and absolute discretion of such Person exercised from time to time. Any references to Value, Borrowing Base components, Loans, Letters of Credit, Obligations and other amounts herein shall be denominated in Dollars, unless expressly provided otherwise, and any determination (including calculation of Borrowing Base and financial covenants) made from time to time by Obligors under the Loan Documents shall be made in light of the circumstances existing at such time. Borrowing Base calculations shall be consistent with historical methods of valuation and calculation, and otherwise reasonably satisfactory to Agent (and not necessarily calculated in accordance with GAAP). Obligors have the burden of establishing any alleged negligence, misconduct or lack of good faith by any Indemnitee under a Loan Document. No provision of a Loan Document shall be construed against a party by reason of it having, or being deemed to have, drafted the provision. Reference to an Obligor's "knowledge" or similar concept means actual knowledge of a Senior Officer, or knowledge that a Senior Officer would have obtained if he or she had engaged in good faith and diligent performance of his or her duties, including reasonably specific inquiries of employees or agents and a good faith attempt to ascertain the matter.

**1.5 Division.** Any reference herein to a merger, transfer, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a Division, or an allocation of assets to a series of any such entity (or the unwinding of a Division or allocation) as if it were a merger, transfer, consolidation, amalgamation, assignment, sale, disposition or transfer or similar term, as applicable, to, of or with a separate Person. Any Division of Person shall constitute a separate Person hereunder.

**1.6 Designation and Conversion of Subsidiaries.**

**1.6.1 Generally.** Unless designated as an Unrestricted Subsidiary on **Schedule 9.1.14(a)** as of the Closing Date or thereafter, assuming compliance with **Section 1.6.2**, any Person that becomes a Subsidiary of an Obligor or any of its Restricted Subsidiaries shall be classified as a Restricted Subsidiary.

**1.6.2 Designation.** Borrower Agent may designate by written notification thereof to Agent, any Restricted Subsidiary, including a newly formed or newly acquired Subsidiary, as an Unrestricted Subsidiary (other than a Borrower or a direct or indirect parent of a Borrower); provided that (a) immediately prior, and immediately after giving effect, to such designation, no Default or Event of Default shall have occurred and be continuing; (b) each Subsidiary designated as an "Unrestricted Subsidiary" and 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 Debt pursuant to which a lender or any other Person has recourse to any Obligor or any Restricted Subsidiary of any Obligor or any of the assets of any Obligor or any Restricted Subsidiary of any Obligor (other than to the extent consisting solely of a pledge of the Equity Interests of such Unrestricted Subsidiary to secure Debt of such Subsidiary); (c) no Obligor or Restricted Subsidiary of any Obligor shall have any liability for any Debt or other obligations of any Unrestricted Subsidiary; (d) such designation is deemed to be (i) an Investment in an Unrestricted Subsidiary in an amount equal to the Fair Market Value as of the date of such designation of the Obligors' direct and indirect ownership interest in the assets of such Subsidiary and such Investment would be permitted to be made at the time of such designation under **Section 10.2.4** and (ii) a Disposition of 100% of the assets of such Subsidiary and such Disposition would be permitted to be made at the time of such designation under **Section 10.2.5**; (e) no Subsidiary may be designated as an Unrestricted Subsidiary (i) if immediately after such designation, it will be a restricted subsidiary for purposes of any other Debt of an Obligor or other Restricted Subsidiary, (ii) to the extent it owns (directly or indirectly) Equity Interests in any Obligor, any material Intellectual Property, any Sand Facility, or, to the extent constituting assets included in the Borrowing Base (or constituting locations from which assets included in the Borrowing Base in the immediately preceding 90 day period originated) any Sand Interest, Sand Property or Sand Mine or (iii) if it was previously an Unrestricted Subsidiary that had been re-designated as a Restricted Subsidiary; (f) Agent shall have received a Borrowing Base Report (giving pro forma effect to such Unrestricted Subsidiary designation) to the extent that at the time of such designation such Subsidiary holds assets or property constituting more than 5.0% of the assets included in the most recent calculation of the Borrowing Base; (g) the Payment Conditions are satisfied at the time of such designation and immediately after giving effect thereto on a pro forma basis, and (h) Agent shall have received an officer's certificate executed by a Senior Officer of Borrower Agent, certifying compliance with the requirements of the preceding clauses (a) through (g). Notwithstanding the foregoing, no Unrestricted Subsidiary may hold any Debt of, Liens on or Equity Interests in any Obligor or any Restricted Subsidiary (or any of their respective assets). Except as provided in this **Section 1.6.2**, no Restricted Subsidiary may be redesignated as an Unrestricted Subsidiary. For the avoidance of doubt, the ongoing requirements in **clauses (b), (c) and (e)** of the first sentence of this **Section 1.6** shall apply to Subsidiaries that are designated as Unrestricted Subsidiaries on **Schedule 9.1.14(a)** on the Closing Date.

1.6.3 **Redesignation.** Borrower Agent may designate any Unrestricted Subsidiary to be a Restricted Subsidiary if after giving effect to such designation, (a) the representations and warranties of the Obligors and their Restricted Subsidiaries contained in each of the Loan Documents are true and correct in all material respects (without duplication of any materiality qualification applicable thereto) on and as of such date as if made on and as of the date of such redesignation (or, if stated to have been made expressly as of an earlier date, were true and correct as of such date), (b) no Default or Event of Default would exist, (c) such designation shall constitute an incurrence of any Debt and Liens of such Unrestricted Subsidiary and must be permitted under **Section 10.2.1** and **Section 10.2.2**, respectively, and (d) the Obligors comply with the requirements of **Section 10.1.9**. Any such designation shall be treated as a cash dividend in an amount equal to the lesser of the Fair Market Value of the applicable Obligor's direct and indirect ownership interest in such Subsidiary or the amount of the Obligors' cash investment previously made for purposes of the limitation on Investments under **Section 10.2.4**.

1.6.4. **No Unrestricted Subsidiaries.** Notwithstanding anything to the contrary in this **Section 1.6** or otherwise in this Agreement, on and following the First Amendment Effective Date, there are no Unrestricted Subsidiaries and Obligors may not designate any Subsidiary as an Unrestricted Subsidiary.

1.7 **Negative Covenant Compliance.** For purposes of determining whether the Obligors and their Restricted Subsidiaries comply with any exception to **Section 10.2** where compliance with any such exception is based on a financial ratio or metric being satisfied as of a particular point in time, it is understood that (a) compliance shall be measured at the time when the relevant event is undertaken, as such financial ratios and metrics are intended to be "incurrence" tests and not "maintenance" tests, and (b) correspondingly, any such ratio and metric shall only prohibit the Obligors and their Restricted Subsidiaries from creating, incurring, assuming, suffering to exist or making, as the case may be, any new, for example, Liens, Debt or Investments, but shall not result in any previously permitted, for example, Liens, Debt or Investments ceasing to be permitted hereunder.

**Section 2. CREDIT FACILITIES.**

**2.1 Loan Commitments**

2.1.1 Commitments. Each Lender agrees, severally on a Pro Rata basis up to its Commitment, on the terms set forth herein (including **Section 6**), to make Loans to Borrowers from time to time through the Termination Date. The Loans may be repaid and reborrowed as provided herein. In no event shall Lenders have any obligation to honor a request for a Loan if Revolver Usage at such time plus the requested Borrowing would exceed the Borrowing Base.

2.1.2 Notes. Loans and interest accruing thereon shall be evidenced by the records of Agent and the applicable Lender. At the request of a Lender, Borrowers shall deliver promissory note(s) to such Lender, evidencing its Loans.

2.1.3 Use of Proceeds. The proceeds of Loans shall be used by Borrowers solely (a) to satisfy existing Debt; (b) to pay fees and transaction expenses associated with the closing of this credit facility; (c) to pay Obligations in accordance with this Agreement; and (d) for lawful corporate purposes, including working capital. Borrowers shall not, directly or, knowingly, indirectly, use any Letter of Credit or Loan proceeds, nor use, lend, contribute or otherwise make available any Letter of Credit or Loan proceeds to any Subsidiary, joint venture partner or other Person, (i) to purchase or carry, or to reduce or refinance any debt incurred to purchase or carry, any Margin Stock or for any related purpose as governed by any regulation (including Regulation U) of the Federal Reserve Board of Governors; (ii) to fund any activities of or business with any Person, or in any country or territory, that, at the time of issuance of the Letter of Credit or funding of the Loan, is the target of any Sanction; or (iii) in any manner that would result in a violation of a Sanction, Anti-Corruption Law or other Applicable Law by any Person (including any Secured Party or other individual or entity participating in any transaction).

2.1.4 Voluntary Reduction or Termination. Upon at least three Business Days' prior written notice to Agent at any time, Borrowers may terminate or reduce the Commitments. Each reduction shall be specified in the notice, in a minimum amount of \$5,000,000 (plus any increment of \$1,000,000), and applied ratably to all Commitments. A notice of termination or reduction by Borrowers is irrevocable; provided, that a notice of termination in full may state that such notice is conditional upon the effectiveness of another credit facility or any other transaction or condition, in which case such notice may be revoked by Borrower Agent by notice to Agent on or prior to the specified effective date if such condition is not satisfied.

2.1.5 Overadvances. Any Overadvance shall be repaid by Borrowers within one Business Day of written demand by Agent (including by email), and constitute an Obligation secured by the Collateral, entitled to all benefits of the Loan Documents. Agent may require Lenders to fund Base Rate Loans requested by Borrowers that cause or constitute an Overadvance and to forbear from requiring Borrowers to cure an Overadvance, as long as the total Overadvance does not exceed \$12,500,000 and does not continue for more than 30 consecutive days without the consent of Required Lenders. In no event shall Loans be required that would cause Revolver Usage to exceed the aggregate Commitments. No funding or sufferance of an Overadvance shall constitute a waiver by Agent or Lenders of any Event of Default. No Obligor shall be a beneficiary of this Section nor authorized to enforce any of its terms.

2.1.6 Protective Advances. Agent shall be authorized, in its discretion, at any time that any condition in **Section 6** is not satisfied, to make Base Rate Loans (“Protective Advances”) (a) up to an aggregate amount of \$12,500,000 outstanding at any time, if Agent deems such Loans necessary or desirable to preserve or protect Collateral, or to enhance payment of Obligations, as long as such Loans do not cause Revolver Usage to exceed the aggregate Commitments; or (b) to pay any other amounts chargeable to Obligor under any Loan Documents, including interest, costs, fees and expenses. Each Lender hereby purchases an undivided Pro Rata participation in Protective Advances outstanding from time to time. Required Lenders may at any time revoke Agent’s authority to make further Protective Advances under clause (a) by written notice to Agent. Absent such revocation, Agent’s determination that funding of a Protective Advance is appropriate shall be conclusive. No funding of a Protective Advance shall constitute a waiver by Agent or Lenders of any Event of Default. No Obligor shall be a beneficiary of this Section nor authorized to enforce any of its terms.

2.1.7 Increase in Commitments. Borrowers may request an increase in Commitments from time to time upon not less than 10 Business Days’ notice to Agent, as long as (a) the requested increase is in a minimum amount of \$5,000,000 and is offered on the same terms as existing Commitments, except for a closing fee specified by Borrowers, (b) total increases under this Section do not exceed \$75,000,000 and no more than five increases are made; *provided* that the Commitment Increase (as defined in the First Amendment) shall be disregarded for purposes of the limits set forth in this clause (b), and (c) the requested increase does not cause the Commitments to exceed 90% of any applicable cap under any intercreditor or subordination agreement (including the Intercreditor Agreement). Agent shall promptly notify Lenders of the requested increase and, within five Business Days thereafter, each Lender shall notify Agent if and to what extent such Lender commits to increase its Commitment. No Lender is obligated to provide any increase, and any Lender not responding within such period shall be deemed to have declined an increase. If Lenders fail to commit to the full requested increase, Eligible Assignees may issue additional Commitments and become Lenders hereunder. Agent may allocate, in consultation with Borrowers, the increased Commitments among committing Lenders and, if necessary, Eligible Assignees. Total Commitments shall be increased by the requested amount (or such lesser amount committed by Lenders and Eligible Assignees) on a date agreed upon by Agent and Borrower Agent, provided (i) the conditions set forth in **Section 6.2** are satisfied at such time and (ii) flood insurance diligence and documentation have been completed as required by all Flood Laws or otherwise in a manner satisfactory to all Lenders. Agent, Obligor, and the new and existing Lenders shall execute and deliver such documents and agreements as Agent reasonably deems appropriate to evidence the increase in and allocations of Commitments and Obligor shall pay any reasonable and documented out-of-pocket fees and expenses incurred in connection therewith. On the effective date of an increase, the Revolver Usage and other exposures under the Commitments shall be reallocated among Lenders, and settled by Agent as necessary, in accordance with Lenders’ adjusted shares of Commitments.

## 2.2 Letter of Credit Facility.

2.2.1 Issuance of Letters of Credit. Issuing Bank shall issue Letters of Credit from time to time until five Business Days prior to the Termination Date, on the terms set forth herein, including the following:

(a) Each Borrower acknowledges that Issuing Bank's issuance of any Letter of Credit is conditioned upon Issuing Bank's receipt of a LC Application with respect to the requested Letter of Credit, as well as such other instruments and agreements as Issuing Bank may customarily require for issuance of a letter of credit of similar type and amount. Issuing Bank shall have no obligation to issue any Letter of Credit unless (i) Issuing Bank receives a LC Request and LC Application at least three Business Days prior to the requested date of issuance; (ii) each LC Condition is satisfied; and (iii) if a Defaulting Lender exists, such Lender or Borrowers have entered into arrangements reasonably satisfactory to Agent and Issuing Bank to eliminate any Fronting Exposure associated with such Lender. If, in sufficient time to act, Issuing Bank receives written notice from Agent or Required Lenders that a LC Condition has not been satisfied, Issuing Bank shall not issue the requested Letter of Credit. Prior to receipt of any such notice, Issuing Bank shall not be deemed to have knowledge of any failure of LC Conditions. Letters of Credit may not extend beyond the scheduled Termination Date unless Cash Collateralized to the reasonable satisfaction of Agent (it being agreed that delivery of cash collateral in an amount equal to 103% of the Stated Amount of such Letter of Credit shall be satisfactory), and Issuing Bank shall be entitled to issue notices of non-renewal to the beneficiaries thereof with respect to any Letter of Credit with automatic renewal provisions.

(b) Letters of Credit may be requested by a Borrower to support obligations incurred by Obligors. Increase, renewal or extension of a Letter of Credit shall be treated as issuance of a new Letter of Credit, but Issuing Bank may require a new LC Application in its discretion.

(c) Borrowers assume all risks of beneficiaries' acts, omissions or misuses of Letters of Credit. None of Agent, Issuing Bank or Lenders shall be responsible for the existence, character, quality, quantity, condition, packing, value or delivery of any goods purported to be represented by any Documents; differences or variation in the character, quality, quantity, condition, packing, value or delivery of any goods from that expressed in any Documents; the form, validity, sufficiency, accuracy, genuineness or legal effect of any Documents or any endorsements thereon; the time, place, manner or order in which shipment of goods is made; partial, incomplete or failed shipment of any goods referred to in a Letter of Credit or Documents; deviation from instructions, delay, default or fraud by any shipper or other Person in connection with any goods, shipment or delivery; breach of contract between a shipper or vendor and an Obligor; errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex, telecopy, e-mail, telephone or otherwise; errors in translation or interpretation of technical terms; misapplication by a beneficiary of a Letter of Credit or proceeds thereof; or consequences arising from causes beyond the control of Issuing Bank, Agent or any Lender, including any act or omission of a Governmental Authority. Obligors shall take commercially reasonable actions (including enforcement of available rights against a beneficiary) requested by Issuing Bank or Agent to avoid and mitigate damages relating to Letters of Credit or claimed against Issuing Bank, Agent or any Lender. Issuing Bank shall be fully subrogated to all rights and remedies of a beneficiary whose claims are discharged through a Letter of Credit.

(d) In connection with its administration of and enforcement of rights or remedies under any Letters of Credit or LC Documents, Issuing Bank shall be entitled to act, and shall be fully protected in acting, upon any certification, documentation or other Communication in whatever form believed by Issuing Bank, in good faith, to be genuine and correct and to have been signed, sent or made by a proper Person. Issuing Bank may use legal counsel, accountants and other experts to advise it concerning its obligations, rights and remedies, and shall be entitled to act (and shall be fully protected in any action taken in good faith reliance) upon any advice given by such experts. Issuing Bank may employ agents and attorneys-in-fact in connection with any matter relating to Letters of Credit or LC Documents, and shall not be liable for the negligence or misconduct of agents and attorneys-in-fact selected with reasonable care.

2.2.2 Reimbursement; Participations.

(a) If Issuing Bank honors any request for payment under a Letter of Credit, Borrowers shall pay to Issuing Bank, (i) within one Business Day of the date of such drawing or disbursement if the Issuing Bank provides notice to the Borrower Agent of such drawing or disbursement prior to 11:00 a.m. (Central time) on such prior Business Day after the date of such drawing or disbursement or (ii) if such notice is received after such time, on the next Business Day following the date of receipt of such notice (such required date for reimbursement under clause (i) or (ii), as applicable, the "Reimbursement Date"), the amount paid by Issuing Bank under such Letter of Credit, together with interest at the interest rate for Base Rate Loans from the Reimbursement Date until payment by Borrowers. The obligation of Borrowers to reimburse Issuing Bank for any payment made under a Letter of Credit shall be absolute, unconditional, irrevocable, and joint and several, and shall be paid without regard to any lack of validity or enforceability of any Letter of Credit or the existence of any claim, setoff, defense or other right that Borrowers may have at any time against the beneficiary. Whether or not Borrower Agent submits a Notice of Borrowing, Borrowers shall be deemed to have requested a Borrowing of Base Rate Loans in an amount necessary to pay all amounts due Issuing Bank on any Reimbursement Date and each Lender shall fund its Pro Rata share of such Borrowing whether or not the Commitments have terminated, an Overadvance exists or is created thereby, or the conditions in **Section 6** are satisfied.

(b) Each Lender hereby irrevocably and unconditionally purchases from Issuing Bank, without recourse or warranty, an undivided Pro Rata participation in all LC Obligations outstanding from time to time. Issuing Bank is issuing Letters of Credit in reliance upon this participation. If Borrowers do not make a payment to Issuing Bank when due hereunder, Agent shall promptly notify Lenders and each Lender shall within one Business Day after such notice pay to Agent, for the benefit of Issuing Bank, the Lender's Pro Rata share of such payment. Upon request by a Lender, Issuing Bank shall provide copies of Letters of Credit and LC Documents in its possession.

(c) The obligation of each Lender to make payments to Agent for the account of Issuing Bank in connection with Issuing Bank's payment under a Letter of Credit shall be absolute, unconditional and irrevocable, not subject to any counterclaim, setoff, qualification or exception whatsoever, and shall be made as provided in this Agreement under all circumstances, irrespective of any lack of validity or unenforceability of any Loan Documents; a draft, certificate or other document presented under a Letter of Credit being determined to be forged, fraudulent, noncompliant, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; waiver by Issuing Bank of a requirement that exists for its protection (and not a Obligor's protection) or that does not materially prejudice an Obligor; honor of an electronic demand for payment even if a draft is required; payment of an item presented after a Letter of Credit's expiration date if authorized by the UCC or applicable customs or practices; or any setoff or defense that an Obligor may have with respect to any Obligations. Issuing Bank does not assume responsibility for any failure or delay in performance or any breach by any Obligor or other Person of any obligations under any LC Documents. Issuing Bank does not make any express or implied warranty, representation or guaranty to Lenders with respect to any Letter of Credit, Collateral, LC Document or Obligor. Issuing Bank shall not be responsible to any Lender for any recitals, statements, information, representations or warranties contained in, or for the execution, validity, genuineness, effectiveness or enforceability of any LC Documents; the validity, genuineness, enforceability, collectability, value or sufficiency of any Collateral or perfection of any Lien therein; or the assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of any Obligor.

(d) No Indemnitee shall be liable to any Obligor, Lender or other Person for any action taken or omitted to be taken in connection with any Letter of Credit or LC Document except as a result of such Indemnitee's gross negligence or willful misconduct. Issuing Bank may refrain from taking any action with respect to a Letter of Credit until it receives written instructions (and in its discretion, appropriate assurances) from the Lenders.

2.2.3 Cash Collateral. At Agent's or Issuing Bank's request, Obligors shall Cash Collateralize (a) the Fronting Exposure of any Defaulting Lender; and (b) all outstanding Letters of Credit if an Event of Default exists (provided, that such cash collateral shall be returned to the Obligors upon the cure or waiver of such Event of Default), the Termination Date is scheduled to occur within five Business Days or the Termination Date occurs. If Obligors fail to provide any Cash Collateral as required hereunder, Lenders may (and shall upon direction of Agent) advance, as Loans, the amount of Cash Collateral required (whether or not the Commitments have terminated, an Overadvance exists or the conditions in **Section 6** are satisfied).

2.2.4 Resignation of Issuing Bank. Issuing Bank may resign at any time upon 30 days' prior written notice to Agent and Borrowers, and any resignation of Agent hereunder shall automatically constitute its concurrent notice of resignation as Issuing Bank. In the event of any such resignation as Issuing Bank, the Borrowers shall be entitled to appoint from among the Lenders a successor Issuing Bank hereunder; provided, that no failure by the Borrowers to appoint any such successor shall affect the resignation of the resigning Issuing Bank. From the effective date of its resignation, Issuing Bank shall have no obligation to issue, amend, renew, extend or otherwise modify any Letter of Credit, but shall otherwise have all rights and obligations of an Issuing Bank hereunder relating to any Letter of Credit issued by it prior to such date. A replacement Issuing Bank may be appointed by written agreement among Agent, Borrower Agent and the new Issuing Bank.

**Section 3. INTEREST, FEES AND CHARGES**

**3.1 Interest**

**3.1.1 Rates and Payment of Interest.**

(a) The Obligations shall bear interest (i) if a Base Rate Loan, at the Base Rate in effect from time to time, plus the Applicable Margin; (ii) if a Term SOFR Loan, at Term SOFR for the applicable Interest Period, plus the Applicable Margin; and (iii) if any other Obligation (including, to the extent permitted by law, interest not paid when due), at the Base Rate in effect from time to time, plus the Applicable Margin for Base Rate Loans.

(b) During an Insolvency Proceeding with respect to any Obligor, or during any other Specified Event of Default if Agent or Required Lenders in their discretion so elect, all overdue Obligations shall bear interest at the Default Rate (whether before or after any judgment), payable **on demand**.

(c) Interest shall accrue from the date a Loan is advanced or Obligation is incurred or payable, as applicable, until paid in full by Borrowers, and shall in no event be less than zero at any time. Interest accrued on the Loans is due and payable in arrears (i) on each Interest Payment Date; (ii) concurrently with prepayment of any Loan, with respect to the principal amount being prepaid; and (iii) on the Termination Date. Interest accrued on any other Obligations shall be due and payable as provided in the applicable agreements or, if no payment date is specified, within five Business Days of Agent's demand therefor.

**3.1.2 Application of Term SOFR to Outstanding Loans.**

(a) Borrowers may elect to convert any portion of Base Rate Loans to, or to continue any Term SOFR Loan at the end of its Interest Period as, a Term SOFR Loan. During any Default or Event of Default, Agent may (and shall at the direction of Required Lenders) declare that no Loan may be made, converted or continued as a Term SOFR Loan.

(b) Borrower Agent shall give Agent a Notice of Conversion/Continuation by 11:00 a.m. at least three Business Days before the requested conversion or continuation date. Promptly after receiving such notice, Agent shall notify each Lender thereof. Each Notice of Conversion/Continuation is irrevocable, and shall specify the amount of Loans to be converted or continued, the conversion or continuation date (which shall be a Business Day), and the duration of the Interest Period (which shall be deemed to be one month if not specified). If, at expiration of an Interest Period for a Term SOFR Loan, Borrowers have failed to deliver a Notice of Conversion/Continuation, the Loan shall convert to a Base Rate Loan. Agent does not warrant or accept responsibility for, nor shall it have any liability with respect to, administration, submission or any other matter related to any reference rate referred to herein or with respect to any rate (including, for the avoidance of doubt, the selection of such rate and any related spread or other adjustment) that is an alternate, replacement or successor to such rate (including any Successor Rate), or any component thereof, or the effect of any of the foregoing, or of any Conforming Changes. The Agent and its affiliates or other related entities may engage in transactions or other activities that affect any reference rate referred to herein, or any alternative, successor or replacement rate (including, without limitation, any Successor Rate) (or any component of any of the foregoing) or any related spread or other adjustments thereto, in each case, in a manner adverse to the Borrowers. Agent may select information source(s) in its discretion to ascertain any reference rate referred to herein or any alternative, successor or replacement rate (including any Successor Rate), or any component thereof, in each case pursuant to the terms hereof, and shall have no liability to any Lender, Obligor or other Person for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise, and whether at law or in equity) for any error or other act or omission related to or affecting the selection, determination or calculation of any rate (or component thereof) provided by such information source(s).

3.1.3 Interest Periods. Borrowers shall select an interest period (“Interest Period”) of one, three or six months (in each case, subject to availability) to apply to each Term SOFR Loan; provided, that (a) the Interest Period shall begin on the date the Loan is made or continued as, or converted into, a Term SOFR Loan, and shall expire one, three or six months thereafter, as applicable; (b) if any Interest Period begins on the last day of a calendar month or on a day for which there is no numerically corresponding day in the calendar month at its end, or if such corresponding day falls after the last Business Day of the end month, then the Interest Period shall expire on the end month’s last Business Day; and if any Interest Period would otherwise expire on a day that is not a Business Day, the period shall expire on the next Business Day; and (c) no Interest Period shall extend beyond the Termination Date.

### 3.2 Fees.

3.2.1 Unused Line Fee. Borrowers shall pay to Agent, for the Pro Rata benefit of Lenders, a fee equal to the Unused Line Fee Rate times the amount by which the Commitments exceed the average daily Revolver Usage during any month. Such fee shall be payable in arrears, on the first day of each quarter and on the Termination Date.

3.2.2 LC Facility Fees. Borrowers shall pay (a) to Agent, for the Pro Rata benefit of Lenders, a fee equal to the Applicable Margin in effect for Term SOFR Loans times the average daily Stated Amount of Letters of Credit, payable in arrears on the first day of each quarter; (b) to Issuing Bank, for its own account, a fronting fee equal to 0.125% per annum on the Stated Amount of each Letter of Credit, payable in arrears on the first day of each quarter; and (c) to Issuing Bank, for its own account, all customary charges associated with issuance, amending, negotiating, payment, processing, transfer and administration of Letters of Credit, payable as and when incurred. During an Event of Default, the fee payable under **clause (a)** shall be increased by 2% per annum.

3.2.3 Fee Letters. Borrowers shall pay all fees set forth in any fee letter executed in connection with this Agreement.

**3.3 Computation of Interest, Fees, Yield Protection.** All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to Term SOFR) shall be computed for actual days elapsed, based on a year of 365 or 366 days, as applicable. All other interest, as well as fees and other charges calculated on a per annum basis, shall be computed for actual days elapsed, based on a year of 360 days. Each determination by Agent of any interest, fee, interest rate or amounts payable hereunder shall be final, conclusive and binding for all purposes, absent manifest error. All fees shall be fully earned when due and shall not be subject to rebate, refund or proration. All fees payable under **Section 3.2** are compensation for services and are not, and shall not be deemed to be, interest or any other charge for the use, forbearance or detention of money. A certificate as to amounts payable by Borrowers under **Section 3.4, 3.7, 3.9** or **5.8** that is submitted to Borrower Agent by Agent or the affected Lender in reasonable detail (a "Reimbursement Certificate") shall be final, conclusive and binding for all purposes, absent manifest error, and Borrowers shall pay such amounts to the appropriate party within 10 days following receipt of the certificate.

**3.4 Reimbursement Obligations.** Obligors shall pay all Claims within 10 days of receipt of a reasonably detailed written request therefor from the requesting Person. Obligors shall also reimburse Agent for all reasonable and documented legal, accounting, appraisal, consulting, and other fees and expenses incurred by it in connection with (a) the negotiation and preparation of Loan Documents, including any modification thereof; (b) the administration of and actions relating to any Collateral, Loan Documents and the transactions contemplated thereby, including any actions taken to perfect or maintain priority of Agent's Liens on any Collateral, to maintain any insurance required hereunder that the Obligors fail to maintain or to verify Collateral; and (c) subject to **Section 10.1.1(b)**, any examination or appraisal with respect to any Obligor or Collateral by Agent's personnel or a third party. All legal, accounting and consulting fees shall be charged to Obligors by Agent's professionals at their then applicable hourly rates, regardless of any alternative fee arrangements that Agent, any Lender or any of their Affiliates may have with such professionals that otherwise might apply to any other transaction. Obligors acknowledge that counsel may provide Agent with a benefit (such as a discount, credit or accommodation for other matters) based on counsel's overall relationship with Agent, including fees paid hereunder. If, for any reason (including inaccurate information in Borrower Materials), it is determined that a higher Applicable Margin should have applied to a period than was actually applied, then the proper margin shall be applied retroactively and Borrowers shall within 10 days following Agent's demand therefor pay to Agent, for the ratable benefit of Lenders, an amount equal to the difference between the amount of interest and fees that would have accrued using the proper margin and the amount actually paid. All amounts payable by Obligors under this Section shall be due within 10 days in accordance with **Section 3.3**. This **Section 3.4** shall be subject to the Legal Expenses Limitation.

**3.5 Illegality.** If any Lender determines that any Applicable Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to perform any of its obligations hereunder, to make, maintain, issue, fund or commit to, participate in, or charge applicable interest or fees with respect to any Loan or Letter of Credit, or to determine or charge interest or fees based on SOFR or Term SOFR, then, on notice thereof by such Lender to Agent, (a) any obligation of such Lender to perform such obligations, to make, maintain, issue, fund, commit to or participate in the Loan or Letter of Credit (or to charge interest or fees otherwise applicable thereto), or to continue or convert Loans as Term SOFR Loans, shall be suspended and Borrowers shall make such appropriate accommodations regarding affected Letters of Credit as Agent or such Lender may reasonably request, as applicable, (b) if such notice asserts the illegality of such Lender to make or maintain Base Rate Loans whose interest rate is determined by reference to Term SOFR, the interest rate applicable to such Lender's Base Rate Loans shall, as necessary to avoid such illegality, be determined by Agent without reference to the Term SOFR component of Base Rate, in each case until such Lender notifies Agent that the circumstances giving rise to Lender's determination no longer exist. Upon delivery of such notice, Borrowers shall prepay or convert Term SOFR Loans of such Lender to Base Rate Loans, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain the Loan and charge applicable interest to such day, or immediately, if such Lender cannot so maintain the Loan. Upon any prepayment or conversion of a Loan pursuant to this Section, Borrowers shall also pay accrued interest on the amount so prepaid or converted.

### 3.6 Inability to Determine Rates

3.6.1 Inability to Determine Rate. If in connection with any request for a Term SOFR Loan or a conversion to or continuation thereof, as applicable, (a) Agent determines (which determination shall be conclusive absent manifest error) that (i) no Successor Rate has been determined in accordance with **Section 3.6.2**, and the circumstances under **Section 3.6.2(a)** or the Scheduled Unavailability Date has occurred (as applicable), or (ii) adequate and reasonable means do not otherwise exist for determining Term SOFR for any requested Interest Period with respect to a proposed Term SOFR Loan or in connection with an existing or proposed Base Rate Loan, or (b) Agent or Required Lenders determine that for any reason Term SOFR for any requested Interest Period with respect to a proposed Term SOFR Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, Agent will promptly so notify Borrowers and Lenders. Thereafter, (x) the obligation of Lenders to make, maintain, or convert Base Rate Loans to, Term SOFR Loans shall be suspended (to the extent of the affected Term SOFR Loans or Interest Periods), and (y) in the event of a determination described in the preceding sentence with respect to the Term SOFR component of Base Rate, the utilization of such component in determining Base Rate shall be suspended, in each case until Agent (or, in the case of a determination by Required Lenders described above, until Agent upon instruction of Required Lenders) revokes such notice. Upon receipt of such notice, (I) Borrowers may revoke any pending request for a Borrowing, conversion or continuation of Term SOFR Loans (to the extent of the affected Term SOFR Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for Base Rate Loans, and (II) any outstanding Term SOFR Loans shall convert to Base Rate Loans at the end of their respective Interest Periods.

3.6.2 Successor Rates. Notwithstanding anything to the contrary in any Loan Document, if Agent determines (which determination shall be conclusive absent manifest error), or Borrower Agent or Required Lenders notify Agent (with, in the case of the Required Lenders, a copy to Borrower Agent) that Borrowers or Required Lenders (as applicable) have determined, that:

(a) adequate and reasonable means do not exist for ascertaining one, three and six month interest periods of Term SOFR, including because the Term SOFR Screen Rate is not available or published on a current basis, and such circumstances are unlikely to be temporary; or

(b) CME or any successor administrator of the Term SOFR Screen Rate or a Governmental Authority having jurisdiction over Agent, CME or such administrator with respect to its publication of Term SOFR, in each case acting in such capacity, has made a public statement identifying a specific date after which one, three and six month interest periods of Term SOFR or the Term SOFR Screen Rate shall or will no longer be made available or permitted to be used for determining the interest rate of U.S. dollar denominated syndicated loans, or shall or will otherwise cease, provided, that at the time of such statement, there is no successor administrator satisfactory to Agent that will continue to provide such interest periods of Term SOFR after such specific date (the latest date on which one, three and six month interest periods of Term SOFR or the Term SOFR Screen Rate are no longer available permanently or indefinitely, "Scheduled Unavailability Date");

then, on a date and time determined by Agent (any such date, "Term SOFR Replacement Date"), which date shall be at the end of an Interest Period or on the relevant interest payment date, as applicable, for interest calculated and, solely with respect to clause (b) above, no later than the Scheduled Unavailability Date, Term SOFR will be replaced hereunder and under any other applicable Loan Document with Daily Simple SOFR plus the SOFR Adjustment, for any payment period for interest calculated that can be determined by Agent, in each case, without any amendment to, or further action or consent of any other party to, any Loan Document ("Successor Rate"). If the Successor Rate is Daily Simple SOFR plus the SOFR Adjustment, all interest will be payable on a monthly basis.

Notwithstanding anything to the contrary herein, (x) if Agent determines that Daily Simple SOFR is not available on or prior to the Term SOFR Replacement Date or (y) if the events or circumstances of the type described in clauses (a) or (b) above have occurred with respect to the Successor Rate then in effect, then in each case, Agent and Borrower Agent may amend this Agreement solely for the purpose of replacing Term SOFR or any then current Successor Rate in accordance with this Section at the end of any Interest Period, relevant interest payment date or payment period for interest calculated, as applicable, with an alternative benchmark rate giving due consideration to any evolving or then existing convention for such alternative benchmarks in similar U.S. dollar denominated credit facilities syndicated and agented in the United States and, in each case, including any mathematical or other adjustments to such benchmark giving due consideration to any evolving or then existing convention for such benchmarks in similar U.S. dollar denominated credit facilities syndicated and agented in the United States, which adjustment or method for calculating such adjustment shall be published on an information service selected by Agent from time to time in its discretion and may be periodically updated. For the avoidance of doubt, any such proposed rate and adjustments shall constitute a Successor Rate. Any such amendment shall become effective at 5:00 p.m. on the fifth Business Day after Agent posts such proposed amendment to all Lenders and Borrowers unless, prior to such time, Required Lenders deliver to Agent written notice that Required Lenders object to the amendment.

Agent will promptly (in one or more notices) notify Borrowers and Lenders of implementation of any Successor Rate. A Successor Rate shall be applied in a manner consistent with market practice; provided, that to the extent market practice is not administratively feasible for Agent, the Successor Rate shall be applied in a manner as otherwise reasonably determined by Agent. Notwithstanding anything else herein, if at any time any Successor Rate as so determined would otherwise be less than zero, the Successor Rate will be deemed to be zero for all purposes of the Loan Documents.

**3.7 Increased Costs; Capital Adequacy**

3.7.1 Increased Costs Generally. If any Change in Law shall:

- (a) impose, modify or deem applicable any reserve, liquidity, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender or Issuing Bank;
- (b) subject any Recipient to Taxes (other than (i) Indemnified Taxes, (ii) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes, and (iii) Connection Income Taxes) with respect to any Loan, Letter of Credit, Commitment or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or
- (c) impose on any Lender, Issuing Bank or any applicable interbank market any other condition, cost or expense (in each case, other than Taxes) affecting any Loan, Letter of Credit, participation in LC Obligations, Commitment or Loan Document;

and the result thereof shall be to increase the cost to a Lender of making or maintaining any Loan or its Commitment, or converting to or continuing any interest option for a Loan, or to increase the cost to a Lender or Issuing Bank of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by a Lender or Issuing Bank hereunder (whether of principal, interest or any other amount) then, within 10 days following the written request of such Lender or Issuing Bank in accordance with **Section 3.3**, Borrowers will pay to it such additional amount(s) as will compensate it for the additional costs incurred or reduction suffered as set forth in such request.

3.7.2 Capital Requirements. If a Lender or Issuing Bank determines that a Change in Law affecting it or its holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's, Issuing Bank's or holding company's capital as a consequence of this Agreement, or such Lender's or Issuing Bank's Commitment, Loans, Letters of Credit or participations in LC Obligations or Loans, to a level below that which such Lender, Issuing Bank or holding company could have achieved but for such Change in Law (taking into consideration its policies with respect to capital adequacy), then from time to time Borrowers will pay to such Lender or Issuing Bank, as the case may be, such additional amounts as will compensate it or its holding company for the reduction suffered within 10 days following delivery of a written request therefor in accordance with **Section 3.3**.

3.7.3 Compensation. Failure or delay on the part of any Lender or Issuing Bank to demand compensation pursuant to this Section shall not constitute a waiver of its right to demand such compensation, but Borrowers shall not be required to compensate a Lender or Issuing Bank for any increased costs, reductions or other amounts pursuant to this Section suffered more than six months (plus any period of retroactivity of the Change in Law giving rise to the demand) prior to the date that the Lender or Issuing Bank notifies Borrower Agent of the applicable Change in Law and of such Lender's or Issuing Bank's intention to claim compensation therefor.

**3.8 Mitigation.** If any Lender gives a notice under **Section 3.5** or requests compensation under **Section 3.7**, or if Borrowers are required to pay any Indemnified Taxes or additional amounts with respect to a Lender under **Section 5.8**, then at the request of Borrower Agent, such Lender shall use reasonable efforts to designate or assign its obligations hereunder to a different Lending Office, if, in the judgment of such Lender, such designation or assignment would eliminate the need for such notice or reduce amounts payable or to be withheld in the future, would not subject the Lender to any unreimbursed cost or expense, and would not otherwise be disadvantageous to it or unlawful. Borrowers shall pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

**3.9 Funding Losses.** If for any reason (a) any Borrowing, conversion or continuation of a Loan (other than a Base Rate Loan) does not occur on the date specified therefor in a Notice of Borrowing or Notice of Conversion/Continuation (whether or not withdrawn), (b) any repayment or conversion of a Loan (other than a Base Rate Loan) occurs on a day other than the end of its Interest Period or tenor, (c) Borrowers fail to repay a Loan (other than a Base Rate Loan) when required, or (d) a Lender (other than a Defaulting Lender) is required to assign a Loan (other than a Base Rate Loan) prior to the end of its Interest Period pursuant to **Section 13.4**, then Borrowers shall pay to Agent its customary administrative charge and to each Lender all losses, expenses and fees arising from redeployment of funds or termination of match funding, but excluding any loss of anticipated profits. All amounts payable by Obligors under this Section shall be due within 10 days following delivery of a written request therefor in accordance with **Section 3.3**.

**3.10 Maximum Interest.** Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by Applicable Law (“maximum rate”). If Agent or any Lender shall receive interest in an amount that exceeds the maximum rate, the excess interest shall be applied to the principal of the Obligations or, if it exceeds such unpaid principal, refunded to Borrowers. In determining whether the interest contracted for, charged or received by Agent or a Lender exceeds the maximum rate, such Person may, to the extent permitted by Applicable Law, (a) characterize any payment that is not principal as an expense, fee or premium rather than interest; (b) exclude voluntary prepayments and the effects thereof; and (c) amortize, prorate, allocate and spread (in equal or unequal parts) the total amount of interest throughout the contemplated term of the Obligations hereunder.

#### **Section 4. LOAN ADMINISTRATION.**

##### **4.1 Manner of Borrowing and Funding Loans**

###### **4.1.1 Notice of Borrowing.**

(a) To request Loans, Borrower Agent shall deliver a Notice of Borrowing to Agent by 12:00 p.m. (noon) (i) on the requested funding date, in the case of Base Rate Loans, and (ii) at least two Business Days prior to the requested funding date, in the case of Term SOFR Loans. Notices received by Agent after such time shall be deemed received on the next Business Day. Each Notice of Borrowing is irrevocable and must specify (A) the Borrowing amount, (B) the requested funding date (which must be a Business Day), (C) whether the Borrowing is to be made as a Base Rate Loan or Term SOFR Loan, and (D) in the case of a Term SOFR Loan, the applicable Interest Period (which shall be deemed to be one month if not specified).

(b) Unless payment is otherwise made by Borrowers, the becoming due of any Obligation (whether principal, interest, fees or other charges, including any Swingline Loan, Overadvance, Protective Advance, Extraordinary Expenses, LC Obligations, Cash Collateral and Secured Bank Product Obligations) shall be deemed to be a request for a Base Rate Loan on the due date in the amount due and the Loan proceeds shall be disbursed as direct payment of such Obligation.

(c) If a Borrower maintains a disbursement account with Agent or any of its Affiliates, then presentation for payment in the account of a Payment Item when there are insufficient funds to cover it shall be deemed to be a request for a Base Rate Loan on the presentation date, in the amount of the Payment Item. Proceeds of the Loan may be disbursed directly to the account.

4.1.2 Funding by Lenders. Except for Swingline Loans, Agent shall endeavor to notify Lenders of each Notice of Borrowing (or deemed request for a Borrowing) by 1:00 p.m. on the proposed funding date for a Base Rate Loan or by 3:00 p.m. two Business Days before a proposed funding of a Term SOFR Loan. Each Lender shall fund its Pro Rata share of a Borrowing in immediately available funds not later than 3:00 p.m. on the requested funding date, unless Agent's notice is received after the times provided above, in which case Lender shall fund by 10:00 a.m. on the next Business Day. Subject to its receipt of such amounts from Lenders, Agent shall disburse the Borrowing proceeds in a manner directed by Borrower Agent and acceptable to Agent. Unless Agent receives (in sufficient time to act) written notice from a Lender that it will not fund its share of a Borrowing, Agent may assume that such Lender has deposited or promptly will deposit its share with Agent, and Agent may disburse a corresponding amount to Borrowers. If a Lender's share of a Borrowing or of a settlement under **Section 4.1.3(b)** is not received by Agent, then Borrowers agree to repay to Agent within one Business Day of demand therefor the amount of such share, together with interest thereon from the date disbursed until repaid, at the rate applicable to the Borrowing. Agent, a Lender or Issuing Bank may fulfill its obligations under Loan Documents through one or more Lending Offices, and this shall not affect any obligation of Obligors under the Loan Documents or with respect to any Obligations.

4.1.3 Swingline Loans; Settlement; Rescindable Amounts.

(a) To fulfill any request for a Base Rate Loan hereunder, Agent may in its discretion advance Swingline Loans to Borrowers, up to an aggregate outstanding amount of \$7,500,000. Swingline Loans shall constitute Loans for all purposes, except that payments thereon shall be made to Agent for its own account until settled with or funded by Lenders hereunder. Each Lender hereby purchases, without recourse or warranty, an undivided Pro Rata participation in all Swingline Loans outstanding from time to time.

(b) Settlement of Loans, including Swingline Loans and Protective Advances, among Lenders and Agent shall take place on a date determined from time to time by Agent (but at least weekly, unless the settlement amount is de minimis), on a Pro Rata basis in accordance with the Settlement Report delivered by Agent to Lenders. Between settlement dates, Agent may in its discretion apply any payment received from an Obligor to Swingline Loans and Protective Advances, regardless of any designation by any Obligor or anything herein to the contrary. If any Loan cannot be settled among Lenders, whether due to an Obligor's Insolvency Proceeding or otherwise, each Lender shall pay the amount of its participation in the Loan to Agent, in immediately available funds, within one Business Day after Agent's request therefor. Interest on a Loan shall be payable in favor of a Lender from the later of the date the Loan is advanced to Borrowers or the Lender funds the Loan (or participation therein). No Obligor or Secured Party shall be entitled to credit for interest paid by a Secured Party to Agent pursuant to **Section 4.1.3(c)** or **12.10.2**, nor shall a Defaulting Lender be entitled to interest on amounts held by Agent pursuant to **Section 4.2**. Lenders' obligations to make settlements and to fund participations are absolute, irrevocable and unconditional, without offset, counterclaim or other defense, and whether or not the Commitments have terminated, an Overadvance exists or the conditions in **Section 6** are satisfied.

(c) Unless Agent receives notice from Borrowers prior to the date on which a payment is due to Agent for the account of Lenders or Issuing Bank hereunder that Borrowers will not make such payment, Agent may assume that Borrowers have made such payment on such date in accordance herewith and may, in reliance on such assumption, distribute to Lenders or Issuing Bank, as applicable, the amount due. With respect to any payment that Agent makes for the account of Lenders or Issuing Bank hereunder as to which Agent determines (which determination shall be conclusive absent manifest error) that any of the following applies (such payment, a "Rescindable Amount"): (1) Borrowers have not in fact made such payment, (2) Agent has made a payment in excess of the amount so paid by Borrowers (whether or not then owed), or (3) Agent has for any reason otherwise erroneously made such payment, then each Lender or Issuing Bank, as applicable, severally agrees to repay to Agent forthwith on demand the Rescindable Amount so distributed to or otherwise made for the account of such Lender or Issuing Bank, in immediately available funds with interest thereon for each day from and including the date such amount is distributed to it to but excluding the date of payment to Agent, at the greater of the Federal Funds Rate and a rate determined by Agent in accordance with banking industry rules on interbank compensation. A notice by Agent to Issuing Bank, any Lender or any Borrower with respect to any amount owing under this clause (c) shall be conclusive, absent manifest error.

4.1.4 Notices. If Borrowers request, convert or continue Loans, select interest rates or transfer funds based on telephonic or electronic instructions to Agent, Borrowers shall confirm the request by prompt delivery to Agent of a Notice of Borrowing or Notice of Conversion/Continuation, as applicable. Agent and Lenders are not liable for any loss suffered by a Borrower as a result of Agent or a Lender acting on its understanding of telephonic or electronic instructions from a person believed in good faith to be authorized to give instructions on a Borrower's behalf.

4.1.5 Conforming Changes. Agent may make Conforming Changes from time to time in consultation with Borrower Agent with respect to SOFR, Term SOFR or any Successor Rate. Notwithstanding anything to the contrary in any Loan Document, any amendment implementing such changes shall be effective without further action or consent of any party to any Loan Document. Agent shall post or provide each such amendment to Lenders and Borrower Agent reasonably promptly after it becomes effective.

**4.2 Defaulting Lender.** Notwithstanding anything herein to the contrary:

4.2.1 **Reallocation of Pro Rata Share; Amendments.** For purposes of determining Lenders' obligations or rights to fund, participate in or receive collections with respect to Loans and Letters of Credit (including existing Swingline Loans, Protective Advances and LC Obligations), Agent may in its discretion reallocate Pro Rata shares by excluding a Defaulting Lender's Commitments and Loans from the calculation of shares. A Defaulting Lender shall have no right to vote on any amendment, waiver or other modification of a Loan Document, except as provided in **Section 14.1.1(c)**.

4.2.2 **Payments; Fees.** Agent may, in its discretion, receive and retain any amounts payable to a Defaulting Lender under the Loan Documents, and a Defaulting Lender shall be deemed to have assigned to Agent such amounts until all Obligations owing to Agent, non-Defaulting Lenders and other Secured Parties have been paid in full. Agent may use such amounts to cover the Defaulting Lender's defaulted obligations, to Cash Collateralize such Lender's Fronting Exposure, to readvance the amounts to Borrowers or to repay Obligations. A Lender shall not be entitled to receive any fees accruing hereunder while it is a Defaulting Lender and its unfunded Commitment shall be disregarded for purposes of calculating the unused line fee under **Section 3.2.1**. If any LC Obligations owing to a Defaulted Lender are reallocated to other Lenders, fees attributable to such LC Obligations under **Section 3.2.2** shall be paid to such Lenders. Agent shall be paid all fees attributable to LC Obligations that are not reallocated.

4.2.3 **Status; Cure.** Agent may determine in its discretion that a Lender constitutes a Defaulting Lender and the effective date of such status shall be conclusive and binding on all parties, absent manifest error. Borrowers, Agent and Issuing Bank may agree in writing that a Lender has ceased to be a Defaulting Lender, whereupon Pro Rata shares shall be reallocated without exclusion of the reinstated Lender's Commitments and Loans, and the Revolver Usage and other exposures under the Commitments shall be reallocated among Lenders and settled by Agent (with appropriate payments by the reinstated Lender, including its payment of breakage costs for reallocated Term SOFR Loans) in accordance with the readjusted Pro Rata shares. Unless expressly agreed by Borrowers, Agent and Issuing Bank, or as expressly provided herein with respect to Bail-In Actions and related matters, no reallocation of Commitments and Loans to non-Defaulting Lenders or reinstatement of a Defaulting Lender shall constitute a waiver or release of claims against such Lender. The failure of any Lender to fund a Loan, to make a payment in respect of LC Obligations or otherwise to perform obligations hereunder shall not relieve any other Lender of its obligations under any Loan Document. No Lender shall be responsible for default by another Lender.

**4.3 Number and Amount of Term SOFR Loans; Determination of Rate.** Each Borrowing of Term SOFR Loans when made shall be in a minimum amount of \$1,000,000, plus an increment of \$100,000 in excess thereof. No more than eight Borrowings of Term SOFR Loans may be outstanding at any time, and all Term SOFR Loans having the same length and beginning date of their Interest Periods shall be aggregated and considered one Borrowing. Upon determining Term SOFR for any Interest Period requested by Borrowers, Agent shall promptly notify Borrowers thereof by telephone or electronically and, if requested by Borrowers, shall confirm any telephonic notice in writing.

**4.4 Borrower Agent.** Each Borrower hereby designates the Company ("Borrower Agent") as its representative and agent for all purposes under the Loan Documents, including requests for and receipt of Loans and Letters of Credit, designation of interest rates, delivery or receipt of Communications, delivery of Borrower Materials, payment of Obligations, requests for waivers, amendments or other accommodations, actions under the Loan Documents (including in respect of compliance with covenants), and all other dealings with Agent, Issuing Bank or any Lender. Borrower Agent hereby accepts such appointment. Agent and Lenders shall be entitled to rely upon any Communication (including any notice of borrowing) delivered by or to Borrower Agent on behalf of any Borrower. Each of Agent, Issuing Bank and Lenders shall have the right, in its discretion, to deal exclusively with Borrower Agent for all purposes under the Loan Documents. Each Obligor agrees that any Communication, delivery, action, omission or undertaking by Borrower Agent shall be binding upon and enforceable against such Obligor.

**4.5 One Obligation.** The Loans, LC Obligations and other Obligations constitute one general obligation of Borrowers, jointly and severally, and are secured by Agent's Lien on all Collateral; provided, that Agent and each Lender shall be deemed to be a creditor of, and the holder of a separate claim against, each Borrower to the extent of any Obligations jointly or severally owed by such Borrower.

**4.6 Effect of Termination.** On the effective date of the termination of all Commitments, the Obligations shall be immediately due and payable, and each Secured Bank Product Provider may terminate its Bank Products. Until Full Payment of the Obligations, all undertakings of Obligors contained in the Loan Documents shall continue, and Agent shall retain its Liens in the Collateral and all of its rights and remedies under the Loan Documents. Agent shall not be required to terminate its Liens unless it receives Cash Collateral or a written agreement, in each case reasonably satisfactory to it, protecting Agent and Lenders from dishonor or return of any Payment Item previously applied to the Obligations. **Sections 2.2, 3.4, 3.6, 3.7, 3.9, 4.1.3(c), 5.4, 5.8, 5.9, 12, 14.2**, this Section, and each indemnity or waiver given by an Obligor or Lender in any Loan Document, shall survive any assignment by Agent, Issuing Bank or any Lender of rights or obligations hereunder, termination of any Commitment, and any repayment, satisfaction, discharge or Full Payment of any Obligations.

## **Section 5. PAYMENTS**

**5.1 General Payment Provisions.** All payments of Obligations shall be made in Dollars, without offset, counterclaim or defense of any kind, free and clear of (and without deduction for) any Taxes (except Taxes as required by Applicable Law), and in immediately available funds, not later than 1:00 p.m. on the due date. Any payment after such time shall be deemed made on the next Business Day. Any payment of a Term SOFR Loan prior to the end of its Interest Period shall be accompanied by all amounts due under **Sections 3.1.1(c)** and **3.9**. Agent shall have the continuing, exclusive right to apply and reapply payments and proceeds of Collateral against the Obligations, at Agent's discretion, but whenever possible (provided no Default or Event of Default exists) any prepayment shall be applied to Base Rate Loans before Term SOFR Loans.

**5.2 Repayment of Loans.** Loans may be prepaid from time to time, without penalty or premium (subject to **Section 3.9**), pursuant to a notice of prepayment (in form reasonably satisfactory to Agent), delivered to Agent concurrently with prepayment of a Swingline Loan and at least three Business Days prior to prepayment of other Loans; provided, that no such notice shall be required for payments applied pursuant to **Section 5.6**. Loans shall be due and payable in full on the Termination Date, unless payment is sooner required hereunder, and any Overadvance or Protective Advance shall be due and payable as provided in **Sections 2.1.5** and **2.1.6**. If a Disposition includes Accounts or Inventory when a Trigger Period exists (or would result therefrom), Obligors shall apply Net Proceeds to repay Loans equal to the greater of (a) the net book value (or fair market value, if higher) of such Accounts and Inventory, or (b) the reduction in Borrowing Base resulting from the disposition.

**5.3 Payment of Other Obligations.** Obligations other than Loans, including LC Obligations and Claims, shall be paid by Obligors as provided in the Loan Documents or, if no payment date is specified, within five Business Days of demand therefor.

**5.4 Marshaling; Payments Set Aside.** None of Agent or Lenders shall be under any obligation to marshal any assets in favor of any Obligor or against any Obligations. If any payment by or on behalf of Obligors is made to Agent, Issuing Bank or any Lender, or if Agent, Issuing Bank or any Lender exercises a right of setoff, and any of such payment or setoff is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by Agent, Issuing Bank or a Lender in its discretion) to be repaid to a trustee, receiver or any other Person, then the Obligation originally intended to be satisfied, and all Liens, rights and remedies relating thereto, shall be revived and continued in full force and effect as if such payment or setoff had not occurred.

**5.5 Application and Allocation of Payments**

5.5.1 Application. Payments made by Borrowers hereunder shall be applied (a) first, as specifically required hereby; (b) second, to Obligations then due and owing; (c) third, to other Obligations specified by Borrowers; and (d) fourth, as determined by Agent in its discretion. If funds received by or available to Agent under clause (b) are insufficient to pay fully all Obligations then due and owing, such funds shall be applied (i) ratably to pay interest and fees until paid in full, and then (ii) ratably to pay unreimbursed draws under Letters of Credit and Loan principal then due and owing.

5.5.2 Post-Default Allocation. Notwithstanding anything in any Loan Document to the contrary but subject to the Intercreditor Agreement, during an Event of Default under **Section 11.1(i), (j)** or **(k)**, or during any other Event of Default at the discretion of Agent or Required Lenders, monies to be applied to the Obligations, whether arising from payments by Obligors, realization on Collateral, setoff or otherwise, shall be allocated as follows:

- (a) first, to all fees, indemnification, costs and expenses, including Extraordinary Expenses, owing to Agent;
- (b) second, to all other amounts owing to Agent, including Swingline Loans, Protective Advances, and Loans and participations that a Defaulting Lender has failed to settle or fund;
- (c) third, to all amounts owing to Issuing Bank;

- (d) fourth, to all Obligations (other than Secured Bank Product Obligations) constituting fees, indemnification, costs or expenses owing to Lenders;
- (e) fifth, to all Obligations (other than Secured Bank Product Obligations) constituting interest;
- (f) sixth, to Cash Collateralize all LC Obligations;
- (g) seventh, to all Loans, and to Secured Bank Product Obligations constituting Swap Obligations (including Cash Collateralization thereof) up to the amount of Reserves existing therefor;
- (h) eighth, to all other Secured Bank Product Obligations; and
- (i) last, to all remaining Obligations.

Amounts shall be applied to payment of each category of Obligations only after Full Payment of amounts payable from time to time under all preceding categories. If amounts are insufficient to satisfy a category, they shall be paid ratably among outstanding Obligations in the category. Monies and proceeds obtained from an Obligor shall not be applied to its Excluded Swap Obligations, but appropriate adjustments shall be made with respect to amounts obtained from other Obligors to preserve the allocations in each category. Agent shall have no obligation to calculate the amount of any Secured Bank Product Obligation and may request a reasonably detailed calculation thereof from a Secured Bank Product Provider. If the provider fails to deliver the calculation within five days following request, Agent may assume the amount is zero. The allocations in this Section are solely to determine the priorities among Secured Parties and may be changed by agreement of affected Secured Parties without the consent of any Obligor. This Section is not for the benefit of or enforceable by any Obligor, and no Obligor has any right to direct the application of payments or Collateral proceeds subject to this Section.

5.5.3 Erroneous Application. Agent shall not be liable for any application of amounts made by it in good faith and, if any such application is subsequently determined to have been made in error, the sole recourse of any Lender or other Person to which such amount should have been paid shall be to recover the amount from the Person that actually received it (and, if such amount was received by a Secured Party, the Secured Party agrees to return it).

5.6 Dominion Account. The ledger balance in the Dominion Account(s) as of the end of a Business Day shall be transferred to Bank of America and applied to the Obligations at the beginning of the next Business Day, during any Trigger Period. Any resulting credit balance shall not accrue interest in favor of Borrowers and Agent shall use commercially reasonable efforts to transfer such credit balance to Borrowers' operating account on such next Business Day so long as no Event of Default exists (an "Existing Event of Default"); provided that upon the cure or waiver of all Existing Events of Default, any such credit balance shall be made available to Borrowers.

**5.7 Account Stated.** Agent shall maintain, in accordance with its customary practices, loan account(s) evidencing the Debt of Borrowers hereunder, including the Register in accordance with **Section 13.3.4**. Any failure of Agent to record anything in a loan account, or any error in doing so, shall not limit or otherwise affect the obligation of Borrowers to pay any amount owing hereunder. Entries in a loan account shall be presumptive evidence of the information contained therein. If information in a loan account is provided to or inspected by or on behalf of a Borrower, the information shall be conclusive and binding on Borrowers for all purposes absent manifest error, except to the extent Borrower Agent notifies Agent in writing within 30 days of specific information subject to dispute.

**5.8 Taxes.**

**5.8.1 Payments Free of Taxes; Obligation to Withhold; Tax Payment.**

(a) All payments of Obligations by Obligor shall be made without deduction or withholding for any Taxes, except as required by Applicable Law. If Applicable Law (as determined by Agent or an Obligor in its good faith discretion) requires the deduction or withholding of any Tax from any such payment by Agent or an Obligor, then Agent or such Obligor shall be entitled to make such deduction or withholding. For purposes of **Sections 5.8** and **5.9**, "Applicable Law" shall include FATCA, "Lender" shall include Issuing Bank and "Obligations" shall exclude Secured Bank Product Obligations.

(b) Subject to **Section 5.8.1(a)**, if Agent or any Obligor is required by the Code to withhold or deduct Taxes, including backup withholding and withholding taxes, from any payment, then (i) Agent shall pay the full amount that it determines is to be withheld or deducted to the relevant Governmental Authority pursuant to the Code, and (ii) to the extent the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Obligor shall be increased as necessary so that the Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(c) If Agent or any Obligor is required by any Applicable Law other than the Code to withhold or deduct Taxes from any payment, then (i) Agent or such Obligor, to the extent required by Applicable Law, shall timely pay the full amount to be withheld or deducted to the relevant Governmental Authority, and (ii) to the extent the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Obligor shall be increased as necessary so that the Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

**5.8.2 Payment of Other Taxes.** Without limiting the foregoing, Obligor shall timely pay to the relevant Governmental Authority in accordance with Applicable Law, or at Agent's option, timely reimburse Agent for payment of, any Other Taxes.

**5.8.3 Tax Indemnification.**

(a) Each Obligor shall indemnify and hold harmless, on a joint and several basis, each Recipient against any Indemnified Taxes (including those imposed or asserted on or attributable to amounts payable under this Section) payable or paid by a Recipient or required to be withheld or deducted from a payment to a Recipient, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. Each Obligor shall make payment within 10 days after demand for any amount or liability payable under this Section. A certificate as to the amount of such payment or liability delivered to Borrower Agent by a Lender or Issuing Bank (with a copy to Agent), or by Agent on its own behalf or on behalf of any Recipient, shall be conclusive absent manifest error.

(b) Each Lender and Issuing Bank shall indemnify and hold harmless, on a several basis, (i) Agent against any Indemnified Taxes attributable to such Lender or Issuing Bank (but only to the extent Obligors have not already paid or reimbursed Agent therefor and without limiting Obligors' obligation to do so), (ii) Agent and Obligors, as applicable, against any Taxes attributable to such Lender's failure to maintain a Participant Register as required hereunder, and (iii) Agent and Obligors, as applicable, against any Excluded Taxes attributable to such Lender or Issuing Bank, in each case, that are payable or paid by Agent or an Obligor in connection with any Obligations, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. Each Lender and Issuing Bank shall make payment within 10 days after demand for any amount or liability payable under this Section. A certificate as to the amount of such payment or liability delivered to any Lender or Issuing Bank by Agent shall be conclusive absent manifest error.

5.8.4 Evidence of Payments. As soon as practicable after payment by an Obligor of any Taxes to a Governmental Authority pursuant to this Section, Borrower Agent shall deliver to Agent the original or a certified copy of a receipt issued by the appropriate Governmental Authority evidencing the payment, a copy of any return required by Applicable Law to report the payment or other evidence of payment reasonably satisfactory to Agent.

5.8.5 Treatment of Certain Refunds. Unless required by Applicable Law, at no time shall Agent have any obligation to file for or otherwise pursue on behalf of a Lender or Issuing Bank, nor have any obligation to pay to any Lender or Issuing Bank, any refund of Taxes withheld or deducted from funds paid for the account of a Lender or Issuing Bank. If a Recipient determines in its discretion, exercised in good faith, that it has received a refund of Taxes that were indemnified by Obligors or with respect to which an Obligor paid additional amounts pursuant to this Section, it shall pay the amount of such refund to Borrower Agent (but only to the extent of indemnity payments or additional amounts actually paid by Obligors with respect to the Taxes giving rise to the refund), net of all reasonable out-of-pocket expenses (including Taxes) incurred by such Recipient and without interest (other than interest paid by the relevant Governmental Authority with respect to such refund). Obligors shall, upon request by the Recipient, repay to the Recipient such amount paid over to Obligors (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) if the Recipient is required to repay such refund to the Governmental Authority. Notwithstanding anything to the contrary in this **Section 5.8.5**, no Recipient shall be required to pay any amount to Obligors if such payment would place it in a less favorable net after-Tax position than it would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. In no event shall Agent or any Recipient be required to make its tax returns (or any other information relating to its taxes that it deems confidential) available to any Obligor or other Person.

**5.9 Lender Tax Information.**

5.9.1 Status of Lenders. Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments of Obligations shall deliver to Borrower Agent and Agent, at the times reasonably requested by the Borrower Agent or the Agent, such properly completed and executed documentation reasonably requested by Borrower Agent or Agent as will permit such payments to be made without or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by Borrower Agent or Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by Borrower Agent or Agent to enable them to determine whether such Lender is subject to backup withholding or information reporting requirements. Notwithstanding the foregoing, such documentation (other than documentation described in **Sections 5.9.2(a), (b) and (d)**) shall not be required if a Lender reasonably believes such completion, execution or submission would subject it to any material unreimbursed cost or expense or would materially prejudice its legal or commercial position.

5.9.2 Documentation. Without limiting the foregoing,

(a) any Lender that is a U.S. Person shall deliver to Borrower Agent and Agent on or prior to the date on which such Lender becomes a Lender hereunder (and from time to time thereafter upon reasonable request of Borrower Agent or Agent), executed copies of IRS Form W-9, certifying that such Lender is exempt from U.S. federal backup withholding Tax;

(b) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower Agent and Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender hereunder (and from time to time thereafter upon reasonable request of Borrower Agent or Agent), whichever of the following is applicable:

(i) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party, (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BENE establishing an exemption from or reduction of U.S. federal withholding Tax pursuant to the “interest” article of such tax treaty, and (y) with respect to other payments under the Loan Documents, IRS Form W-8BENE establishing an exemption from or reduction of U.S. federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty;

(ii) executed copies of IRS Form W-8ECI;

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate in form satisfactory to Agent to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of a Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (“U.S. Tax Compliance Certificate”), and (y) executed copies of IRS Form W-8BENE; or

(iv) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BENE, a U.S. Tax Compliance Certificate in form satisfactory to Agent, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided, that if the Foreign Lender is a partnership and one or more of its direct or indirect partners is claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate on behalf of each such partner;

(c) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower Agent and Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender hereunder (and from time to time thereafter upon the reasonable request of Borrower Agent or Agent), executed copies of any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by Applicable Law to permit Borrowers or Agent to determine the withholding or deduction required to be made; and

(d) if payment of an Obligation to a Lender would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code), such Lender shall deliver to Borrower Agent and Agent, at the time(s) prescribed by law and otherwise upon reasonable request, such documentation prescribed by Applicable Law (including Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by Borrower Agent or Agent as may be necessary for Obligors or Agent to comply with their obligations under FATCA and to determine that such Lender has complied with its obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this clause (d), "FATCA" shall include any amendments made to FATCA after the date hereof; and

(e) on or before the date on which Bank of America, N.A. (and any successor or replacement Agent) becomes the Agent hereunder, it shall deliver to Borrower Agent an executed copy of IRS Form W-9 certifying that such Agent is exempt from U.S. federal backup withholding tax.

5.9.3 Redelivery of Documentation. If any form or certification previously delivered by a Lender or Agent pursuant to this Section expires or becomes obsolete or inaccurate in any respect, such Lender shall promptly update the form or certification or notify Borrower Agent and Agent in writing of its legal inability to do so.

## 5.10 Nature and Extent of Each Obligor's Liability.

5.10.1 Joint and Several Liability. Each Obligor agrees that it is jointly and severally liable for, and absolutely and unconditionally guarantees to Agent and the other Secured Parties the prompt payment and performance of, all Obligations, except its Excluded Swap Obligations. Each Obligor agrees that its guaranty of the Obligations hereunder constitutes a continuing guaranty of payment and performance and not of collection, that such guaranty shall not be discharged until Full Payment of the Obligations, and that such guaranty is absolute and unconditional, irrespective of (a) the genuineness, validity, regularity, enforceability, subordination or any future modification of, or change in, any Obligations or Loan Document, or any other document, instrument or agreement to which any Obligor is or may become a party or be bound; (b) the absence of any action to enforce this Agreement (including this Section) or any other Loan Document, or any waiver, consent or indulgence of any kind by Agent or any other Secured Party with respect thereto; (c) the existence, value or condition of, or failure to perfect a Lien or to preserve rights against, any security or guaranty for any Obligations or any action or inaction by Agent or any other Secured Party in respect thereof (including the release of any security or guaranty); (d) the insolvency of any Obligor; (e) any election by Agent or any other Secured Party in an Insolvency Proceeding for the application of Section 1111(b)(2) of the Bankruptcy Code; (f) any borrowing or grant of a Lien by any other Obligor, as debtor-in-possession under Section 364 of the Bankruptcy Code or otherwise; (g) the disallowance of any claims of Agent or any other Secured Party against any Obligor for the repayment of any Obligations under Section 502 of the Bankruptcy Code or otherwise; or (h) any other action or circumstances that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, except Full Payment of the Obligations.

### 5.10.2 Waivers.

(a) Each Obligor expressly waives all rights that it may have now or in the future under any statute, at common law, in equity or otherwise, to compel Agent or any other Secured Party to marshal assets or to proceed against any other Obligor, other Person or security for the payment or performance of any Obligations before, or as a condition to, proceeding against such Obligor. Each Obligor waives all defenses available to a surety, guarantor or accommodation co-obligor other than Full Payment of Obligations and waives, to the maximum extent permitted by law, any right to revoke any guaranty of Obligations as long as it is an Obligor. It is agreed among each Obligor, Agent and the other Secured Parties that the provisions of this Section are of the essence of the transaction contemplated by the Loan Documents and that, but for such provisions, Agent and the other Secured Parties would decline to make Loans and issue Letters of Credit. Each Obligor acknowledges that its guaranty pursuant to this Section is necessary to the conduct and promotion of its business, and can be expected to benefit such business.

(b) Agent and the other Secured Parties may, in their discretion, pursue such rights and remedies as they deem appropriate, including realization upon Collateral or any Real Estate by judicial foreclosure or nonjudicial sale or enforcement, without affecting any rights and remedies under this Section. If, in taking any action in connection with the exercise of any rights or remedies, Agent or any other Secured Party shall forfeit any other rights or remedies, including the right to enter a deficiency judgment against any Obligor or other Person, whether because of any Applicable Laws pertaining to "election of remedies" or otherwise, each Obligor consents to such action and waives any claim based upon it, even if the action may result in loss of any rights of subrogation that any Obligor might otherwise have had. Any election of remedies that results in denial or impairment of the right of Agent or any other Secured Party to seek a deficiency judgment against any Obligor shall not impair any other Obligor's obligation to pay the full amount of the Obligations. Each Obligor waives all rights and defenses arising out of an election of remedies, such as nonjudicial foreclosure with respect to any security for Obligations, even though that election of remedies destroys such Obligor's rights of subrogation against any other Person. Agent may bid Obligations, in whole or part, at any foreclosure, trustee or other sale, including any private sale, and the amount of such bid need not be paid by Agent but may be credited against the Obligations. The amount of the successful bid at any such sale, whether Agent or any other Person is the successful bidder, shall be conclusively deemed to be the fair market value of the Collateral, and the difference between such bid amount and the remaining balance of the Obligations shall be conclusively deemed to be the amount of the Obligations guaranteed under this Section, notwithstanding that any present or future law or court decision may have the effect of reducing the amount of any deficiency claim to which Agent or any other Secured Party might otherwise be entitled but for such bidding at any such sale.

5.10.3 Extent of Liability; Contribution.

(a) Notwithstanding anything herein to the contrary, each Obligor's liability under this Section shall not exceed the greater of (i) all amounts for which such Obligor is primarily liable, as described in clause (c) below, or (ii) such Obligor's Allocable Amount.

(b) If any Obligor makes a payment under this Section of any Obligations (other than amounts for which such Obligor is primarily liable) (a "Guarantor Payment") that, taking into account all other Guarantor Payments previously or concurrently made by any other Obligor, exceeds the amount that such Obligor would otherwise have paid if each Obligor had paid the aggregate Obligations satisfied by such Guarantor Payments in the same proportion that such Obligor's Allocable Amount bore to the total Allocable Amounts of all Obligors, then such Obligor shall be entitled to receive contribution and indemnification payments from, and to be reimbursed by, each other Obligor for the amount of such excess, ratably based on their respective Allocable Amounts in effect immediately prior to such Guarantor Payment. The "Allocable Amount" for any Obligor shall be the maximum amount that could then be recovered from such Obligor under this Section without rendering such payment voidable under Section 548 of the Bankruptcy Code or under any applicable state fraudulent transfer or conveyance act, or similar statute or common law.

(c) This Section shall not limit the liability of any Obligor to pay or guarantee Loans made directly or indirectly to it (including Loans advanced hereunder to any other Person and then re-loaned or otherwise transferred to, or for the benefit of, such Obligor), LC Obligations relating to Letters of Credit issued to support its business, Secured Bank Product Obligations incurred to support its business, and all accrued interest, fees, expenses and other related Obligations with respect thereto, for which such Obligor shall be primarily liable for all purposes hereunder. Agent and Lenders shall have the right, at any time in their discretion, to condition Loans and Letters of Credit upon a separate calculation of borrowing availability for each Borrower and to restrict the disbursement and use of Loans and Letters of Credit to a Borrower based on that calculation.

(d) Each Obligor that is a Qualified ECP when its guaranty of or grant of Lien as security for a Swap Obligation becomes effective hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide funds or other support to each Specified Obligor with respect to such Swap Obligation as may be needed by such Specified Obligor from time to time to honor all of its obligations under the Loan Documents in respect of such Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP's obligations and undertakings under this Section voidable under any applicable fraudulent transfer or conveyance act). The obligations and undertakings of each Qualified ECP under this Section shall remain in full force and effect until Full Payment of all Obligations. Each Obligor intends this Section to constitute, and this Section shall be deemed to constitute, a guarantee of the obligations of, and a "keepwell, support or other agreement" for the benefit of, each Obligor for all purposes of the Commodity Exchange Act.

5.10.4 Joint Enterprise. Each Obligor has requested that Agent and Lenders make this credit facility available to Borrowers on a combined basis, in order to finance Obligor's business most efficiently and economically. Obligor's business is a mutual and collective enterprise, and the successful operation of each Obligor is dependent upon the successful performance of the integrated group. Obligor believes that consolidation of their credit facility will enhance the borrowing power of each Borrower and ease administration of the facility, all to their mutual advantage. Obligor acknowledges that Agent's and Lenders' willingness to extend credit and to administer the Collateral on a combined basis hereunder is done solely as an accommodation to Obligor and at Obligor's request.

5.10.5 Subordination. Each Obligor hereby subordinates any claims, including any rights at law or in equity to payment, subrogation, reimbursement, exoneration, contribution, indemnification or set off, that it may have at any time against any other Obligor, howsoever arising, to the Full Payment of its Obligations.

## **Section 6. CONDITIONS PRECEDENT.**

**6.1 Conditions Precedent to Initial Loans**. In addition to the conditions set forth in **Section 6.2**, Lenders shall not be required to fund any requested Loan, issue any Letter of Credit, or otherwise extend credit to Borrowers hereunder, until the date ("Closing Date") that each of the following conditions has been satisfied:

(a) Each Loan Document shall have been duly executed and delivered to Agent by each of the signatories thereto, and each Obligor shall be in compliance with all terms thereof.

(b) Agent shall have received acknowledgments of all filings or recordings necessary to perfect its Liens in the Collateral, as well as UCC and Lien searches and other evidence reasonably satisfactory to Agent that such Liens are the only Liens upon the Collateral, except Permitted Liens.

(c) Agent shall have received duly executed agreements establishing each Dominion Account and related lockbox and Deposit Account Control Agreements for all Deposit Accounts (other than Excluded Accounts), in form and substance reasonably satisfactory to Agent.

(d) Agent shall have received certificates, in form and substance satisfactory to it, from a knowledgeable Senior Officer of each Obligor certifying that, after giving effect to the initial Loans and transactions hereunder, (i) such Obligor is Solvent; (ii) no Default or Event of Default exists; (iii) the representations and warranties set forth in **Section 9** are true and correct; (iv) assuming Agent and the Lenders are satisfied with any items that are subject to their satisfaction, such Obligor has complied with all agreements and conditions to be satisfied by it under the Loan Documents; and (v) attached to such certificate are true, accurate and complete copies of the Term Loan Agreement and all amendments thereto.

(e) Agent shall have received a certificate of a duly authorized officer of each Obligor, certifying (i) that attached copies of such Obligor's Organic Documents are true and complete, and in full force and effect, without amendment except as shown; (ii) that an attached copy of resolutions authorizing execution and delivery of the Loan Documents is true and complete, and that such resolutions are in full force and effect, were duly adopted, have not been amended, modified or revoked, and constitute all resolutions adopted with respect to this credit facility; and (iii) to the title, name and signature of each Person authorized to sign the Loan Documents. Agent may conclusively rely on this certificate until it is otherwise notified by the applicable Obligor in writing.

(f) Agent shall have received a written opinion of Vinson & Elkins L.L.P., in form and substance reasonably satisfactory to Agent.

(g) Agent shall have received copies of the charter documents of each Obligor, certified by the Secretary of State or other appropriate official of such Obligor's jurisdiction of organization as of a recent date. Agent shall have received good standing certificates as of a recent date for each Obligor, issued by the Secretary of State or other appropriate official of such Obligor's jurisdiction of organization and each jurisdiction where such Obligor's conduct of business or ownership of Property necessitates qualification.

(h) Agent shall have received copies of policies or certificates of insurance for the insurance policies carried by Obligors.

(i) Each Obligor shall have provided, in form and substance satisfactory to Agent and each Lender, all documentation and other information as Agent or any Lender deems appropriate in connection with applicable "know your customer" and anti-money-laundering rules and regulations, including the Patriot Act and Beneficial Ownership Regulation. If any Obligor qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, it shall have provided a Beneficial Ownership Certification to Agent and Lenders in relation to such Obligor.

(j) Agent shall have completed its business, financial and legal due diligence of Obligors, including a field examination and appraisal, with results satisfactory to Agent. No material adverse change in the financial condition of any Obligor or in the quality, quantity or value of any Collateral shall have occurred since December 31, 2021.

(k) Obligors shall have paid all fees and expenses to be paid to Agent on the Closing Date, including field exam and appraisal costs and the reasonable and documented out-of-pocket fees and expenses of Haynes & Boone, LLP and other external advisors to the extent invoiced prior to the Closing Date.

(l) Agent shall have received a Borrowing Base Report as of December 31, 2022. Upon giving effect to the initial funding of Loans and issuance of Letters of Credit, and the payment by Obligors of all fees and expenses incurred in connection herewith as well as any payables stretched beyond their customary payment practices, Availability shall be at least \$15,000,000.

(m) Agent shall have received a duly executed payoff letter in form and substance satisfactory to it and dated on or prior to the Closing Date with respect to the Company's ABL Credit Agreement dated December 14, 2018 with Barclays Bank PLC, as administrative agent, together with evidence satisfactory to it (including UCC-3 financing statement terminations and other termination documents) that on the Closing Date such Debt will be repaid in full and the Liens securing such Debt have been released, subject only to the filing of applicable terminations and releases.

(n) Term Loan Agent shall have entered into (i) the Intercreditor Agreement with Agent and (ii) an amendment to the Term Loan Agreement in order to permit this Agreement, which shall each be in form and substance reasonably satisfactory to Agent.

(o) Agent shall have received the Related Real Estate Documents requested by Agent for all Real Estate described on **Schedule 6.1(o)**.

**6.2 Conditions Precedent to All Credit Extensions.** Agent, Issuing Bank and Lenders shall not be required to make any credit extension hereunder (including funding a Loan, arranging a Letter of Credit, or granting any other accommodation to or for the benefit of any Obligor), if the following conditions are not satisfied on such date and upon giving effect thereto:

(a) No Default or Event of Default exists or would result therefrom;

(b) The representations and warranties of each Obligor in the Loan Documents are true and correct in all material respects without duplication of any materiality qualification applicable thereto (except for representations and warranties that expressly apply only on an earlier date, which shall be true and correct in all material respects, without duplication, as of such date);

(c) Sufficient Availability exists therefor; and

(d) With respect to a Letter of Credit issuance, all LC Conditions are satisfied.

Each request (or deemed request) by a Borrower for any credit extension shall constitute a representation by Obligors that the foregoing conditions are satisfied on the date of such request and on the date of the credit extension. Notwithstanding the foregoing, no more than \$50,000,000 of Loans may be outstanding on the date the Hercules Acquisition is consummated (and, if applicable, Borrowers shall prepay the outstanding Loans such that the aggregate principal amount of Loans does not exceed \$50,000,000 on the date the Hercules Acquisition is consummated).

## **Section 7. COLLATERAL.**

**7.1 Grant of Security Interest.** To secure the prompt payment and performance of the Obligations, each Obligor hereby grants to Agent, for the benefit of Secured Parties, a continuing security interest and Lien on all personal Property of such Obligor, including the following, whether now owned or hereafter acquired, and wherever located:

(a) all Accounts and all Payment Intangibles;

(b) all Chattel Paper, including electronic chattel paper;

- (c) all Commercial Tort Claims, including those shown on **Schedule 7.5**;
- (d) all Deposit Accounts and Securities Accounts;
- (e) all Documents;
- (f) all General Intangibles (including Intellectual Property) and all business interruption insurance;
- (g) all Goods, including Inventory, Equipment, Fixtures and As-Extracted Collateral;
- (h) all Instruments;
- (i) all Investment Property;
- (j) all Letter-of-Credit Rights;
- (k) all Supporting Obligations;
- (l) all monies, whether or not in the possession or under the control of Agent, including any Cash Collateral;
- (m) all accessions to, substitutions for, and all replacements, products, and cash and non-cash proceeds of the foregoing, including proceeds of and unearned premiums with respect to insurance policies, and claims against any Person for loss, damage or destruction of any Collateral; and
- (n) all books and records (including customer lists, files, correspondence, tapes, computer programs, print-outs and computer records) pertaining to the foregoing.

To the extent that any of the above-described Property is not subject to the UCC, each Obligor hereby pledges and collaterally assigns all of such Obligor's right, title, and interest in and to such Property, whether now owned or hereafter acquired, to Agent for the benefit of the Secured Parties to secure the payment and performance of the Obligations to the full extent that such a pledge and collateral assignment is possible under relevant law.

Notwithstanding the foregoing, Collateral shall not include any Excluded Property; provided that Excluded Property shall not include any proceeds, products, substitutions or replacements of Excluded Property, including monies due or to become due to an Obligor (unless such proceeds, products, substitutions or replacements would otherwise constitute Excluded Property).

## **7.2 Lien on Deposit Accounts; Cash Collateral.**

7.2.1 Deposit Accounts. Agent's Lien hereunder encumbers all amounts credited to any Deposit Account of an Obligor (other than to the extent constituting Excluded Property), including sums in any blocked, lockbox, sweep or collection account.

7.2.2 Cash Collateral. As security for the Obligations, each Obligor hereby grants to Agent a security interest in and Lien upon all Cash Collateral delivered hereunder from time to time, whether held in a segregated cash collateral account or otherwise. Agent may apply Cash Collateral to the payment of the Obligations as they become due, in such order as Agent may elect. All Cash Collateral and related Deposit Accounts shall be under the sole dominion and control of Agent, and no Obligor or other Person shall have any right to any Cash Collateral until Full Payment of the Obligations.

### 7.3 Pledged Collateral

7.3.1 Pledged Equity Interests and Debt Securities. As security for the payment and performance of the Obligations, each Obligor hereby assigns and pledges to Agent, for the benefit of the Secured Parties, and hereby grants to Agent, for the benefit of Secured Parties, a security interest in, all of such Obligor's right, title and interest in, to and under (a) the Equity Interests now owned or at any time hereafter acquired by such Obligor, including the Equity Interests set forth opposite the name of such Obligor on **Schedule 7.3**, and all certificates and other instruments representing such Equity Interests (excluding any Excluded Property, collectively, the "Pledged Equity Interests"); (b) the debt securities now owned or at any time hereafter acquired by such Obligor, including the debt securities set forth opposite the name of such Obligor on **Schedule 7.3**, and all promissory notes and other instruments evidencing such debt securities (collectively, the "Pledged Debt Securities"); (c) all payments of principal or interest, dividends, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of, in exchange for or upon the conversion of, and all other proceeds received in respect of, the property referred to in clauses (a) and (b) above; (d) all rights and privileges of such Obligor with respect to the securities, instruments and other property referred to in clauses (a), (b) and (c) above; and (e) all proceeds of any and all of the foregoing (the items referred to in clauses (a) through (e) above being collectively referred to as the "Pledged Collateral").

#### 7.3.2 Delivery of the Pledged Collateral

(a) Each Obligor agrees to deliver or cause to be delivered to Agent any and all Pledged Collateral at any time owned by such Obligor promptly following the acquisition thereof by such Obligor (and in any event within 30 days) to the extent that such Pledged Collateral is either (i) certificated Pledged Equity Interests or (ii) in the case of Pledged Debt Securities, required to be delivered pursuant to paragraph (b) of this **Section 7.3.2**; provided, that Agent acknowledges that any Obligor's delivery of any such Pledged Collateral to the applicable Person entitled thereto under the Intercreditor Agreement at such time will satisfy such Obligor's delivery obligations under this **Section 7.3.2(a)** so long as the Intercreditor Agreement is in full force and effect.

(b) All Debt (other than Debt that has a principal amount of less than \$250,000 individually and \$1,000,000 in the aggregate) owing to any Obligor that is evidenced by a promissory note or other Instrument shall be promptly (and in any event within 30 days of the acquisition thereof) delivered to Agent pursuant to the terms hereof; provided, that Agent acknowledges that any Obligor's delivery of any such Pledged Collateral to the applicable Person entitled thereto under the Intercreditor Agreement at such time will satisfy such Obligor's delivery obligations under this **Section 7.3.2(b)** so long as the Intercreditor Agreement is in full force and effect.

(c) Upon delivery (i) any Pledged Equity Interests shall be accompanied by undated stock powers duly executed by the applicable Obligor in blank or other instruments of transfer reasonably satisfactory to Agent and by such other instruments and documents as Agent may reasonably request and (ii) all other property comprising part of the Pledged Collateral shall, if relevant or applicable to such property, be accompanied by undated proper instruments of assignment duly executed by the applicable Obligor in blank and by such other instruments and documents as Agent may reasonably request. In connection with any delivery of Pledged Collateral after the date hereof, Borrower Agent shall deliver a Schedule describing the Pledged Collateral so delivered, which Schedule shall be attached to **Schedule 7.3** and made a part hereof; provided, that failure to deliver any such Schedule hereto or any error in a Schedule so attached shall not affect the validity of the pledge of any Pledged Collateral.

7.3.3 Pledge Related Representations, Warranties and Covenants. Each Obligor hereby represents, warrants and covenants to Agent and the Secured Parties that:

(a) As of the Closing Date, **Schedule 7.3** sets forth a true and complete list, with respect to such Obligor, of (i) all the Equity Interests owned by such Obligor and the percentage of the issued and outstanding units of each class of the Equity Interests of the issuer thereof represented by the Pledged Equity Interests owned by such Obligor and (ii) all debt owned by such Obligor, and all promissory notes and other instruments evidencing such debt. **Schedule 7.3** sets forth all Equity Interests, debt and promissory notes required to be pledged hereunder as of the Closing Date.

(b) The Pledged Equity Interests and Pledged Debt Securities, solely with respect to Pledged Equity Interests and Pledged Debt Securities issued by a Person that is an Obligor or a Subsidiary of the Company, have been duly and validly authorized and issued by the issuers thereof and (i) in the case of Pledged Equity Interests issued by a Person that is an Obligor or a Subsidiary of the Company, are fully paid and nonassessable (to the extent such concepts are relevant to such Pledged Equity Interests) and (ii) in the case of Pledged Debt Securities issued by an Obligor or a Subsidiary of the Company, are legal, valid and binding obligations of the issuers thereof (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(c) Except for the security interests granted hereunder, such Obligor (i) is and, subject to any transfers or dispositions made in compliance with this Agreement, will continue to be the direct owner, beneficially and of record, of the Pledged Collateral indicated on **Schedule 7.3** as owned by such Obligor, (ii) holds the same free and clear of all Liens (other than Permitted Liens), (iii) will make no assignment, pledge, hypothecation or transfer of, or create or permit to exist any security interest in or other Lien on, the Pledged Collateral (other than Permitted Liens and Permitted Dispositions), and (iv) will defend its title or interest thereto or therein against any and all Liens (other than Permitted Liens and Permitted Dispositions), however arising, of all Persons whomsoever.

(d) Such Obligor has the power and authority to pledge the Pledged Collateral pledged by it hereunder.

(e) No Governmental Approval or any other action by any Governmental Authority and no consent or approval of any securities exchange or any other Person (including stockholders, partners, members or creditors of such Obligor) is or will be required for the validity of the pledge effected hereby (other than such as have been obtained and are in full force and effect).

7.3.4 Registration in Nominee Name; Denominations. Agent shall have the right to hold the Pledged Collateral in its own name as pledgee, in the name of its nominee or in the name of the applicable Obligor, endorsed or assigned in blank or in favor of Agent. During the continuance of an Event of Default, Agent shall at all times have the right to exchange the certificates representing Pledged Equity Interests for certificates of smaller or larger denominations for any purpose consistent with this Agreement.

7.3.5 Voting Rights; Dividends and Interest.

(a) Unless and until an Event of Default shall have occurred and be continuing and Agent shall have notified any Obligors that their rights under this Section are being suspended:

(i) Each Obligor shall be entitled to exercise any and all voting and other consensual rights and powers inuring to an owner of Pledged Collateral or any part thereof for any purpose consistent with the terms of this Agreement and the other Loan Documents; provided, that such rights and powers shall not be exercised in any manner that could materially and adversely affect the rights inuring to a holder of any Pledged Collateral or the rights and remedies of Agent or any other Secured Party under this Agreement or any other Loan Document or the ability of the Secured Parties to exercise the same.

(ii) Agent shall promptly execute and deliver to Obligors, or cause to be executed and delivered to Obligors, all such proxies, powers of attorney and other instruments as Obligors may reasonably request for the purpose of enabling Obligors to exercise the voting and other consensual rights and powers they are entitled to exercise pursuant to paragraph (i) above.

(iii) Each Obligor shall be entitled to receive and retain any and all dividends, interest, principal and other distributions paid on or distributed in respect of the Pledged Collateral to the extent and only to the extent that such dividends, interest, principal and other distributions are permitted by, and otherwise paid or distributed in accordance with, the terms and conditions of this Agreement, the other Loan Documents and Applicable Law; provided, that any noncash dividends, interest, principal or other distributions that would constitute Pledged Equity Interests or Pledged Debt Securities, whether resulting from a subdivision, combination or reclassification of the outstanding Equity Interests of the issuer of any Pledged Collateral or received in exchange for Pledged Collateral or any part thereof, or in redemption thereof, or as a result of any merger, consolidation, acquisition or other exchange of assets to which such issuer may be a party or otherwise, shall be and become part of the Pledged Collateral and, if received by any Obligor, shall be held in trust for the benefit of Agent and shall be forthwith delivered to Agent promptly following demand in the same form as so received (with any necessary endorsement); provided, that Agent acknowledges that any Obligor's delivery of any such Pledged Collateral to the applicable Person entitled thereto under the Intercreditor Agreement at such time will satisfy such Obligor's delivery obligations under this **Section 7.3.5** so long as the Intercreditor Agreement is in full force and effect.

(b) Upon the occurrence and during the continuance of an Event of Default, after Agent shall have notified any Obligors of the suspension of their rights under paragraph (a)(iii) of this Section, all rights of any Obligor to dividends, interest, principal or other distributions that such Obligor is authorized to receive pursuant to paragraph (a)(iii) of this Section shall cease, and all such rights shall thereupon become vested in Agent, which shall have the sole and exclusive right and authority to receive and retain such dividends, interest, principal or other distributions. All dividends, interest, principal or other distributions received by any Obligor contrary to the provisions of this Section shall be held in trust for the benefit of Agent and shall be forthwith delivered to Agent upon demand in the same form as so received (with any necessary endorsement); provided, that Agent acknowledges that any Obligor's delivery of any such Pledged Collateral to the applicable Person entitled thereto under the Intercreditor Agreement at such time will satisfy such Obligor's delivery obligations under this **Section 7.3.5** so long as the Intercreditor Agreement is in full force and effect. Any and all money and other property paid over to or received by Agent pursuant to the provisions of this paragraph shall be retained by Agent in an account to be established by Agent upon receipt of such money or other property, shall be held as security for the Obligations and shall be applied in accordance with the provisions of **Section 5.5**.

(c) Upon the occurrence and during the continuance of an Event of Default, after Agent shall have notified any Obligors of the suspension of their rights under paragraph (a)(i) of this Section, all rights of any Obligor to exercise the voting and other consensual rights and powers it is entitled to exercise pursuant to paragraph (a)(i) of this Section, and the obligations of Agent under paragraph (a)(ii) of this Section, shall cease, and all such rights shall thereupon become vested in Agent, which shall have the sole and exclusive right and authority to exercise such voting and other consensual rights and powers; provided, that unless otherwise directed by the Required Lenders, Agent shall have the right from time to, in its sole discretion, notwithstanding the continuance of an Event of Default, to permit any Obligor to exercise such rights and powers.

#### 7.3.6 Consents.

(a) In the case of each Obligor which is an issuer of Pledged Collateral, such Obligor agrees to be bound by the terms of this Agreement relating to the Pledged Collateral issued by it and will comply with such terms insofar as such terms are applicable to it. Without limitation to the foregoing, with respect to each Obligor that is an issuer of Pledged Collateral constituting uncertificated securities, such Obligor agrees that upon notice from Agent following the occurrence and during the continuance of an Event of Default, such Obligor shall comply with Agent's instructions with respect to such Pledged Collateral without further consent of the Obligor holding such Pledged Collateral.

(b) Each Obligor on behalf of itself, and in the case of each Obligor which is a partner, shareholder or member, as the case may be, in a partnership, corporation, limited liability company or other entity that is an issuer of Pledged Collateral such Obligor in such capacity, hereby (i) consents, to the extent required by the applicable Organic Documents of such Obligor or such issuer of Pledged Collateral, to the pledge by it and by each other Obligor pursuant to the terms hereof of the Pledged Collateral in such partnership, corporation, limited liability company or other entity and, upon the occurrence and during the continuance of an Event of Default, to the transfer of such Pledged Collateral to Agent or its nominee or transferee and admission of such Person as a substitute partner, shareholder or member, as the case may be, and (ii) to the maximum extent permitted to do so, irrevocably waives any and all provisions of the applicable Organic Documents of such issuer of Pledged Collateral that conflict with the terms of this Agreement or prohibit, restrict, condition or otherwise affect the grant hereunder of any Lien on any of the Pledged Collateral or any enforcement action which may be taken in respect of any such Lien.

#### **7.4 Real Estate Collateral.**

7.4.1 Lien on Real Estate. The Obligations shall be secured by Mortgages upon all Required Real Estate Collateral owned or leased by Obligors. If any Obligor acquires Required Real Estate Collateral hereafter (or any previously owned or leased Real Estate becomes Required Real Estate Collateral after the date hereof), Obligors shall promptly notify Agent and, within 60 days (or such later date as the Agent may agree), execute, deliver and record a Mortgage, in form and substance reasonably satisfactory to Agent, together with all Related Real Estate Documents. The Mortgages shall be duly recorded, at Obligors' expense, in each office where such recording is required to constitute a fully perfected Lien on the Real Estate covered thereby.

7.4.2 Collateral Assignment of Leases. To further secure the prompt payment and performance of its Obligations, each Obligor hereby transfers and assigns to Agent and grants a Lien in favor of Agent on all of such Obligor's right, title and interest in, to and under all now or hereafter existing leases of Real Estate to which such Obligor is a party, whether as lessor or lessee, and all extensions, renewals, modifications and proceeds thereof.

7.4.3 Release of Required Real Estate Collateral. Notwithstanding anything in any Loan Document to the contrary, with respect to any Real Estate (other than fixtures and as-extracted collateral) subject to a Lien in favor of Agent, in the event that no Term Loan Debt is outstanding or the Term Loan Debt is not secured by a Lien on such Real Estate (and no other Borrowed Money permitted under **Section 10.2.1(n)** is secured by such Real Estate) (the occurrence of such event with respect to any Real Estate, a "Release Event"), the Obligors may request that Agent release its Lien on such Real Estate and Agent shall release such Lien promptly following such Obligors' request pursuant to such release documentation as the Obligors may reasonably request and that is reasonably acceptable to Agent, provided, that (a) no Event of Default exists at such time, (b) Agent may make or retain UCC "as-extracted" collateral and/or fixture filings, and (c) any such release shall be without prejudice to **Section 7.4.1** in the event that such Real Estate subsequently constitutes Required Real Estate Collateral.

**7.5 Other Collateral.**

7.5.1 **Commercial Tort Claims.** As of the Closing Date, no Obligor has a Commercial Tort Claim (other than any Commercial Tort Claim of less than \$500,000) except as set forth on **Schedule 7.5**. Obligors shall promptly (and in any event within 30 days) notify Agent in writing if any Obligor has an additional Commercial Tort Claim (other than, as long as no Default or Event of Default exists, a Commercial Tort Claim for less than \$500,000), shall promptly amend **Schedule 7.5** to include such claim, and shall take such actions as Agent deems appropriate to subject such claim to a duly perfected, first priority Lien in favor of Agent (subject to the Intercreditor Agreement).

7.5.2 **Certain After-Acquired Collateral.** As of the Closing Date, no Obligor has any Chattel Paper (other than any Chattel Paper with a face amount individually of less than \$500,000 or less than \$1,000,000 in the aggregate) except as set forth on **Schedule 7.5**. Obligors shall promptly (and in any event within 30 days) notify Agent in writing if any Obligor acquires any Chattel Paper with a face amount individually in excess of \$500,000 or in the aggregate in excess of \$1,000,000 constituting Collateral, and shall, upon Agent's request, deliver to Agent the originals of any such Chattel Paper. As of the Closing Date, no Obligor has any Document evidencing or constituting Collateral in an amount individually in excess of \$500,000 or in the aggregate in excess of \$1,000,000 except as set forth on **Schedule 7.5**. Obligors shall promptly (and in any event within 30 days) notify Agent in writing if any Obligor acquires any Document evidencing or constituting Collateral in an amount individually in excess of \$500,000 or in the aggregate in excess of \$1,000,000, and shall, upon Agent's request, deliver to Agent the originals of any such Documents. Obligors shall promptly (and in any event within 30 days) notify Agent in writing if any Obligor acquires any Letter of Credit Right evidencing or constituting Collateral in an amount individually in excess of \$500,000 or in the aggregate in excess of \$1,000,000, and shall, upon Agent's request, take such further actions as Agent may reasonably require to perfect its Lien thereon. Obligors shall notify Agent of the acquisition of any material Intellectual Property at the time of delivery of each Compliance Certificate and shall, upon Agent's request, take such further actions as Agent may reasonably require to perfect its Lien thereon.

7.6 **Limitations.** The Lien on Collateral granted hereunder is given as security only and shall not subject Agent or any Lender to, or in any way modify, any obligation or liability of Obligors relating to any Collateral. In no event shall any Obligor's grant of a Lien under any Loan Document secure its Excluded Swap Obligations.

7.7 **Further Assurances.** All Liens granted to Agent under the Loan Documents are for the benefit of Secured Parties. Promptly (and in any event within 30 days) upon request, Obligors shall deliver such instruments and agreements, and shall take such actions, as Agent deems appropriate under Applicable Law to evidence or perfect its Lien on any Collateral, or otherwise to give effect to the intent of this Agreement. Each Obligor authorizes Agent to file any financing statement that describes the Collateral as "all assets" or "all personal property" of such Obligor, or words to similar effect.

**Section 8. COLLATERAL ADMINISTRATION.**

**8.1 Borrowing Base Reports.** By the 25<sup>th</sup> day of each month, Borrower Agent shall deliver to Agent (and Agent shall promptly deliver same to Lenders) a Borrowing Base Report as of the close of business of the previous month; provided, that if a Trigger Period is in effect Borrower Agent shall, no later than the third Business Day of each calendar week, deliver a Borrowing Base Report prepared as of the close of business of such previous week. All information (including the calculation of Availability) in a Borrowing Base Report shall be certified by Borrower Agent. Agent may from time to time adjust such report (a) to reflect Agent's reasonable estimate of declines in value of Collateral, due to collections received in the Dominion Account or otherwise; and (b) to the extent any information or calculation does not comply with this Agreement.

**8.2 Accounts.**

**8.2.1 Records and Schedules of Accounts.** Each Obligor shall keep accurate and complete, in all material respects, records of its Accounts, including all payments and collections thereon, and shall submit to Agent each of the reports set forth on **Schedule 8.2.1** at the times specified therein. If Accounts in an aggregate face amount of \$2,500,000 or more cease to be Eligible Accounts or Eligible Unbilled Accounts, Borrowers shall notify Agent of such occurrence promptly (and in any event within three Business Days) after any Obligor has knowledge thereof.

**8.2.2 Taxes.** If an Account of any Obligor includes a charge for any Taxes, Agent is authorized, in its discretion if Obligors have not paid such Taxes when due and a Default or an Event of Default has occurred and is continuing, to pay the amount thereof to the proper taxing authority for the account of such Obligor and to charge Obligors therefor; provided, that neither Agent nor Lenders shall be liable for any Taxes that may be due from Obligors or relate to any Collateral.

**8.2.3 Account Verification.** Whether or not a Default or Event of Default exists, Agent shall have the right at any time, in the name of Agent, any designee of Agent or any Obligor, to verify the validity, amount or any other matter relating to any Accounts of Obligors by mail, telephone or otherwise; provided that as long as no Event of Default exists (a) Agent shall provide Borrower Agent at least two (2) Business Days' notice prior to such verification and (b) shall provide an opportunity for a representative of the Borrower Agent to participate in any such phone call, if Borrower Agent so elects. Obligors shall provide reasonable cooperation with Agent in an effort to facilitate and promptly conclude any such verification process.

**8.2.4 Maintenance of Dominion Account.** Obligors shall maintain Dominion Accounts pursuant to lockbox or other arrangements reasonably acceptable to Agent (and which Dominion Accounts shall be separate from the collection accounts for any Unrestricted Subsidiary). Obligors shall obtain a Deposit Account Control Agreement from each lockbox servicer and Dominion Account bank, establishing Agent's control over and Lien in the lockbox or Dominion Account (which may be exercised by Agent only during a Trigger Period) requiring immediate deposit of all remittances received in the lockbox to a Dominion Account, and waiving offset rights of such servicer or bank, except for customary administrative charges. Agent may, during any Trigger Period, require immediate transfer of all funds in such Dominion Account(s) to Bank of America pursuant to **Section 5.6** and such transferred funds shall be applied to the Obligations or made available to Borrowers, as applicable, in accordance with **Section 5.6**. Agent and Lenders assume no responsibility to Obligors for any lockbox arrangement or Dominion Account, including any claim of accord and satisfaction or release with respect to any Payment Items accepted by any bank.

8.2.5 Proceeds of ABL Priority Collateral. Obligors shall request in writing and otherwise take all commercially reasonable steps to ensure that all payments on Accounts or otherwise relating to ABL Priority Collateral are made directly to a Dominion Account (or a lockbox relating to a Dominion Account). If any Obligor or Subsidiary receives cash or Payment Items with respect to any ABL Priority Collateral, it shall hold same in trust for Agent and promptly (not later than the next Business Day) deposit the same into a Dominion Account. Obligors shall not deposit or commingle payments on Accounts owing to any Unrestricted Subsidiary into the Dominion Account.

### **8.3 Inventory**

8.3.1 Records and Reports of Inventory. Each Obligor shall keep accurate and complete records of its Inventory, and shall submit to Agent each of the reports set forth on **Schedule 8.2.1** at the times specified therein.

8.3.2 [Reserved].

8.3.3 Acquisition, Sale and Maintenance. No Obligor shall acquire or accept any Inventory on consignment or approval, and shall take all steps to assure that all Inventory is produced in accordance with Applicable Law, including the FLSA. No Obligor shall sell any Inventory on consignment or approval or any other basis under which the customer may return or require an Obligor to repurchase such Inventory. Obligors shall use, store and maintain all Inventory with reasonable care and caution, in accordance with applicable standards of any insurance and in conformity with all Applicable Law, and shall make current rent payments (within applicable grace periods provided for in leases) at all locations where any Collateral is located, in each case except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

### **8.4 [Reserved]**

8.5 Administration of Deposit Accounts and Securities Accounts. As of the Closing Date, **Schedule 8.5** lists all Deposit Accounts and Securities Accounts maintained by Obligors, including Dominion Accounts. Obligors shall be the sole account holders of each Deposit Account and Securities Account (other than Excluded Accounts described in clauses (a) and (c) of the definition thereof) and shall not allow any Person (other than Agent, the depository bank or securities intermediary and the Term Loan Agent) to have control over their Deposit Accounts, Securities Accounts or any Property deposited therein (other than Excluded Accounts described in clauses (a) and (c) of the definition thereof). Obligors shall promptly notify Agent of any opening of a Deposit Account or a Securities Account. With respect to all Deposit Accounts (other than Excluded Accounts) and Securities Accounts existing on the Closing Date, and promptly following the opening of any new Deposit Account (other than Excluded Accounts) and Securities Account after the Closing Date (but in any event prior to the transfer of any funds or other property thereto), the Obligors shall provide Agent with a Deposit Account Control Agreement or Securities Account Control Agreement, as applicable. Obligors shall not commingle funds of any Unrestricted Subsidiary in Obligors' Deposit Accounts or Securities Accounts; provided that the inadvertent commingling of funds in an aggregate amount not exceeding \$1,000,000 at any one time shall not constitute a breach of the foregoing requirement so long as promptly rectified following knowledge thereof.

## 8.6 General Provisions.

8.6.1 Location of Collateral. All material tangible items of Collateral, other than Inventory in transit and Equipment out for repair or in use away from a Sand Facility in the Ordinary Course of Business, shall at all times be kept by Obligors at the business locations set forth in **Schedule 8.6.1** (as updated from time to time by the Obligors by written notice to the Agent), except that Obligors may (a) make sales or other dispositions of Collateral in accordance with **Section 10.2.5**; and (b) move Collateral to customer sites, drop depots and trucking yards in the Ordinary Course of Business.

### 8.6.2 Insurance of Collateral; Condemnation Proceeds.

(a) Each Obligor shall maintain insurance with respect to the Collateral with financially sound and reputable insurance companies in such amounts and against such risks (including casualty) as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations and with insurers reasonably satisfactory to Agent (it being agreed that insurers with a Best rating of at least A- shall be deemed satisfactory to Agent), which insurance policies and proceeds thereof, whether now owned or hereafter existing, are hereby collaterally assigned to Agent as security for the Obligations; provided, that if Real Estate secures any Obligations, flood hazard diligence, documentation and insurance for such Real Estate shall comply with all Flood Laws or shall otherwise be reasonably satisfactory to all Lenders. From time to time upon Agent's reasonable request, Obligors shall deliver to Agent copies of its insurance policies and updated flood plain searches. Each policy shall include endorsements reasonably satisfactory to Agent (i) showing Agent as additional insured and lender's loss payee; and (ii) requiring 30 days prior written notice to Agent of cancellation of the policy for any reason whatsoever (10 days in the case of non-payment). If any Obligor fails to provide and pay for any insurance, Agent may, in its discretion, procure the insurance and charge Obligors therefor. While no Event of Default exists, Obligors may settle, adjust or compromise any insurance claim. If an Event of Default exists, only Agent may settle, adjust and compromise such claims with respect to Collateral (subject to the Intercreditor Agreement with respect to any Term Priority Collateral).

(b) Any proceeds of business interruption insurance and of property insurance in respect of ABL Priority Collateral (other than, for the avoidance of doubt, workers' compensation, D&O insurance and liability policy payments to third parties) and awards from condemnation of ABL Priority Collateral shall be paid directly to Agent for application to the Obligations during a Trigger Period.

8.6.3 **Protection of Collateral.** All expenses of protecting, storing, warehousing, insuring, handling, maintaining and shipping any Collateral, all Taxes payable with respect to any Collateral (including any sale thereof), and all other payments required to be made by Agent to any Person to realize upon any Collateral, shall be borne and paid by Obligors. Agent shall not be liable or responsible in any way for the safekeeping of any Collateral, for any loss or damage thereto (except for reasonable care in its custody while Collateral is in Agent's actual possession), for any diminution in the value thereof, or for any act or default of any warehouseman, carrier, forwarding agency or other Person whatsoever, but the same shall be at Obligors' sole risk.

8.6.4 **Defense of Title.** Each Obligor shall use commercially reasonable efforts to defend its title to any material Collateral and Agent's Liens therein against all Persons, claims and demands, except Permitted Liens.

8.7 **Power of Attorney.** Each Obligor hereby irrevocably constitutes and appoints Agent (and all Persons designated by Agent) as such Obligor's true and lawful attorney (and agent-in-fact) for the purposes provided in this Section. Agent, or Agent's designee, may (in its discretion), without notice and in either its or an Obligor's name, but at the cost and expense of Obligors:

(a) Endorse an Obligor's name on any Payment Item or other proceeds of Collateral (including proceeds of insurance) that come into Agent's possession or control; and

(b) During the continuance of an Event of Default, (i) notify any Account Debtors of the assignment of their Accounts, demand and enforce payment of Accounts by legal proceedings or otherwise, and generally exercise any rights and remedies with respect to Accounts; (ii) settle, adjust, modify, compromise, discharge or release any Accounts or other Collateral, or any legal proceedings brought to collect Accounts or Collateral; (iii) sell or assign any Accounts and other Collateral upon such terms, for such amounts and at such times as Agent deems advisable; (iv) collect, liquidate and receive balances in Deposit Accounts or investment accounts, and take control, in any manner, of proceeds of Collateral; (v) prepare, file and sign an Obligor's name to a proof of claim or other document in a bankruptcy of an Account Debtor, or to any notice, assignment or satisfaction of Lien or similar document; (vi) endorse any Chattel Paper, Document, Instrument, bill of lading, or other document or agreement relating to any Accounts, Inventory or other Collateral; (vii) use an Obligor's stationery and sign its name to verifications of Accounts and notices to Account Debtors; (viii) use information contained in any data processing, electronic or information systems relating to Collateral; (ix) make and adjust claims under insurance policies; (x) take any action as may be necessary or appropriate to obtain payment under any letter of credit, banker's acceptance or other instrument for which an Obligor is a beneficiary; (xi) exercise any voting or other rights relating to Investment Property following written notice to Borrower Agent of its intention to do so; and (xii) take all other actions as Agent deems appropriate to fulfill any Obligor's obligations under the Loan Documents.

## **Section 9. REPRESENTATIONS AND WARRANTIES.**

9.1 **General Representations and Warranties.** To induce Agent and Lenders to enter into this Agreement and to make available the Commitments, Loans and Letters of Credit, each Obligor represents and warrants that:

9.1.1 Organization; Powers. Each of the Obligor and their Restricted Subsidiaries is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, has all requisite power and authority, and has all governmental licenses, authorizations, consents and approvals necessary, to own its assets and to carry on its business as now conducted, and is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required, except where failure to have such power, authority, licenses, authorizations, consents, approvals and qualifications would not reasonably be expected to result in a Material Adverse Effect.

9.1.2 Authority; Enforceability. The execution, delivery and performance of the Loan Documents are within each Obligor's corporate, limited liability company or partnership powers and have been duly authorized by all necessary corporate, limited liability company or partnership and, if required, equityholder action (including, without limitation, any action required to be taken by any class of directors, whether interested or disinterested, of the Obligor or any other Person in order to ensure the due authorization of the Loan Documents). Each Loan Document to which any Obligor is a party has been duly executed and delivered by such Obligor and constitutes a legal, valid and binding obligation of such Obligor, enforceable in accordance with its terms, subject to applicable Debtor Relief Laws and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

9.1.3 Approvals; No Conflicts. The execution, delivery and performance of the Loan Documents to which each Obligor is a party (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority or any other third Person (including equityholders, members, partners or any class of directors or managers, whether interested or disinterested, of the Obligor or any other Person), nor is any such consent, approval, registration, filing or other action necessary for the validity or enforceability of any Loan Document or the consummation of the obligations under the Loan Documents, except such as have been obtained or made and are in full force and effect, other than (i) the recordations and filings necessary to perfect Agent's Liens in the Collateral, as required by this Agreement and (ii) those third party approvals or consents which, if not made or obtained, would not cause a Default hereunder and would not reasonably be expected to result in a Material Adverse Effect, (b) will not violate any Applicable Law or any order of any Governmental Authority material to any Obligor's or its Restricted Subsidiary's business, (c) will not violate or result in a default under any Organic Documents of any Obligor or any indenture or other material agreement regarding Debt binding upon any Obligor or its Restricted Subsidiaries or its Properties (including the Term Loan Documents), or give rise to a right thereunder to require any payment to be made by any Obligor, and (d) will not result in the creation or imposition of any Lien on any Sand Property of any Obligor or its Restricted Subsidiaries (other than the Liens created by the Loan Documents).

9.1.4 Financial Condition; No Material Adverse Effect.

(a) The Borrowers have delivered to the Agent (for further distribution to the Lenders) the annual financial statements for the Fiscal Year ending December 31, 2021 and the quarterly financial statements for the Fiscal Quarter ending September 30, 2022 (the "Historical Financial Statements"). The Historical Financial Statements, including schedules and notes thereto, if any, have been prepared in reasonable detail in accordance with GAAP consistently applied throughout the periods covered thereby and present fairly, in all material respects, the Company's and its Subsidiaries' financial position as at the dates thereof and their results of operations for the periods then ended, subject, in the case of such unaudited financial statements, to changes resulting from normal year-end adjustments and the absence of footnotes.

(b) Since December 31, 2021, there has been no event, development or circumstance that has had or would reasonably be expected to result in a Material Adverse Effect.

(c) No Obligor or any of its Restricted Subsidiaries has as of the Closing Date any material (i) Debt (including Disqualified Equity Interests) or contingent liabilities, (ii) off-balance sheet liabilities or partnership liabilities, (iii) liabilities for past due Taxes, (iv) unusual forward or long-term commitments or (v) unrealized or anticipated losses from any unfavorable commitments, in each case, that would be required by GAAP to be reflected or noted in audited financial statements, except as referred to or reflected or provided for in the Historical Financial Statements or in other written information provided by the Borrowers to the Agent and the Lenders prior to the Closing Date.

9.1.5 Litigation. There are no actions, suits, investigations or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of the Borrowers, threatened in writing against or affecting any Obligor or any of its Restricted Subsidiaries (i) not fully covered by insurance (except for normal deductibles) as to which there is a reasonable probability of an adverse determination that, if adversely determined, would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect, or (ii) that involve the enforceability of any Loan Document.

9.1.6 Environmental Matters.

(a) Except for matters set forth on **Schedule 9.1.6** or that, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect:

(i) the Obligors and each of their respective Properties and operations thereon are, and within all applicable statute of limitation periods have been, in compliance with all applicable Environmental Laws;

(ii) the Obligors have obtained all Environmental Permits required for their respective operations and each of their Properties, with all such Environmental Permits being currently in full force and effect, and neither the Company nor the other Obligors has received any written notice or otherwise has knowledge that any such existing Environmental Permit will be revoked or that any application for any new Environmental Permit or renewal of any existing Environmental Permit will be denied;

(iii) there are no claims, demands, suits, orders, inquiries, or proceedings concerning any violation of, or any liability (including as a potentially responsible party or any liability for investigation, remediation, removal, abatement, or monitoring of Hazardous Materials) under, any applicable Environmental Laws that is pending or, to the Obligors' knowledge, threatened in writing against any Obligor or any of its Restricted Subsidiaries or any of their respective Properties or as a result of any operations at such Properties;

(iv) there has been no Environmental Release or, to the Obligors' knowledge, threatened Environmental Release, of Hazardous Materials at, on, under or from the Obligors' Properties, there are no investigations, remediations, abatements, removals, or monitorings of Environmental Releases of Hazardous Materials required under applicable Environmental Laws at such Properties and, to the knowledge of the Obligors, none of such Properties are adversely affected by any Environmental Release or threatened Environmental Release of a Hazardous Material originating or emanating from any other real property;

(v) there has been no exposure of any Person or Property to any Hazardous Materials as a result of or in connection with the operations and businesses of any of the Obligors' Properties that would reasonably be expected to form the basis for a claim for damages or compensation; and

(vi) none of the Properties of the Obligors contain any: (i) underground storage tanks; (ii) asbestos-containing materials; (iii) landfills or dumps; (iv) hazardous waste management units as defined pursuant to RCRA or any comparable state law; or (v) sites on or nominated for the National Priority List promulgated pursuant to CERCLA or any state remedial priority list promulgated or published pursuant to any comparable state law.

(b) The Obligors have made available to the Agent, to the extent requested by the Agent, complete and correct copies of all material written environmental site assessment reports, investigative reports, studies, analyses, and governmental correspondence, in each case on environmental matters (including matters relating to any alleged non-compliance with or liability under Environmental Laws) that are in any of the Borrowers' or any other Obligor's possession or control and relating to their respective Properties or operations thereon.

9.1.7 Compliance with the Laws and Agreements; No Defaults.

(a) Each of the Obligors (i) is in compliance with (A) all Applicable Laws applicable to it or its Property or to the construction of the Sand Facility Improvements, and (B) all agreements and other instruments binding upon it or its Property, and (ii) possesses all licenses, permits, franchises, exemptions, approvals and other governmental authorizations, in each case, necessary for the ownership of its Property, the construction of the Sand Facility Improvements, and the conduct of its business, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

(b) There exists no default or event or circumstance that, but for the expiration of any applicable grace period or the giving of notice, or both, would result in or permit the acceleration of the maturity of or would require any Borrower or any other Obligor or any of their respective Restricted Subsidiaries to redeem, defease or otherwise repay or make any offer therefor under any indenture, note, credit agreement or instrument pursuant to which any Material Debt is outstanding or by which any Borrower or any other Obligor or any of their Restricted Subsidiaries or any of their Properties is bound.

(c) No Default or Event of Default has occurred and is continuing.

9.1.8 Investment Company Act. None of the Obligor is an “investment company” or a company “controlled” by an “investment company,” within the meaning of, or subject to regulation under, the Investment Company Act of 1940, as amended.

9.1.9 Taxes. Each of the Obligor has (a) timely filed or caused to be filed all federal income Tax returns and all material state and other tax returns and reports, in each case required by Applicable Law to have been filed, and such Tax returns accurately reflect in all material respects all liabilities for Taxes of the Obligor for the periods covered thereby, and (b) paid or caused to be paid all material Taxes required to have been paid by it, except Taxes that are being contested in good faith by appropriate proceedings and for which such Borrower or such other Obligor or its Restricted Subsidiaries, as applicable, has set aside on its books adequate reserves in accordance with GAAP. The charges, accruals and reserves on the books of the Obligor and their Restricted Subsidiaries in respect of Taxes and other governmental charges are, in the reasonable opinion of the Obligor, adequate. To the knowledge of the Obligor, (i) no Tax lien has been filed other than those constituting an Excepted Lien described in clause (a) of the definition thereof and (ii) as of the Closing Date, no claim is being asserted in writing with respect to any such Tax or other such governmental charge.

9.1.10 ERISA. Except as would not reasonably be expected, either individually or in the aggregate, to result in a Material Adverse Effect:

(a) Each Pension Plan is in compliance in all respects with the applicable provisions of ERISA, the Code and other Applicable Laws; and each Pension Plan that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination letter from the IRS to the effect that the form of such Pension Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the IRS to be exempt from Federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the IRS, and, to the knowledge of the Obligor, nothing has occurred that would prevent or cause the loss of such tax-qualified status.

(b) Other than routine claims for benefits, there are no pending or, to the knowledge of any Obligor, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Pension Plan. To the knowledge of any Obligor, there has been no “prohibited transaction” (as defined in Section 406 of ERISA or Section 4975 of the Code) or violation of the fiduciary responsibility rules with respect to any Pension Plan that.

(c) No ERISA Event has occurred, and neither the Obligor nor any ERISA Affiliate is aware of any fact, event or circumstance that, either individually or in the aggregate, could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan or Multiemployer Plan.

(d) Full payment when due has been made of all amounts which each Borrower, each other Obligor or any Restricted Subsidiaries or any ERISA Affiliate is required, under the terms of each Pension Plan, Multiemployer Plan or Applicable Law, to have paid as contributions to such Pension Plan or Multiemployer Plan as of the date hereof.

(e) None of the Obligor nor any ERISA Affiliate sponsors, maintains, or contributes to an employee welfare benefit plan, as defined in Section 3(1) of ERISA, including, without limitation, any such plan maintained to provide benefits to former employees of such entities (other than in accordance with Section 4980B of the Code or any similar state law), that may not be terminated by any Borrower, any other Obligor or any Restricted Subsidiary or any ERISA Affiliate in its sole discretion at any time without any material liability.

(f) The present value of all accrued benefit liabilities (as defined in Section 4001(a)(16) of ERISA) under each Pension Plan (based on those assumptions used to fund such Pension Plan) did not, as of the last annual valuation date prior to the date on which this representation is made or deemed made, exceed the value of the assets of such Pension Plan allocable to such accrued benefits by a material amount (any such excess, "Unfunded Pension Liabilities"). As of the most recent valuation date for each Multiemployer Plan, the potential liability of any Obligor or any ERISA Affiliate for a complete withdrawal from such Multiemployer Plan (within the meaning of Section 4203 of ERISA), when aggregated with such potential liability for a complete withdrawal from all Multiemployer Plans, is zero.

9.1.11 Disclosure; No Material Misstatements. The reports, financial statements, certificates and other written information, taken as a whole, furnished by or on behalf of the Obligor to the Agent and the Lenders in connection with the negotiation of this Agreement or any other Loan Document or delivered hereunder or under any other Loan Document (as modified or supplemented by other information so furnished) do not contain any material misstatement of fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were or are made, not misleading as of the date such information is dated or certified; *provided* that (a) to the extent any such report, financial statement, certificate or other written information was based upon or constitutes a forecast or projection, each Obligor represents only that it acted in good faith and utilized reasonable assumptions and due care in the preparation of such report, financial statement, certificate or other written information (it being recognized by the Lenders, however, that projections as to future events are not to be viewed as facts and that results during the period(s) covered by such projections may differ from the projected results and that such differences may be material and that the Obligor make no representation that such projections will be realized) and (b) as to statements, information and reports supplied by third parties, each Obligor represents only that it is not aware of any material misstatement or omission therein. The information included in the Beneficial Ownership Certification most recently delivered under this Agreement is true and correct in all respects.

9.1.12 Insurance. The Obligor have (a) all insurance policies sufficient for the compliance by each of them with all material Applicable Laws and all material agreements and (b) insurance coverage in at least amounts and against such risks (including, without limitation, public liability) that are usually insured against by companies similarly situated and engaged in the same or a similar business for the assets and operations of the Obligor. The Agent and the Lenders have been named as additional insureds in respect of such liability insurance policies and the Agent has been named as a lender loss payee with respect to Property loss insurance.

9.1.13 Restriction on Liens. None of the Obligor is a party to any material agreement or arrangement, or subject to any order, judgment, writ or decree, which either restricts or purports to restrict its ability to grant Liens to the Agent for the benefit of the Secured Parties on or in respect of their Properties that are subject to a Lien under one or more Loan Documents to secure the Obligations, except for Permitted Liens.

9.1.14 Subsidiaries and Capitalization.

(a) Except as set forth on **Schedule 9.1.14(a)** or as disclosed in writing to the Agent (which shall promptly furnish a copy to the Lenders), which shall be deemed to be a supplement to **Schedule 9.1.14(a)**, the Obligor has no Subsidiaries. The Obligor has no Foreign Subsidiaries.

(b) **Schedule 9.1.14(b)** lists the owners of all of the authorized and outstanding Equity Interests of each Obligor on the Closing Date, including options and other equity equivalents of the Obligor, together with the amount and percentage of such Equity Interests held by each such owner. All of the outstanding Equity Interests of each Subsidiary of the Obligor is validly issued and free and clear of any and all Liens (other than Permitted Liens).

9.1.15 Location of Business and Offices. Each Obligor's jurisdiction of organization, name as listed in the public records of its jurisdiction of organization, organizational identification number in its jurisdiction of organization, and the location of its principal place of business or chief executive office, as applicable, is stated on **Schedule 9.1.15** (or as set forth in a notice delivered pursuant to **Section 10.1.9**, **Section 10.2.7** and **Section 14.3**). Each Subsidiary's jurisdiction of organization, name as listed in the public records of its jurisdiction of organization, organizational identification number in its jurisdiction of organization, and the location of its principal place of business or chief executive office, as applicable, is stated on **Schedule 9.1.15** (or as set forth in a notice delivered pursuant to **Section 10.1.9**, **Section 10.2.7** and **Section 14.3**).

9.1.16 Properties; Titles, Etc.

(a) Subject to Immaterial Title Deficiencies, each of the Obligor has good and defensible title to all of its real Sand Properties and good title to all of its personal Sand Properties, in each case, free and clear of all Liens except Permitted Liens. All leases and agreements necessary for the conduct of the business of the Obligor are valid and subsisting, in full force and effect, and there exists no default or event or circumstance which with the giving of notice or the passage of time or both would give rise to a default under any such leases or agreements that would reasonably be expected to result in a Material Adverse Effect.

(b) All of the Sand Mines are described on **Schedule 9.1.16(b)** attached hereto or have been disclosed in writing as "Sand Mines" to the Agent after the Closing Date, which shall be deemed to be a supplement to **Schedule 9.1.16(b)**. The Obligor possess all of the real property interests necessary for the operation of the Sand Facilities currently operated by the Obligor, and all of the Sand Properties of the Obligor that are reasonably necessary for the operation of such Sand Facilities are in good working condition and are maintained in accordance with prudent business standards.

(c) Each Obligor and its Restricted Subsidiaries owns, or is licensed to use, all trademarks, trade names, copyrights, patents and other Intellectual Property material to its business (including geological data, geophysical data, engineering data, seismic data, maps and interpretations), and the use thereof by such Obligor and its Restricted Subsidiaries does not infringe upon the rights of any other Person, except for any such infringements that, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

(d) Each Obligor and each of its Restricted Subsidiaries has good and defensible title in fee simple to, or valid leasehold interests in, or easements or other marketable property interests in, all Property necessary in the ordinary conduct of its business, free and clear of all Liens except for minor defects in title that do not materially interfere with its ability to conduct its business or to utilize such assets for their intended purposes and Permitted Liens and except where the failure to have such title or other interest would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

9.1.17 Maintenance of Properties. Except for such acts or failures to act as would not reasonably be expected to result in a Material Adverse Effect, the Sand Facilities currently operated by the Obligors have been maintained, operated, developed and mined in a good and workmanlike manner and in conformity with all Applicable Laws and in conformity with the provisions of all leases, subleases, agreements or other contracts forming a part of the Sand Properties of the Obligors related thereto. All improvements, fixtures and equipment owned in whole or in part by the Obligors that are necessary for the operation of such Sand Facilities are being maintained in a state adequate to conduct normal operations thereof, other than those the failure of which to maintain in accordance with this **Section 9.1.17** would not reasonably be expected to result in a Material Adverse Effect.

9.1.18 Borrowing Base Calculations. The calculation by the Borrowers of the Borrowing Base in any Borrowing Base Report delivered to the Agent and the valuation thereunder is complete and accurate in all material respects as of the date of such delivery.

9.1.19 Validity and Priority of Security Interest. Upon execution and delivery thereof by the parties thereto, the applicable Loan Documents will be effective to create legal and valid Liens on all the applicable Collateral in favor of the Agent for the benefit of the Secured Parties, subject to the effects of Debtor Relief Laws, general equitable principles (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing and, upon the taking of such actions set forth in the Loan Documents, but subject to any exceptions to the taking of any actions as set forth therein, such Liens (a) constitute perfected Liens on all of the applicable Collateral, (b) have priority over all other Liens on the Collateral, subject to Permitted Liens and the provisions of any applicable Intercreditor Agreement then in existence, and (c) are enforceable against each Obligor, as applicable, granting such Liens.

9.1.20 Swap Obligations. **Schedule 9.1.20**, as of the Closing Date, and after the date hereof, each report required to be delivered by the Borrowers pursuant to **Section 10.1.2(i)**, sets forth a true and complete list of all Swap Obligations of each Borrower and each other Obligor and its Restricted Subsidiaries, the material terms thereof (including the type, term, effective date, termination date and notional amounts or volumes), all credit support agreements relating thereto and the counterparty to each such agreement.

9.1.21 Use of Loans. The proceeds of the Loans and Letters of Credit shall be used only for the purposes specified in **Section 2.1.3**. The Obligors and their Restricted Subsidiaries are not engaged principally, or as one of its or their important activities, in the business of extending credit for the purpose, whether immediate, incidental or ultimate, of buying or carrying margin stock (within the meaning of Regulation T, U or X of the Board). No part of the proceeds of any Loan or Letter of Credit will be used whether on or following the Closing Date for any purpose which violates the provisions of Regulations T, U or X of the Board.

9.1.22 Solvency. The Obligors and their Restricted Subsidiaries, taken as a whole, are Solvent.

9.1.23 Major Material Contracts. As of the Closing Date, no Obligor or its Restricted Subsidiaries is a party to any Major Material Contract other than those Major Material Contracts set forth on **Schedule 9.1.23**. Each of the Obligors and their Subsidiaries is in compliance with the terms of the Major Material Contracts, except where the failure to so comply would not reasonably be expected to result in a Material Adverse Effect.

9.1.24 Sanctions; Anti-Corruption.

(a) None of Parent, any Obligor or any of their Subsidiaries or, to the knowledge of Parent and such Obligor, any director, officer, employee, or agent of Parent, such Obligor or such Subsidiary, is a Person that is, or is owned or controlled by Persons that are, (i) the target of any Sanction, or (ii) located, organized or resident in a country or territory that is, or whose government is, the subject of Sanctions.

(b) Parent, the Obligors and their respective Subsidiaries and, to the knowledge of Obligors and Parent, their respective directors, officers employees and agents, are, and have at all times in the past been, in compliance with all applicable Sanctions and Anti-Corruption Laws. Neither any Obligor or Parent has received notice of any action, suit, proceeding, or investigation against it with respect to Sanctions from any Governmental Authority during the past five (5) years. Each Obligor and Parent has instituted and maintains in effect such policies and procedures reasonably designed to ensure compliance with applicable Sanctions and the Anti-Corruption Laws.

9.1.25 Designation of Senior Debt. The Obligations are "Designated Senior Debt" (or any similar term) under the terms of the documentation governing any Subordinated Debt.

9.1.26 Affiliate Transactions. No Obligor or any of its Restricted Subsidiaries has entered into any transaction after the Closing Date that is not permitted by **Section 10.2.14**.

9.1.27 Credit Card Agreements. Set forth on **Schedule 9.1.27** is a correct and complete list of all of the Credit Card Agreements existing as of the Closing Date among any Obligor, Credit Card Issuers, Credit Card Processors and any of their Affiliates.

## **Section 10. COVENANTS AND CONTINUING AGREEMENTS.**

**10.1 Affirmative Covenants**. As long as any Commitment or Obligations are outstanding, each Obligor shall, and shall cause each Restricted Subsidiary to:

10.1.1 Inspections; Appraisals.

(a) Permit Agent from time to time, subject (unless a Default or Event of Default exists) to reasonable notice and normal business hours, to visit and inspect the Properties of any Obligor or Subsidiary, inspect, audit and make extracts from any Obligor's or Subsidiary's books and records, and discuss with its officers, employees, agents, advisors and independent accountants such Obligor's or Subsidiary's business, financial condition, assets and results of operations; provided that so long as no Event of Default shall have occurred and be continuing, (i) Agent shall limit the number of inspections to not more than four (4) during any twelve (12) month period, and (ii) not more than one such inspection during any twelve (12) month period shall be at Borrowers' expense; provided, further, that if an Exam Trigger Period occurred during such year, Obligors shall reimburse Agent for all charges, costs and expenses associated with two inspections in a 12-month period. During any such inspection, Agent and its employees and agents and any employees and agents of any participating Lender shall comply with Borrowers' standard health and safety policies and procedures. Lenders may participate in any such visit or inspection, at their own expense. Secured Parties shall have no duty to any Obligor to make any inspection, nor to share any results of any inspection, appraisal or report with any Obligor. Obligors acknowledge that all inspections, appraisals and reports are prepared by Agent and Lenders for their purposes, and Obligors shall not be entitled to rely upon them.

(b) Reimburse Agent for all its reasonable and documented charges, costs and expenses in connection with (i) examinations of Obligors' books and records or any other financial or Collateral matters as it deems reasonably appropriate, up to one time per calendar year; and (ii) appraisals of Inventory, up to one time per calendar year; provided, that if (A) an Exam Trigger Period occurred during such year, Obligors shall reimburse Agent for all charges, costs and expenses associated with two examinations and two appraisals in a 12-month period and (B) an examination or appraisal is initiated during an Event of Default, all documented charges, costs and expenses relating thereto shall be reimbursed by Obligors without regard to such limits. Obligors shall pay Agent's then standard charges for examination activities, including charges for its internal examination and appraisal groups, as well as the charges of any third party used for such purposes. Except with respect to Hercules Accounts that are included in the Hercules Formula Amount (and subject to the limitations thereon in this Agreement), no Borrowing Base calculation shall include Collateral acquired in a Permitted Acquisition, the Hercules Acquisition or otherwise outside the Ordinary Course of Business until completion of applicable field examinations and appraisals (which field examinations and appraisals, including those in respect of the Hercules Assets, shall not be included in the limits provided above) reasonably satisfactory to Agent.

10.1.2 Financial and Other Information. Keep adequate records and books of account with respect to its business activities, in which proper entries are made in accordance with GAAP reflecting all financial transactions; and furnish to Agent:

(a) as soon as available, and in any event within 120 days (or, if applicable, such earlier date on which such annual financial statements are required to be filed with the SEC) after the close of each Fiscal Year, balance sheets as of the end of such Fiscal Year and the related statements of income, cash flow and shareholders equity for such Fiscal Year, on a consolidated basis for the Applicable Reporting Entity and its Subsidiaries, which consolidated statements shall be audited and certified (without any "going concern" or other qualification, exception or explanatory paragraph (except resulting from (i) the impending maturity of the Obligations within the four fiscal quarter period following the relevant audit date or (ii) any potential future breach of the financial covenants under this Agreement) or any qualification, exception or explanatory paragraph as to the scope of such audit) by a firm of independent certified public accountants of recognized standing selected by Borrower Agent and reasonably acceptable to Agent, and shall set forth in comparative form corresponding figures for the preceding Fiscal Year and other information acceptable to Agent;

(b) as soon as available, and in any event within 60 days (or, if applicable, such earlier date on which such quarterly financial statements are required to be filed with the SEC) after the end of each Fiscal Quarter, unaudited balance sheets as of the end of such Fiscal Quarter and the related statements of income, cash flow and shareholders equity for such Fiscal Quarter and for the portion of the Fiscal Year then lapsed, on a consolidated basis for the Applicable Reporting Entity and its Subsidiaries, setting forth in comparative form corresponding figures for the preceding Fiscal Year and certified by the chief financial officer of Borrower Agent as prepared in accordance with GAAP and fairly presenting, in all material respects, the financial position and results of operations for such Fiscal Quarter and period, subject to normal year-end adjustments and the absence of footnotes;

(c) while a Trigger Period is in effect (provided, that if a Trigger Period commenced and is no longer in effect, Agent shall receive at least one set of monthly financial statements pursuant to this clause (c)), as soon as available, and in any event within 30 days after the end of each month, unaudited balance sheets as of the end of such month and the related statements of income, cash flow and shareholders equity for such month and for the portion of the Fiscal Year then elapsed, on a consolidated basis for the Applicable Reporting Entity and its Subsidiaries, setting forth in comparative form corresponding figures for the preceding Fiscal Year and certified by the chief financial officer of Borrower Agent as prepared in accordance with GAAP and fairly presenting, in all material respects, the financial position and results of operations for such month and period, subject to normal year-end adjustments and the absence of footnotes;

(d) concurrently with delivery of financial statements under clauses (a) through (c) above, a Compliance Certificate executed by a Senior Officer of Borrower Agent (which shall calculate the Fixed Charge Coverage Ratio if a Covenant Trigger Period is in effect);

(e) concurrently with delivery of financial statements under clause (a) above, copies of all management letters and other material reports submitted to the Applicable Reporting Entity by its accountants in connection with such financial statements;

(f) concurrently with delivery of financial statements under clause (a) above, projections of Obligor's consolidated balance sheets, results of operations, cash flow and Availability for the current Fiscal Year, month by month;

(g) promptly after the sending or filing thereof, copies of any proxy statements, financial statements or reports that any Obligor or Parent has made generally available to its shareholders; copies of any regular, periodic and special reports or registration statements or prospectuses that any Obligor or Parent files with the Securities and Exchange Commission or any other Governmental Authority, or any securities exchange; and copies of any press releases or other statements made available by an Obligor or Parent to the public concerning material changes to or developments in the business of such Obligor or Parent;

- (h) promptly after the sending or filing thereof, copies of any annual report to be filed in connection with each Plan or Foreign Plan;
- (i) concurrently with any delivery of financial statements under **clauses (a) through (c)** above, a certificate of a financial officer of Borrower Agent, in form and substance reasonably satisfactory to the Agent, setting forth as of a recent date a reasonably detailed summary of the Swaps to which any Obligor or any of its Subsidiaries is a party on such date;
- (j) within five Business Days of the sending or effectiveness thereof, copies of (i) any material statement or report furnished by any Obligor to any other party pursuant to the terms of the Term Loan Documents and not otherwise required to be furnished to the Agent pursuant to this Agreement and (ii) any amendment or modification to the Term Loan Documents or the Hercules Note Documents;
- (k) such other reports and information (financial or otherwise, including financial covenant reporting) as Agent may reasonably request from time to time in connection with any Collateral or any Borrower's, Subsidiary's or other Obligor's financial condition, ownership or business, including bank statements, certifications and other evidence as may be reasonably requested by Agent in connection with any determination of Liquidity under this Agreement;
- (l) concurrently with any delivery of financial statements under **clauses (a) through (c)** above, a copy of any Major Material Contract (or material amendment or modification thereto) entered into by any Obligor or any of its Subsidiaries after the Closing Date and not previously delivered to the Agent;
- (m) at any time that Power SPV, any Unrestricted Subsidiaries or Parent are included in the financial statements delivered pursuant to **clauses (a) through (c)** above, then concurrently with any delivery of such financial statements, a certificate of a financial officer of Borrower Agent setting forth consolidating spreadsheets that show Power SPV, all of the Unrestricted Subsidiaries and Parent and the eliminating entries, in such form as would be presentable to the auditors of the Applicable Reporting Entity, and that summarizes the results of the Obligors and their Restricted Subsidiaries on a stand-alone basis; and
- (n) not later than the third Business Day of each calendar week (beginning on the first such Business Day that is immediately prior to the date that is 91 days before the scheduled maturity date of the Hercules Seller Note and continuing thereafter until the Hercules Seller Note has been paid in full), a certificate in form and detail reasonably satisfactory to Agent executed by a Senior Officer of Borrower Agent certifying as to the amount of Liquidity of Borrowers as of the close of business of the prior calendar week, accompanied by reasonably detailed calculations of Liquidity and bank statements as of the close of business of the prior calendar week (a "**Liquidity Certificate**").

Documents, reports and notices required to be delivered pursuant to **clauses (a) and (b)** (to the extent any such documents are included in materials otherwise filed with the SEC or any similar regulator or Governmental Authority of any jurisdiction) or **(g)** may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which such documents are posted on the Borrowers' behalf on an Internet or intranet website, if any, to which each Lender and the Agent have access (whether a commercial, third-party website or whether sponsored by the Agent); provided that the Borrower Agent shall notify the Agent (by electronic mail) of the posting of any such documents and shall deliver paper copies of such documents to the Agent or any Lender that so requests.

10.1.3 **Notices.** Notify Agent in writing, promptly (any in any event within five Business Days) after a Borrower's knowledge thereof, of any of the following affecting an Obligor: (a) the threat in writing or the commencement of any proceeding or investigation, whether or not covered by insurance, that, if adversely determined, would reasonably be expected to have a Material Adverse Effect; (b) the occurrence of any Major Material Contract EOD that has resulted, or would reasonably be expected to result, in liability of any Obligor or any Subsidiary of any Obligor in an aggregate amount in excess of \$40,000,000; (c) the early termination of any real property lease that is a Sand Interest; (d) the occurrence of an "Event of Default" under and as defined in the Term Loan Agreement or the Hercules Seller Note; (e) existence of a Default or Event of Default; (f) any judgment for the payment of money in an amount exceeding \$40,000,000; (g) assertion of any Intellectual Property Claim, if an adverse resolution could reasonably be expected to have a Material Adverse Effect; (h) violation or asserted violation of any Applicable Law (including ERISA, OSHA, FLSA or any Sanction or Environmental Law), if an adverse resolution could reasonably be expected to have a Material Adverse Effect; (i) the occurrence of an ERISA Event; (j) any material change in any accounting or financial reporting practice that affects the calculation of the Borrowing Base or the Fixed Charge Coverage Ratio; (k) any change in any information contained in a Beneficial Ownership Certificate delivered to Agent or any Lender; (l) the discharge, withdrawal or resignation of Obligors' independent accountants; (m) the opening or move of the Company's chief executive office, not more than 10 Business Days following such opening or move; or (n) the filing of any Tax lien affecting any Collateral with respect to an amount owing in excess of \$1,000,000.

10.1.4 **Landlord and Storage Agreements.** Promptly upon Agent's request, provide Agent with copies of all existing agreements between an Obligor and any landlord, warehouseman, processor, shipper, bailee or other Person that owns any premises at which any Collateral may be kept or that otherwise may possess or handle any Collateral.

10.1.5 **Compliance with Laws.** Comply with all Applicable Laws, including ERISA, Environmental Laws, FLSA, OSHA and Anti-Terrorism Laws, and maintain all Governmental Approvals necessary for ownership of its Properties or conduct of its business, unless failure to comply (other than failure to comply with Anti-Terrorism Laws) or maintain could not reasonably be expected to have a Material Adverse Effect. Each Obligor and Subsidiary shall maintain such policies and procedures, if any, as it reasonably deems appropriate, in light of its business and international activities (if any), to promote compliance with applicable Anti-Corruption Laws and Sanctions. Without limiting the generality of the foregoing, if any Environmental Release occurs at or on any Properties of any Obligor or Subsidiary, it shall act promptly and diligently to investigate and report to Agent and all appropriate Governmental Authorities the extent of, and to make appropriate remedial action to eliminate, such Environmental Release, whether or not directed to do so by any Governmental Authority, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

10.1.6 Taxes. Pay and discharge all Taxes prior to the date on which they become delinquent or penalties attach, unless (a) such Taxes are being Properly Contested or (b) the failure to make payment would not reasonably be expected to result in a Material Adverse Effect.

10.1.7 Insurance. In addition to the insurance required hereunder with respect to Collateral, maintain insurance with financially sound and reputable insurance companies with respect to the Properties and business of Obligors and Subsidiaries of such type, in such amounts, and with such coverages and deductibles as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations.

10.1.8 Licenses. Keep each License affecting any Collateral (including the manufacture, distribution or disposition of Inventory) or any other material Property of Obligors and Subsidiaries in full force and effect and pay all royalties and other amounts when due under any License, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

10.1.9 Future Subsidiaries. Promptly (and in any event within 10 days) notify Agent if any Person becomes a Subsidiary and deliver any know-your-customer or other background diligence information requested by Agent or any Lender with respect to such Subsidiary; and (provided it is not a Foreign Subsidiary, a FSHCO or a Subsidiary of a Foreign Subsidiary or not designated by Borrower Agent as an Unrestricted Subsidiary in accordance with **Section 1.6**) within 30 days (or such later date as Agent may agree in its reasonable discretion) of such Person becoming a Subsidiary (or an Unrestricted Subsidiary being redesignated as a Restricted Subsidiary) cause it to become a “Borrower” or “Guarantor” under this Agreement and to guaranty and grant Liens securing the Obligations, in each case in a manner reasonably satisfactory to Agent, and to execute and deliver such documents, instruments and agreements and to take such other actions as Agent may reasonably request to evidence and perfect a Lien in favor of Agent on all assets of such Person (other than Excluded Property), including, if requested by Agent, delivery of legal opinions, in form and substance reasonably satisfactory to Agent.

10.1.10 [Reserved].

10.1.11 Post-Closing Obligations. Each Obligor will (a) complete each of the actions that is described in **Schedule 10.1.11** as soon as commercially reasonable following the Closing Date, but in any event no later than the date set forth in **Schedule 10.1.11** with respect to such action, or such later date as Agent may agree in its sole discretion and (b) on or before the date that is 60 days following the Fourth Amendment Effective Date (or such later date as Agent may agree in its sole discretion), provide Agent with (i) an executed copy of the power purchase agreement between Power SPV and its customer (which must be substantially on the same terms described in the “Project Cactus” transaction materials provided to Agent on December 18, 2025) or (ii) in the event that such agreement described in clause (i) is not entered into, an updated forecast and projections together with such other information as may be reasonably requested by Agent.

10.1.12 Credit Card Agreements. Each of the Obligors shall: (a) observe and perform all material terms of the Credit Card Agreements to be observed and performed by it at the times set forth therein; and (b) deposit or cause to be deposited all cash received with respect to Credit Card Agreements into a Credit Card Receivables Account subject to a Deposit Account Control Agreement; provided that the maximum amount on deposit in all Credit Card Receivables Accounts shall not exceed \$500,000 at any one time.

10.1.13 Operation and Maintenance of Properties.

(a) Maintain all of its material property necessary and useful in the conduct of its business, taken as a whole, in good operating condition and repair (or, in the case of Inventory, in saleable, useable or rentable condition), ordinary wear and tear and casualty excepted, except, in each case, to the extent the failure to do so would not reasonably be expected to have a Material Adverse Effect;

(b) operate the Sand Facilities and other material Sand Properties, or cause the Sand Facilities and other material Sand Properties to be operated, in a careful manner in accordance with the practices of the industry and in compliance with all applicable contracts and agreements and in compliance with all Applicable Laws, including, without limitation, applicable Environmental Laws, and all other applicable laws, rules and regulations of every Governmental Authority from time to time constituted to regulate the development and operation of the Sand Facilities and the production and sale of sand and minerals therefrom, except, in each case, where the failure to do so would not reasonably be expected to result in a Material Adverse Effect;

(c) keep and maintain all Sand Property material to the conduct of its business in good working order and condition (ordinary wear and tear excepted) and preserve, maintain and keep in good repair and working order (ordinary wear and tear and obsolescence excepted) all of its Properties necessary to operate the Sand Facilities, except where the failure to do so would not reasonably be expected to result in a Material Adverse Effect;

(d) promptly pay and discharge, or make reasonable and customary efforts to cause to be paid and discharged, all rentals, royalties, expenses and indebtedness accruing under the leases or other agreements affecting or pertaining to its Sand Properties and do all other things necessary to keep unimpaired its rights with respect thereto and prevent any forfeiture thereof or default thereunder, except where the failure to do so would not reasonably be expected to result in a Material Adverse Effect;

(e) promptly perform, or make reasonable and customary efforts to cause to be performed, in accordance with customary industry standards, the obligations required by each and all of the assignments, deeds, leases, sub-leases, contracts and agreements affecting its interests in the Sand Facilities and other material Sand Properties, except, in each case, where the failure to do so would not reasonably be expected to result in a Material Adverse Effect; and

(f) pay, satisfy and obtain the release of all other claims and Liens affecting or purporting to affect title to the Mortgaged Property or any part thereof (other than Permitted Liens), and all costs, charges, interest and penalties on account thereof, including without limitation the claims of all subcontractors and other Persons supplying labor or materials to the Mortgaged Property, and to give the Agent within five Business Days of Agent's written demand therefor (including by email), evidence reasonably satisfactory to the Agent of the payment, satisfaction or release thereof, except those (i) being contested in good faith by appropriate proceedings and for which the Borrowers or any other Obligor or any Subsidiary of any Obligor, as applicable, has set aside on its books adequate reserves in accordance with GAAP and (ii) the failure to pay, satisfy, or release would not reasonably be expected to result in a Material Adverse Effect.

**10.2 Negative Covenants.** As long as any Commitment or Obligations are outstanding, each Obligor shall not, and shall cause each Restricted Subsidiary not to:

10.2.1 Permitted Debt. Create, incur, guarantee or suffer to exist any Debt, except:

(a) the Obligations;

(b) (i) Debt incurred under the Term Loan Agreement and (ii) Permitted Refinancing Debt incurred to refinance or replace Debt previously incurred in reliance on this **clause (b)**, in each case, in an aggregate principal amount not to exceed an amount at any one time outstanding equal to the result of (x) the sum of (1) \$540,000,000 plus (2) additional amounts so long as at the time of incurrence thereof and immediately after giving pro forma effect thereto and the use of proceeds thereof, the Borrowers would be in compliance with a Senior Secured Leverage Ratio on a pro forma basis of less than or equal to 3.00 to 1.00 (and the Borrowers shall, on the date of incurrence of such Debt in reliance on this clause (2), deliver a certificate from a Senior Officer in form and detail reasonably satisfactory to Agent demonstrating compliance with such Senior Secured Leverage Ratio), less (y) the aggregate amount of all payments of the principal of the Debt under the Term Loan Agreement; provided that (A) such Debt incurred in reliance on this **clause (b)** and the Liens securing such Debt are subject to the Intercreditor Agreement and such Liens are subordinate to the Agent's Liens on the ABL Priority Collateral, (B) no Default or Event of Default is then continuing or would result from incurrence thereof, (C) the scheduled maturity date of such Debt is at least 91 days after the Termination Date and (D) with respect to any Permitted Refinancing Debt incurred in reliance on this **clause (b)**, such Debt is not guaranteed by any Person other than an Obligor (Debt incurred in reliance on this **clause (b)**, the "Term Loan Debt");

(c) Debt that constitutes purchase money Debt or under Capital Leases (or other equipment financing arrangements for mobile excavation equipment, automobiles, trucks, rental equipment or other personal Property (excluding Inventory) to be used in the Ordinary Course of Business) not to exceed in the aggregate principal amount at any one time outstanding the greater of (i) \$25,000,000 and (ii) 5.0% of Consolidated Net Tangible Assets;

(d) Debt existing on the Closing Date and not satisfied with the initial Loan proceeds, to the extent set forth on **Schedule 10.2.1** hereto and Permitted Refinancing Debt incurred to refinance, replace or extend any such Debt;

(e) Debt with respect to Bank Products;

(f) Debt incurred or assumed in connection with Permitted Acquisitions (including a Permitted Acquisition effectuated by a Permitted Parent Entity Investment but excluding the Hercules Seller Note), including Debt consisting of indemnities, obligations in respect of earn outs or other purchase price adjustments or similar obligations in connection therewith, not to exceed (i) \$50,000,000 or (ii) an unlimited amount so long as, on the date of creation, incurrence or assumption thereof and after giving pro forma effect thereto, the Borrowers would be in compliance on a pro forma basis with a Consolidated Leverage Ratio of no greater than 3.00 to 1.00 as of such time (and the Borrower Agent shall deliver a certificate of a Senior Officer in form and detail reasonably satisfactory to Agent demonstrating compliance with such Consolidated Leverage Ratio);

(g) (i) Permitted Contingent Obligations and (ii) Debt arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently (except in the case of daylight overdrafts) drawn against insufficient funds in the Ordinary Course of Business; provided, that such Debt is extinguished within two Business Days of its incurrence;

(h) Debt incurred in connection with the financing of insurance premiums in the Ordinary Course of Business;

(i) intercompany Debt among the Obligors and their Restricted Subsidiaries permitted under **Section 10.2.4**; provided, that any such Debt owing by an Obligor to a non-Obligor must constitute Subordinated Debt;

(j) Debt incurred by the Obligors in respect of Credit Card Agreements in the Ordinary Course of Business not to exceed in the aggregate principal amount at any one time outstanding \$500,000;

(k) Debt constituting a guaranty by any Obligor or Restricted Subsidiary of other Debt permitted to be incurred under this **Section 10.2.1**;

(l) Debt and obligations owing under Swap Agreements to the extent permitted under **Section 10.2.12**;

(m) Debt of any Restricted Subsidiary that is not an Obligor incurred under this **clause (m)**; provided that (i) such Debt is not guaranteed by any Obligor, (ii) the holder of such Debt does not have, directly or indirectly, any recourse to any Obligor, whether by reason of representations or warranties, agreements of the parties, operation of law, or otherwise, (iii) such Debt is not secured by any assets of any Obligor and (iv) the aggregate amount of Debt incurred under this **clause (m)** shall not exceed \$25,000,000;

(n) Debt incurred under this **clause (n)** and then outstanding in an aggregate principal amount, measured at the time of incurrence and after giving pro forma effect thereto and the use of the proceeds therefrom, not to exceed \$35,000,000 at any time;

(o) other unsecured Debt; provided that (i) on the date of incurrence thereof and after giving pro forma effect thereto and the use of proceeds thereof, the Borrowers would be in compliance on a pro forma basis with a Consolidated Leverage Ratio of no greater than 5.00 to 1.00 at such time (and the Borrower Agent shall, on the date of incurrence of such Debt, deliver a certificate of a Senior Officer in form and detail reasonably satisfactory to Agent demonstrating compliance with such Consolidated Leverage Ratio), (ii) no Default or Event of Default shall exist or will result immediately after giving effect to the incurrence of such Debt, (iii) the borrower and the guarantors with respect to such Debt shall only be the Obligors (or if any other Person is a borrower or guarantor in respect of such Debt, such other Person shall become a Guarantor hereunder and under the other Loan Documents pursuant to **Section 10.1.9**), (iv) the maturity of such Debt is not prior to, and such Debt does not require any scheduled amortization or other scheduled prepayments of principal, prior to, the date that is ninety-one (91) days after the Termination Date and (v) the covenants and events of default governing such Debt shall not be, taken as a whole, materially more restrictive to the Obligors than those under this Agreement;

(p) unsecured Debt arising from loan programs of the Small Business Administration or other Governmental Authorities where the principal thereof is eligible for forgiveness under the applicable program or legislation; provided that the Obligor or Restricted Subsidiary incurring such Debt meets the requirements and criteria for forgiveness under such program or legislation;

(q) Debt consisting of obligations in respect of letters of credit in an aggregate amount not to exceed \$25,000,000 at any one time outstanding solely to the extent such letters of credit are issued when no Person is acting in the capacity of Issuing Bank under this Agreement; and

(r) Debt outstanding under the Hercules Seller Note in an aggregate principal amount not to exceed, at any one time outstanding, the sum of (i) \$125,000,000, *plus* (ii) the aggregate amount of paid in kind interest added to the principal amount of the Hercules Seller Note in accordance with the terms thereof, *plus* (iii) the amount of any purchase price adjustment that results in an increase in the principal balance of the Hercules Seller Note in accordance with the terms of the Hercules Acquisition Agreement.

10.2.2 Permitted Liens. Create or suffer to exist any Lien upon any of its Property, except the following (collectively, "Permitted Liens"):

(a) Liens in favor of Agent;

(b) Liens now or hereafter securing the Term Loan Debt, so long as such Liens remain subject to the terms of the Intercreditor Agreement;

(c) Liens securing Debt permitted by **Section 10.2.1(c)** (other than Liens on Inventory); provided, that (i) such Liens do not secure any Property other than the Property leased or financed by such Debt (provided that individual financings of equipment or other property permitted under **Section 10.2.1(c)** provided by one lender may be cross collateralized to other financings permitted under **Section 10.2.1(c)** provided by such lender) and (ii) the principal amount of Debt secured by any such Lien shall at no time exceed 100% of the original purchase price or lease payment amount of such Property at the time it was acquired;

(d) Excepted Liens;

(e) Liens on assets that are acquired in a Permitted Acquisition (including a Permitted Acquisition effectuated by a Permitted Parent Entity Investment), securing Debt permitted by **Section 10.2.1(f)**;

- (f) Liens arising from precautionary UCC financing statements regarding specifically described assets (which may not include Inventory) that are the subject of an operating lease;
- (g) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;
- (h) Liens securing Debt permitted by **Section 10.2.1(i)** (other than on Accounts and Inventory); provided that at the time of the incurrence thereof, the aggregate outstanding amount of Debt and other obligations secured by Liens under this **clause (h)** and then-outstanding shall not exceed \$10,000,000;
- (i) Liens existing on the Closing Date and shown on **Schedule 10.2.2**;
- (j) other Liens; provided that the aggregate outstanding amount of Debt and other obligations secured by Liens under this **clause (j)** and then-outstanding shall not exceed \$35,000,000 at any one time; provided, further, that the holder of any such Debt or obligations (or an agent representative in respect thereof) shall have entered into an intercreditor agreement in form and substance reasonably satisfactory to Agent and the Borrowers (providing, among other things, that the Liens on the ABL Priority Collateral securing such Debt or other obligations shall rank junior to Agent's Liens on the ABL Priority Collateral);
- (k) Liens or rights of setoff against credit balances or cash and Cash Equivalents held in a Credit Card Receivables Account of the Borrowers or any of their Restricted Subsidiaries with Credit Card Issuers or Credit Card Processors to secure indebtedness permitted by **Section 10.2.1(j)**; provided, that the aggregate amount of credit balances or cash or Cash Equivalents subject to such Liens and rights of setoff under this **Section 10.2.2(k)** shall not exceed \$500,000 at any one time;
- (l) Liens on the Equity Interests of Unrestricted Subsidiaries pledged by an Obligor on a non-recourse basis to secure Debt incurred by one or more Unrestricted Subsidiaries;
- (m) Liens on cash collateral securing Debt permitted under **Section 10.2.1(q)**; and
- (n) Liens on the Trust Property (as defined in the Hercules Seller Mortgage) securing Debt permitted by **Section 10.2.1(r)**, so long as such Liens remain subject to the terms of the Hercules Intercreditor Agreement at all times prior to the occurrence of a Release Event with respect to such Property (and following a Release Event is subject to a collateral access agreement reasonably acceptable to Agent).

10.2.3 Distributions; Upstream Payments.

- (a) Declare or make any Distributions, except, Obligors and Restricted Subsidiaries may make:
  - (i) Upstream Payments;

(ii) the Company may declare and make Distributions with respect to its Equity Interests payable solely in additional shares of its Equity Interests that do not constitute Disqualified Equity Interests (including exchanges of Equity Interests for different classes);

(iii) Distributions by the Company constituting Permitted Tax Distributions;

(iv) so long as no Default or Event of Default shall have occurred and be continuing or would result therefrom, repurchases or redemptions of any Equity Interests that are not Disqualified Equity Interests of the Company or Parent held by officers, directors or employees (or their transferees, estates or beneficiaries under their estates) of Parent or any Obligor, including any repurchase, retirement or redemption pursuant to stock option plans, employee benefit plans, or any shareholders' agreement or other similar agreement or arrangement then in effect or upon their death, disability, retirement, severance or termination of employment or service, provided, that the aggregate cash consideration paid for all such redemptions and payments shall not exceed \$10,000,000 in any Fiscal Year; provided, further that any unused amount in a Fiscal Year may be carried over to the subsequent Fiscal Year for a maximum amount available under this clause of \$15,000,000 in any Fiscal Year;

(v) other cash Distributions by the Company so long as the Payment Conditions are satisfied before and after giving effect thereto;

(vi) to the extent constituting Distributions and without duplication of **Section 10.2.14(e)(i)**, Distributions by the Company to Parent to pay Parent's overhead costs and expenses incurred in the Ordinary Course of Business (including legal, accounting and other general and administrative expenses) in each case that are reasonable and customary and directly attributable to the ownership or operations of the Company and its Subsidiaries; provided, that no such Distribution may be made in respect of overhead costs and expenses directly attributable to Unrestricted Subsidiaries unless a like amount has been received by the Obligors and their Restricted Subsidiaries from the Unrestricted Subsidiaries;

(vii) Distributions by the Company to the holders of its Equity Interests in an aggregate amount not to exceed ~~\$5,000,000~~ 10,000,000 during the term of this Agreement; provided that no Default or Event of Default has occurred and is continuing or would result therefrom;

(viii) so long as no Default or Event of Default shall have occurred and be continuing or would result therefrom, additional cash Distributions by the Company in an aggregate amount not to exceed the Available Equity Amount at the time of such Distribution;

(ix) repurchases of Equity Interests (i) deemed to occur on the exercise of options by the delivery of Equity Interests in satisfaction of the exercise price of such options and (ii) in consideration of withholding or similar Taxes payable by any future, present or former employee, director, manager or consultant (or any spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees of any of the foregoing), including deemed repurchases in connection with the exercise of stock options or restricted stock units;

(x) Distributions by the Company to Parent (or any other Person of which the Company is a direct or indirect Subsidiary) to finance any Investment (including any Permitted Acquisition) permitted under **Section 10.2.4** (provided that (x) any Distribution under this **clause (a)(x)** shall be made substantially concurrently with the closing of such Investment and (y) Parent (or such other parent entity) shall, promptly following the closing thereof, cause (I) all property acquired to be contributed to the Company or one or more other Obligor, or (II) the merger, consolidation or amalgamation of the Person formed or acquired into the Company or one or more other Obligor, in order to consummate such Investment in compliance with the applicable requirements of **Section 10.2.4** as if undertaken as a direct Investment by the Company or the relevant Obligor) (any such Investment or Permitted Acquisition described in this clause (x), a “**Permitted Parent Entity Investment**”); ~~and~~

~~(xi) [reserved]; or~~

(xi) the Company may pay cash Distributions to Parent in lieu of any fractional share issuance in connection with any equity issuance by Parent, including in connection with any conversion in respect of Permitted Convertible Debt; and

(xii) so long as no Default or Event of Default shall have occurred and be continuing, the Company may make Distributions to Parent to make scheduled interest payments in respect of Permitted Convertible Debt; or

(b) create or suffer to exist any encumbrance or restriction on the ability of a Restricted Subsidiary to make an Upstream Payment, except for restrictions (i) under the Loan Documents and the Term Loan Documents, (ii) under Applicable Law, (iii) permitted under **Section 10.2.12** and (iv) in effect on the Closing Date as shown on **Schedule 10.2.3**.

10.2.4 Investments. Make any Investment, other than:

(a) (i) Investments in Subsidiaries to the extent existing on the Closing Date and (ii) Investments existing on the Closing Date and set forth on **Schedule 10.2.4**, in each case for this clause (a), excluding increases thereof following the Closing Date;

(b) cash and Cash Equivalents;

(c) advances to an officer or employee for salary, travel expenses, commissions and similar items in the Ordinary Course of Business;

(d) intercompany cash Investments (i) solely among Obligor and (ii) by a Restricted Subsidiary that is not an Obligor in any other Restricted Subsidiary that is not an Obligor or an Obligor; provided, that any Investment in the form of a loan or advance shall be evidenced by an intercompany note and, in the case of a loan or advance by any Obligor, pledged by such Person as Collateral pursuant to the Security Documents;

(e) the grant of trade credit in the Ordinary Course of Business and payable or dischargeable in accordance with customary trade terms, and Investments received in the Ordinary Course of Business in satisfaction or partial satisfaction thereof from financially troubled Account Debtors to the extent reasonably necessary in order to prevent or limit loss;

(f) Investments consisting of lease, utility and other similar deposits in the Ordinary Course of Business;

(g) Permitted Acquisitions;

(h) the Hercules Acquisition;

(i) so long as no Default or Event of Default shall have occurred and be continuing or would result therefrom, any Investment in an amount not to exceed the Available Equity Amount at such time;

(j) other Investments (excluding Acquisitions) so long as the Payment Conditions are satisfied before and after giving effect thereto;

(k) other Investments; provided that the aggregate unrecovered/then outstanding amount of Investments made pursuant to this **clause (k)** shall not exceed, at the time of the making of such Investment and immediately after giving pro forma effect thereto, \$5,000,000;

(l) to the extent constituting an Investment, the guarantee by an Obligor of any Debt of an Unrestricted Subsidiary so long as such guarantee is limited solely to a non-recourse pledge of the Equity Interests of such Unrestricted Subsidiary;

(m) Investments, including Investments in Unrestricted Subsidiaries, to the extent funded with, to the extent Not Otherwise Applied, cash proceeds from contributions to the Company's common equity capital or from the sale of its Equity Interests (other than Disqualified Equity Interests and the proceeds of Cure Amounts and any IPO Event) received by an Obligor after the Closing Date (a "**Pass-Through Equity Contribution**") and applied to such Investments within 90 days of the receipt thereof (it being understood and agreed that (x) the Borrower Agent shall provide Agent prior written notice of any such Pass-Through Equity Contribution, which such notice shall designate the applicable cash proceeds as a Pass-Through Equity Contribution and (y) in no event shall any Pass-Through Equity Contribution increase the Available Equity Amount, the Borrowing Base or Liquidity);

(n) [reserved]; and

(o) to the extent constituting an Investment, Permitted Intercompany Activities.

10.2.5 Disposition of Assets. Make any Disposition, except for as long as no Default or Event of Default exists or would result therefrom, a Disposition constituting:

- (a) the sale of Inventory in the Ordinary Course of Business;
- (b) the use, transfer or disposition of cash and Cash Equivalents pursuant to any transaction not prohibited by the terms of the Loan Documents;
- (c) a Disposition of obsolete, unmerchantable or otherwise unsalable Inventory that is not included in the Borrowing Base;
- (d) a transfer of Property by a Restricted Subsidiary or Obligor to another Obligor or solely among Restricted Subsidiaries that are not Obligors;
- (e) Distributions permitted under **Section 10.2.3** and Investments permitted under **Section 10.2.4**;
- (f) the Disposition of any Equity Interest (i) in a Subsidiary to any Obligor and (ii) in any Unrestricted Subsidiary;
- (g) the issuance of Equity Interests (other than Disqualified Equity Interests) in the Company to the extent such issuance does not result in a Change of Control;
- (h) the sale or transfer of equipment and other personal property that is no longer necessary for the business of an Obligor or is replaced by equipment or other personal property of at least comparable value and use;
- (i) non-exclusive licensing and cross-licensing arrangements involving any technology or other intellectual property of the Company or any Restricted Subsidiary in the Ordinary Course of Business;
- (j) the abandonment of any rights, franchises, licenses, or intellectual property that any Obligor reasonably determines are no longer useful in its business or commercially desirable;
- (k) the transfer of interests in any Sand Properties, or portions thereof, to which no Sand Reserves are attributed;
- (l) the transfer of Property (other than ABL Priority Collateral) in connection with a Casualty Event;
- (m) the sale, disposition or other transfer of any Properties (other than Accounts) that are not regulated by clauses (a) through (l) of this **Section 10.2.5** having a Fair Market Value not to exceed \$10,000,000 in the aggregate during any 12-month period; provided that (i) the Borrower Agent shall deliver an updated Borrowing Base Report prior to giving effect to such sale, disposition, or other transfer if more than 5.0% of the assets included in the most recent calculation of the Borrowing Base are being disposed of pursuant to this **clause (m)**, (ii) no Overadvance shall exist or result therefrom, and (iii) Obligors shall comply with **Section 5.2**, if applicable;

(n) the sale, disposition or other transfer of any Property (other than Accounts), if such Property is so sold, disposed of or transferred for Fair Market Value; provided that the applicable Obligor or Restricted Subsidiary shall receive not less than 75% of such consideration in the form of cash or Cash Equivalents; provided, further, that, for purposes of determining what constitutes cash and Cash Equivalents under this **clause (n)** in connection with any disposition, sale or transfer of any Property (other than with respect to any Disposition of any ABL Priority Collateral), up to \$5,000,000 of any Designated Non-Cash Consideration received by the applicable Obligor or such Restricted Subsidiary in respect of such Property, taken together with all other Designated Non-Cash Consideration received pursuant to this **clause (n)** that is outstanding at the time such Designated Non-Cash Consideration is received, shall be deemed to be cash; provided however (i) the Borrower Agent shall deliver an updated Borrowing Base Report if more than 5.0% of the assets included in the most recent calculation of the Borrowing Base are being disposed of pursuant to this **clause (n)**, (ii) Obligors shall comply with **Section 5.2**, if applicable, and (iii) no Overadvance shall exist or result therefrom; and

(o) the transfer of Property by means of a transaction expressly permitted under **Section 10.2.7**.

10.2.6 **Restrictions on Payment of Certain Debt.** (a) Make any voluntary prepayments or other Redemptions with respect to any Junior Debt, except (a) regularly scheduled payments of principal, interest and fees and any Permitted Refinancing Debt, in each case but only to the extent permitted under any subordination agreement relating to such Debt (if applicable), (b) to the extent the Payment Conditions are satisfied with respect thereto or (c) so long as no Default or Event of Default shall have occurred and be continuing or would result therefrom, additional prepayments or Redemptions in an aggregate amount not to exceed the Available Equity Amount at the time of such prepayment or Redemption; or (b) make any payments or other Redemptions with respect to any Permitted Convertible Debt, except that Parent may utilize the proceeds of Distributions received by it and otherwise permitted under Section 10.2.3(a) for such purposes.

10.2.7 **Fundamental Changes.** (a) Change its legal name or change its form or state of formation or organization, in each case, without giving Agent at least 10 days prior written notice (or such lesser period as Agent may agree in its sole discretion) and taking such actions as Agent may reasonably request with respect thereto to continue the creation and perfection of Agent's Liens in any Collateral or the enforceability of the Loan Documents; (b) liquidate, wind up its affairs or dissolve itself; (c) consummate or unwind a Division; (d) effect a Disposition of substantially all its assets; or (e) merge, combine or consolidate with any Person, in each case whether in a single transaction or series of related transactions, except (i) for mergers or consolidations of a wholly-owned Obligor or Restricted Subsidiary with another wholly-owned Obligor or Restricted Subsidiary, provided, that (A) with respect to any merger or consolidation involving a Borrower, a Borrower is the surviving person in such merger or consolidation and (B) with respect to any merger or consolidation involving a Guarantor (unless **clause (A)** also applies, in which case such clause shall govern), such Guarantor is the surviving person in such merger or consolidation, (ii) Permitted Acquisitions, (iii) [reserved], and (iv) any non-Obligor Restricted Subsidiary may liquidate or dissolve so long as any remaining assets are transferred to another non-Obligor Restricted Subsidiary or to an Obligor and any Obligor (other than the Company) may liquidate or dissolve so long as any remaining assets of such Obligor are transferred to another Obligor.

10.2.8 Subsidiaries. Form or acquire any Subsidiary after the Closing Date, except in accordance with **Sections 10.1.9**; or permit any existing Restricted Subsidiary to issue any additional Equity Interests except directors' qualifying shares or Equity Interests issued to its immediate parent company. Following the Closing Date, the Obligors shall not form or acquire any Foreign Subsidiaries.

10.2.9 Organic Documents. Amend, modify or otherwise change any of its Organic Documents in a manner that would reasonably be expected to be materially adverse to the Lenders.

10.2.10 Accounting Changes. Make any material change in accounting treatment or reporting practices, except in accordance with **Section 1.2**, or change its Fiscal Year.

10.2.11 Restrictive Agreements. Become a party or be subject to any contract, agreement or understanding (other than those in existence on the Closing Date and set forth on **Schedule 10.2.3**, this Agreement, the Security Documents, agreements with respect to purchase money Debt or Capital Leases creating Liens permitted by **Section 10.2.2(c)** (limited to the Property securing such Debt and the proceeds thereof), documents creating Liens which are described in **clause (d), (g), (i) or (l)** of the definition of "Excepted Liens", agreements, instruments, and documents executed in connection with Debt permitted under **Section 10.2.1(b), 10.2.1(f)** (limited to the subject of and Property acquired in such Permitted Acquisition and the proceeds thereof), and **10.2.1(n)** (limited to the Property securing such Debt and the proceeds thereof), constituting customary restrictions on assignment in leases and other contracts and customary restrictions and conditions contained in any agreement relating to the sale of any property permitted under this Agreement pending the consummation of such sale) that in any way prohibits or restricts the granting, conveying, creation or imposition of any Lien on any of its Sand Property or Property constituting ABL Priority Collateral in favor of the Agent for the benefit of the Secured Parties or restricts any Restricted Subsidiary from paying dividends or making distributions in respect of its Equity Interests to any Obligor.

10.2.12 Swaps. Enter into any Swap, except (i) Swaps to hedge existing or anticipated interest rate risk in respect of Debt permitted pursuant to **Section 10.2.1** and (ii) Swaps entered into not for speculative purposes and intended to hedge existing or anticipated risk in respect of commodity prices.

10.2.13 Conduct of Business. Engage in any business, other than its business as conducted on the Closing Date and any businesses or activities that are similar, related, ancillary, incidental or complementary thereto or businesses that are a reasonable extension, development or expansion thereof.

10.2.14 Affiliate Transactions. Enter into or be party to any transaction with an Affiliate (or amend or modify any such transaction) involving aggregate payments or consideration in any Fiscal Year in excess of \$500,000, except (a) transactions otherwise expressly permitted by the Loan Documents; (b) compensation to, and the terms of any employment contracts with, individuals who are employees, officers, managers or directors of the Obligors (including, the performance of employment, equity award, equity option or equity appreciation agreements, plans or other similar compensation or benefit plans or arrangements (including vacation plans, health and insurance plans, deferred compensation plans and retirement or savings plans)); (c) transactions solely among Obligors or transactions solely among Restricted Subsidiaries that are not Obligors; (d) transactions with Affiliates entered into prior to the Closing Date, as shown on **Schedule 10.2.14**; (e) (i) Distributions permitted under **Section 10.2.3** (or payment of Parent's overhead costs and expenses as described in **Section 10.2.3(a)(vi)**) subject to the limitations set forth therein in lieu of Distributions therefor) and (ii) Investments permitted under **clauses (a), (d)(ii), (i), (j), (k), (l), (m) and (n) of Section 10.2.4**; (f) transactions with Affiliates in the Ordinary Course of Business, upon fair and reasonable terms and no less favorable than would be obtained in a comparable arm's-length transaction with a non-Affiliate; (g) the issuance and sale of Equity Interests issued by the Company (other than Disqualified Equity Interests) or the amendment of the terms of any Equity Interests issued by the Company (other than Disqualified Equity Interests); (h) Permitted Intercompany Activities; (i) [reserved]; and (j) reasonable and customary fees and compensation to, the reimbursement of reasonable out of pocket costs of, and indemnities provided on behalf of, officers, directors, and employees of the Obligors (or Parent) or any Restricted Subsidiary in their capacity as such; provided, that in the case of clauses (b) and (j) for Persons that also provide services on behalf of any Unrestricted Subsidiary, there is a reasonable allocation of any material costs and expenses for such arrangements as between Borrowers and their Restricted Subsidiaries, on the one hand, and the Unrestricted Subsidiaries, on the other hand.

10.2.15 Plans. Become party to any Multiemployer Plan or Foreign Plan, other than any in existence on the Closing Date.

10.2.16 Amendments to Subordinated Debt, Hercules Note Documents or Term Loan Documents. Amend, supplement or otherwise modify (a) the Term Loan Agreement or any other Term Loan Document in each case except to the extent not prohibited by the Intercreditor Agreement, (b) any document, instrument or agreement relating to any Subordinated Debt, if such modification (i) increases the principal balance of such Debt beyond the amount permitted by **Section 10.2.1**, or increases any required payment of principal or interest; (ii) accelerates the date on which any installment of principal or any interest is due, or adds any additional redemption, put or prepayment provisions; (iii) shortens the final maturity date or otherwise accelerates amortization; (iv) increases or adds any recurring fees or charges; (v) modifies any covenant in a manner or adds any covenant or default that is more onerous or restrictive in any material respect for any Obligor or Subsidiary than those set forth in this Agreement, or that is otherwise materially adverse to any Obligor, any Subsidiary or Lenders; or (vi) results in the Obligations not being fully benefited by the subordination provisions thereof, or (c) the Hercules Seller Note, if such modification (i) increases the principal balance of such Debt beyond the amount permitted by **Section 10.2.1(r)**, or increases any required payment of principal or interest; (ii) accelerates the date on which any installment of principal is due, or adds any additional mandatory redemption, put or prepayment provisions; or (iii) shortens the scheduled final maturity date.

10.2.17 Passive Holding Company. Obligor shall cause Parent to not:

(a) engage at any time in any business or activity other than (i) direct or indirect ownership of Equity Interests in the Company, Power SPV and other miscellaneous non-material assets, and making of Investments in, and contributions to, the Company and Power SPV, together with activities related thereto (including (x) engaging in Permitted Parent Entity Investments and other Permitted Acquisitions and Investments permitted hereunder and the drop down of assets acquired thereunder to the Company and its Subsidiaries and (y) formation of Power SPV whether on or prior to the Fourth Amendment Effective Date), (ii) paying Taxes, (iii) exchanges, issuances, sales, repurchases and redemptions of its Equity Interests and activities in connection therewith and related thereto, (iv) holding directors' and shareholders' meetings, preparing corporate and similar records and other activities required to maintain its corporate or other legal existence or to participate in tax, accounting or other administrative matters related to the Company and its Subsidiaries and to Power SPV, (v) preparing reports to, and preparing and making notices to and filings with, Governmental Authorities, securities exchanges and to its holders of Equity Interests, (vi) receiving, and holding proceeds of, Distributions permitted hereunder and dividends from Power SPV and distributing the proceeds thereof, (vii) providing customary indemnification to officers, directors, employees and agents subject to the terms hereof, (viii) hiring, maintaining and compensating executives and other employees and consultants to the extent required or incidental to owning Equity Interests in the Company or Power SPV, (ix) [enter into and perform its obligations and enforce its rights under the Hercules Acquisition Agreement, Permitted Convertible Debt and Permitted Capped Call Transactions, including receiving and holding proceeds of Permitted Convertible Debt and Permitted Capped Call Transactions and distributing the proceeds thereof.](#) and (x) ownership of cash and immaterial properties and assets incidental to the business or activities described in the foregoing clauses of this **Section 10.2.17**, activities incidental to the business or activities described in the foregoing clauses of this **Section 10.2.17** and payment of costs and expenses in connection with the business or activities described in the foregoing clauses of this **Section 10.2.17**;

(b) (i) create, incur, assume or permit to exist any Debt other than (A) tax liabilities, (B) corporate, administrative and operating expenses in the ordinary course of business, (C) with respect to the Parent Entity of the Company that is then a publicly traded company, [\(1\) Permitted Convertible Debt and Permitted Capped Call Transactions relating thereto and \(2\)](#) a guarantee of the Term Loan Debt, the Hercules Seller Note and Debt of Power SPV by such Parent Entity and (D) customary indemnity, reimbursement and similar obligations incurred in connection with any Permitted Parent Entity Investments, including in connection with the Hercules Acquisition, or (ii) grant any consensual Lien encumbering any of its properties or assets; or

(c) fail to maintain in full force and effect its legal existence.

10.2.18 Other Amendments. Amend, supplement or otherwise modify the terms and conditions of the Major Material Contracts except to the extent that any such amendment, supplement, modification or change would not reasonably be expected to (i) adversely affect the interests of the Agent or the Lenders in any material respect or (ii) result in a Material Adverse Effect. For the avoidance of doubt, this section shall not prohibit or restrict the expiration or termination of a Major Material Contract in accordance with the terms thereof.

10.2.19 Power SPV. (a) Permit Power SPV to (i) create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable with respect to any Debt pursuant to which a lender or any other Person has recourse to any Obligor or any Restricted Subsidiary or any of the assets of any Obligor or any Restricted Subsidiary, (ii) own Equity Interests in any Obligor or any Restricted Subsidiary, (iii) hold any Debt of, or Liens on, any Obligor or any Restricted Subsidiary (or any of their respective assets), and (iv) engage in any business other than the ownership, lease and operation of power generation equipment for purposes of providing its customers with long-term power solutions, the sale of power into the grid and activities ancillary to the foregoing; or

(b) provide any credit support of any kind for, Guarantee or otherwise become directly or indirectly liable for any Debt or other obligations of Power SPV (including any purchase orders or purchase agreements for assets of Power SPV).

**10.3 Fixed Charge Coverage Ratio.** As long as any Commitment or Obligations are outstanding, Obligors shall maintain a Fixed Charge Coverage Ratio as of the last day of each four Fiscal Quarter period of at least 1.0 to 1.0 while a Covenant Trigger Period is in effect, measured for the most recent four Fiscal Quarter period ending on the last day of the most recently ended Fiscal Quarter for which financial statements were delivered hereunder prior to the Covenant Trigger Period and each four Fiscal Quarter period ending thereafter until the Covenant Trigger Period is no longer in effect.

**Section 11. EVENTS OF DEFAULT; REMEDIES ON DEFAULT.**

**11.1 Events of Default.** Each of the following shall be an “Event of Default” if it occurs for any reason whatsoever, whether voluntary or involuntary, by operation of law or otherwise:

(a) Any Borrower fails to pay (i) any principal on any Loan or any Letter of Credit reimbursement (to the extent such Letter of Credit reimbursement obligation is not refinanced with the proceeds of Base Rate Loans in accordance with **Section 2.2.2(a)** at a time when the conditions in **Section 6.2** are satisfied) when due (whether at stated maturity, on demand, upon acceleration or otherwise) or (ii) any interest, any fee or any other amount (other than an amount referred to in subclause (i) above) payable under any Loan Document when due and such failure under this subclause (ii) continues unremedied for a period of five (5) Business Days;

(b) Any representation, warranty or other written statement of an Obligor made in connection with any Loan Documents or transactions contemplated thereby is incorrect or misleading in any material respect when given;

(c) An Obligor or Restricted Subsidiary (or in the case of (x) **Section 10.2.17**, Parent or (y) **Section 10.2.19**, Power SPV) breaches or fails to perform any covenant contained in (i) **Section 7.4.1, 7.5, 7.7, 8.2.4, 8.2.5, 8.5, 10.1.1, 10.1.3, 10.1.9, 10.1.11, 10.2** or **10.3** or (ii) **Section 7.3.2, 8.1, 8.2.1, 8.3.1** or **10.1.2** and such failure under this clause (ii) shall continue unremedied for a period of five Business Days (provided, that if a Trigger Period is then in effect, the grace period under this clause (ii) with respect to **Section 8.1, 8.2.1** and **8.3.1** shall be reduced to two Business Days);

(d) An Obligor or Restricted Subsidiary breaches or fails to perform any other covenant contained in any Loan Documents, and such breach or failure is not cured within 30 days after a Senior Officer of such Obligor or Restricted Subsidiary has knowledge thereof or receives notice thereof from Agent, whichever is sooner;

(e) A Guarantor repudiates, revokes or attempts to revoke its Guaranty; an Obligor or third party denies or contests the validity or enforceability of any Loan Documents or Obligations, or the perfection or priority of any Lien granted to Agent; it is unlawful for an Obligor to perform any of its obligations under a Loan Document; or any Loan Document ceases to be in full force or effect for any reason (other than a waiver or release by Agent and Lenders);

(f) Any Security Document after delivery thereof shall cease to create a valid and perfected Lien of the priority required thereby on any Collateral having a Fair Market Value in excess of \$10,000,000 and that is purported to be encumbered thereby (other than as a result of the acts or omissions of the Agent), except to the extent permitted by the terms of this Agreement or any other Loan Document, or any Obligor or any of their Subsidiaries shall so state in writing;

(g) (i) Any Obligor or Restricted Subsidiary shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Debt or any Term Loan Debt; or Parent shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Permitted Convertible Debt, in each case when and as the same shall become due and payable, and such failure to pay shall extend beyond any applicable period of grace or (ii) (A) any event or condition occurs that results in any Permitted Convertible Debt, Material Debt or ~~any~~ Term Loan Debt becoming due prior to its scheduled maturity or (B) any event or condition occurs that enables or permits (after giving effect to all applicable notice and cure periods) the holder or holders of any Permitted Convertible Debt, Material Debt or Term Loan Debt or any trustee or agent on its or their behalf to cause any Permitted Convertible Debt, Material Debt or Term Loan Debt to become due, or to require the Redemption thereof or any offer to Redeem to be made in respect thereof, prior to its scheduled maturity or require any Parent, Obligor or Restricted Subsidiary to make an offer in respect thereto; provided, that with respect to Permitted Convertible Debt none of the following events will, in and of themselves, be a Default or Event of Default under this Section 11.1(g)(ii): (x) the occurrence of any customary event or condition that vests the right of any holder of Permitted Convertible Debt to submit any such Debt for conversion in accordance with its terms so long as such event or condition does not result from a breach by Parent of the terms of such Debt or (y) any actual conversion to Equity Interests (other than Disqualified Equity Interests) of any Permitted Convertible Debt in accordance with its terms.

(h) (i) one or more final judgments for the payment of money in an aggregate amount in excess of \$40,000,000 (to the extent not covered by independent third party insurance as to which the insurer does not dispute coverage) or (ii) any one or more final non-monetary judgments that have resulted in, or would reasonably be expected to result in, individually or in the aggregate, a Material Adverse Effect, in either case, shall be rendered against any Obligor or any of its Restricted Subsidiaries or any combination thereof and the same shall remain undischarged for a period of 60 consecutive days during which execution shall not be effectively stayed (by reason of a pending appeal or otherwise), or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of any Obligor or Restricted Subsidiary to enforce any such judgment;

(i) An involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of any Parent Entity, Obligor or Restricted Subsidiary or any of their debts, or of a substantial part of any of their assets, under any Debtor Relief Law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Parent Entity, Obligor or Restricted Subsidiary or for a substantial part of any of their assets, and, in any such case, such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered;

(j) Any Parent Entity, Obligor or Restricted Subsidiary shall (i) voluntarily commence any Insolvency Proceeding or file any petition seeking liquidation, reorganization or other relief under any Debtor Relief Law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in **Section 11.1(i)**, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Parent Entity, Obligor or Restricted Subsidiary or for a substantial part of any of their assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing;

(k) Any Parent Entity, Obligor or Restricted Subsidiary shall become unable, admit in writing its inability or fail generally to pay its debts as they become due;

(l) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan that has resulted or could reasonably be expected to result in liability of an Obligor to a Pension Plan, Multiemployer Plan or PBGC, or that constitutes grounds for appointment of a trustee for or termination by the PBGC of any Pension Plan or Multiemployer Plan; an Obligor or ERISA Affiliate fails to pay when due any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan; or any event similar to the foregoing occurs or exists with respect to a Foreign Plan, in an aggregate amount for all events exceeding \$40,000,000; or

(m) A Change of Control occurs.

**11.2 Remedies upon Default.** If an Event of Default under **Section 11.1(i)** or **(j)** occurs with respect to any Obligor or Parent, then to the extent permitted by Applicable Law, all Obligations (including Secured Bank Product Obligations only to the extent provided in applicable agreements) shall become automatically due and payable and all Commitments shall terminate, without any action by Agent or notice of any kind. In addition, or if any other Event of Default exists, Agent may in its discretion (and shall upon written direction of Required Lenders) do any one or more of the following from time to time:

(a) declare any Obligations (other than Secured Bank Product Obligations) immediately due and payable, whereupon they shall be due and payable without diligence, presentment, demand, protest or notice of any kind, all of which are hereby waived by Obligors to the fullest extent permitted by law;

(b) terminate, reduce or condition any Commitment or adjust the Borrowing Base;

(c) require Obligors to Cash Collateralize LC Obligations, Secured Bank Product Obligations and other Obligations that are contingent or not yet due and payable, and if Obligors fail to deposit such Cash Collateral, Agent may (and shall upon the direction of Required Lenders) advance the required Cash Collateral as Loans (whether or not an Overadvance exists or is created thereby, or the conditions in **Section 6** are satisfied); and

(d) exercise any other rights or remedies afforded under any agreement, by law, at equity or otherwise, including the rights and remedies of a secured party under the UCC. Such rights and remedies include the rights to (i) take possession of any Collateral; (ii) require Obligors to assemble Collateral, at Obligors' expense, and make it available to Agent at a premises owned or leased by an Obligor designated by Agent; (iii) enter any premises where Collateral is located and store Collateral on such premises until sold (and if the premises are owned or leased by an Obligor, Obligors agree not to charge for such storage); and (iv) sell or otherwise dispose of any Collateral in its then condition, or after any further manufacturing or processing thereof, at public or private sale, with such notice as may be required by Applicable Law, in lots or in bulk, at such locations, all as Agent, in its discretion, deems advisable. Each Obligor agrees that 10 days' notice of any proposed sale or other disposition of Collateral by Agent shall be reasonable, and that any sale conducted on the internet or to a licensor of Intellectual Property shall be commercially reasonable. Agent may conduct sales on any Obligor's premises, without charge, and any sale may be adjourned from time to time in accordance with Applicable Law. Agent shall have the right to sell, lease or otherwise dispose of any Collateral for cash, credit or any combination thereof, and Agent may purchase any Collateral at public or, if permitted by law, private sale and, in lieu of actual payment of the purchase price, may credit bid and set off the amount of such price against the Obligations.

**11.3 License.** Agent is hereby granted an irrevocable, non-exclusive license or other right to use, license or sub-license (without payment of royalty or other compensation to any Person) any or all Intellectual Property of Obligors, computer hardware and software, trade secrets, brochures, customer lists, promotional and advertising materials, labels, packaging materials and other Property, in advertising for sale, marketing, selling, collecting, completing manufacture of, or otherwise exercising any rights or remedies with respect to, any Collateral. Each Obligor's rights and interests under Intellectual Property shall inure to Agent's benefit.

**11.4 Setoff.** At any time during an Event of Default, Agent, Issuing Bank, Lenders, and any of their Affiliates are authorized, to the fullest extent permitted by Applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by Agent, Issuing Bank, such Lender or such Affiliate to or for the credit or the account of an Obligor against the Obligations, whether or not Agent, Issuing Bank, such Lender or such Affiliate shall have made any demand under this Agreement or any other Loan Document and although such Obligations may be contingent or unmatured or are owed to a branch or office of Agent, Issuing Bank, such Lender or such Affiliate different from the branch or office holding such deposit or obligated on such indebtedness. The rights of Agent, Issuing Bank, each Lender and each such Affiliate under this Section are in addition to other rights and remedies (including other rights of setoff) that such Person may have.

## 11.5 Remedies Cumulative; No Waiver

11.5.1 Cumulative Rights. All agreements, warranties, guaranties, indemnities and other undertakings of Obligor under the Loan Documents are cumulative and not in derogation of each other. The rights and remedies of Agent, Issuing Bank and Lenders under the Loan Documents are cumulative, may be exercised at any time and from time to time, concurrently or in any order, and are not exclusive of any other rights or remedies available by agreement, by law, at equity or otherwise. All such rights and remedies shall continue in full force and effect until Full Payment of all Obligations.

11.5.2 Waivers. No waiver or course of dealing shall be established by (a) the failure or delay of Agent, Issuing Bank or any Lender to require strict performance by any Obligor under any Loan Document, or to exercise any rights or remedies with respect to Collateral or otherwise; (b) the making of any Loan or issuance of any Letter of Credit during a Default, Event of Default or other failure to satisfy any conditions precedent; or (c) acceptance by Agent, Issuing Bank or any Lender of any payment or performance by an Obligor under any Loan Documents in a manner other than that specified therein. Any failure to satisfy a financial covenant on a measurement date shall not be cured or remedied by satisfaction of such covenant on a subsequent date.

## 11.6 Right to Cure

11.6.1 Notwithstanding anything to the contrary contained in **Sections 11.1** through **11.5**, in the event that the Obligor fails to comply with the requirements of **Section 10.3**, the Company shall have the right, during the period beginning at the end of the last Fiscal Quarter of the applicable test period and until the tenth (10th) Business Day after the date on which financial statements with respect to such test period for which such covenant is being measured are required to be delivered pursuant to **Section 10.1.2** (such date, the "**Cure Deadline**"), to include the cash proceeds of an equity contribution to, or the cash proceeds of an issuance of common Equity Interests of, the Company (or other Equity Interests reasonably acceptable to Agent), in each case, received by the Company in cash after the last day of such test period and prior to the Cure Deadline (the "**Cure Right**") in EBITDA for the purposes of calculating the Fixed Charge Coverage Ratio under **Section 10.3**, and upon the receipt by the Company of such cash proceeds pursuant to the exercise of the Cure Right (the "**Cure Amount**"), the Fixed Charge Coverage Ratio shall be recalculated, giving effect to a pro forma increase to EBITDA for such test period in an amount equal to such Cure Amount; provided that such pro forma adjustment to EBITDA shall be given solely for the purpose of determining the existence of a Default or an Event of Default under **Section 10.3** with respect to any period that includes the Fiscal Quarter for which such Cure Right was exercised and not for any other purpose under any Loan Document (including any other use of the Fixed Charge Coverage Ratio).

11.6.2 If, after the receipt of the Cure Amount and the recalculations pursuant to **Section 11.6.1** above, the Obligor shall then be in compliance with the requirements of **Section 10.3** as of the last day of the applicable Fiscal Quarter, the Obligor shall be deemed to have satisfied the requirements of **Section 10.3** as of the relevant date of determination with the same effect as though there had been no failure to comply therewith at such date, and the applicable Event of Default that had occurred shall be deemed cured; provided that (a) the Cure Right may be exercised on no more than five (5) occasions, (b) in each four Fiscal Quarter period, there shall be at least two Fiscal Quarters in respect of which no Cure Right is exercised, (c) with respect to any exercise of the Cure Right, the Cure Amount shall be no greater than the amount required to cause the Obligor to be in compliance with **Section 10.3**, (d) all Cure Amounts shall be disregarded for purposes of determining any baskets or ratios with respect to the covenants contained in the Loan Documents ~~and (e), (e) proceeds from an issuance of Permitted Convertible Debt shall not constitute part of any Cure Amount, and (f)~~ there shall be no pro forma reduction in Debt (by netting or otherwise) or Consolidated Interest Expense with the proceeds of any Cure Amount for determining compliance with **Section 10.3** for the test period for which such Cure Amount is deemed applied.

11.6.3 Prior to the Cure Deadline if Borrower Agent notifies Agent of its intent to cure, neither Agent nor any Lender shall exercise any rights or remedies under **Section 11** (or under any other Loan Document available during the continuance of any Default or Event of Default) solely on the basis of any actual or purported failure to comply with **Section 10.3** unless such failure is not cured by the Cure Deadline (it being understood that this sentence shall not have any effect on the rights and remedies of the Agent or the Lenders with respect to any other Default or Event of Default pursuant to any other provision of any Loan Document other than breach of **Section 10.3**); provided, that the Agent and the Lenders shall have no obligation to make any Loans, and the Issuing Banks shall have no obligation to issue any Letters of Credit, prior to receipt of the Cure Amount or such Default or Event of Default is otherwise cured or waived.

**Section 12. AGENT.**

**12.1 Appointment, Authority and Duties of Agent.**

12.1.1 Appointment and Authority. Each Secured Party appoints and designates Bank of America as Agent under all Loan Documents. Agent may, and each Secured Party authorizes Agent to, enter into all Loan Documents to which Agent is intended to be a party and accept all Security Documents. Any action taken by Agent in accordance with the provisions of the Loan Documents, and the exercise by Agent of any rights or remedies set forth therein, together with all other powers reasonably incidental thereto, shall be authorized by and binding upon all Secured Parties. Without limiting the generality of the foregoing, Agent shall have the sole and exclusive authority to (a) act as the disbursing and collecting agent for Lenders with respect to all payments and collections arising in connection with the Loan Documents; (b) execute and deliver as Agent each Loan Document, including any intercreditor or subordination agreement, and accept delivery of each Loan Document; (c) act as collateral agent for Secured Parties for purposes of perfecting and administering Liens under the Loan Documents, and for all other purposes stated therein; (d) manage, supervise or otherwise deal with Collateral; and (e) take any Enforcement Action or otherwise exercise any rights or remedies with respect to any Collateral or under any Loan Documents, Applicable Law or otherwise. Agent alone is authorized to determine eligibility and applicable advance rates under the Borrowing Base in accordance with the terms of this Agreement, whether to impose or release any reserve, or whether any conditions to funding or issuance of a Letter of Credit have been satisfied, which determinations and judgments, if exercised in good faith, shall exonerate Agent from liability to any Secured Party or other Person for any error in judgment.

12.1.2 Duties. The title of “Agent” is used solely as a matter of market custom and the duties of Agent are administrative in nature only. Agent has no duties except those expressly set forth in the Loan Documents, and in no event does Agent have any agency, fiduciary or implied duty to or relationship with any Secured Party or other Person by reason of any Loan Document or related transaction, even if a Default exists. The conferral upon Agent of any right shall not imply a duty to exercise such right, unless instructed to do so by Lenders in accordance with this Agreement.

12.1.3 Agent Professionals. Agent may perform its duties through employees and agents. Agent may consult with and employ Agent Professionals, and shall be entitled to act upon, and shall be fully protected in any action taken in good faith reliance upon, any advice given by an Agent Professional. Agent shall not be responsible for the negligence or misconduct of any agents, employees or Agent Professionals selected by it with reasonable care.

12.1.4 Instructions of Required Lenders. The rights and remedies conferred upon Agent under the Loan Documents may be exercised without the necessity of joining any other party, unless required by Applicable Law. In determining compliance with a condition for any action hereunder, including satisfaction of any condition in **Section 6**, Agent may presume that the condition is satisfactory to a Secured Party unless Agent has received notice to the contrary from such Secured Party before Agent takes the action. Agent may request instructions from Required Lenders or other Secured Parties with respect to any act (including the failure to act) in connection with any Loan Documents or Collateral, and may seek assurances to its satisfaction from Secured Parties of their indemnification obligations against Claims that could be incurred by Agent. Agent may refrain from any act until it has received such instructions or assurances, and shall not incur liability to any Person by reason of so refraining. Instructions of Required Lenders shall be binding upon all Secured Parties, and no Secured Party shall have any right of action whatsoever against Agent as a result of Agent acting or refraining from acting pursuant to instructions of Required Lenders. Notwithstanding the foregoing, instructions by and consent of specific parties shall be required to the extent provided in **Section 14.1.1**. In no event shall Agent be required to take any action that it determines in its discretion is contrary to Applicable Law or any Loan Documents or could expose any Agent Indemnitee to potential liability.

## **12.2 Agreements Regarding Collateral and Borrower Materials**

12.2.1 Lien Releases; Care of Collateral. Secured Parties authorize Agent to release any Lien on any Collateral (a) upon Full Payment of the Obligations; (b) that is the subject of a disposition or Lien that Borrower Agent certifies in writing is a Permitted Disposition or a Permitted Lien entitled to priority over Agent's Liens (and Agent may rely conclusively on such certificate without further inquiry); (c) that does not constitute a material part of the Collateral; (d) subject to **Section 14.1**, with the consent of Required Lenders; or (e) constituting real property interests upon the occurrence of a Release Event with respect thereto. Secured Parties authorize Agent to subordinate its Liens to any Purchase Money Lien or other Lien entitled to priority hereunder. Agent has no obligation to assure that any Collateral exists or is owned by an Obligor, or is cared for, protected or insured, nor to assure that Agent's Liens have been properly created, perfected or enforced, or are entitled to any particular priority, nor to exercise any duty of care with respect to any Collateral. To the extent required under the laws of any foreign jurisdiction, each Secured Party hereby grants to Agent any required power of attorney to take any action with respect to Collateral or to execute any Loan Document on the Secured Party's behalf.

12.2.2 **Possession of Collateral.** Agent and Secured Parties appoint each Secured Party as agent (for the benefit of Secured Parties) for the purpose of perfecting Liens in Collateral held or controlled by it, to the extent such Liens are perfected by possession or control. If a Secured Party obtains possession or control of any Collateral, it shall notify Agent thereof and, promptly upon Agent's request, deliver such Collateral to Agent or otherwise deal with it in accordance with Agent's instructions.

12.2.3 **Reports.** Agent shall promptly provide to Lenders, when complete, any field examination, audit, appraisal or consultant report prepared for Agent with respect to any Obligor or Collateral ("Report"). Reports and other Borrower Materials may be made available to Lenders by posting them on the Platform, but Agent shall not be responsible for system failures or access issues that may occur from time to time. Each Lender agrees (a) that Reports are not intended to be comprehensive audits or examinations, and that Agent or any other Person performing an audit or examination will inspect only limited information and will rely significantly upon Borrowers' books, records and representations; (b) that Agent makes no representation or warranty as to the accuracy or completeness of any Borrower Materials and shall not be liable for any information contained in or omitted from any Borrower Materials; and (c) to keep all Borrower Materials confidential and strictly for such Lender's internal use, not to distribute any Report or other Borrower Materials (or contents thereof) to any Person (except to such Lender's Participants, attorneys and accountants), and to use all Borrower Materials solely for administration of the Obligations. Each Lender shall indemnify and hold harmless Agent and any other Person preparing a Report from any action such Lender may take as a result of or any conclusion it may draw from any Borrower Materials, as well as from any Claims arising as a direct or indirect result of Agent furnishing same to such Lender, via the Platform or otherwise.

12.3 **Reliance By Agent.** Agent shall be entitled to rely, and shall be fully protected in relying, upon any Communication (including those by telephone, telex, telegram, telecopy, e-mail or other electronic means) believed by it to be genuine and correct and to have been signed, sent or made by the proper Person. Agent shall have a reasonable and practicable amount of time to act on any Communication and shall not be liable for any delay in acting.

12.4 **Action Upon Default.** Agent shall not be deemed to have knowledge of any Default or Event of Default, or of any failure to satisfy any conditions in **Section 6**, unless it has received written notice from a Borrower or Required Lenders specifying the occurrence and nature thereof. If a Lender acquires knowledge of a Default, Event of Default or failure of such conditions, it shall promptly notify Agent and the other Lenders thereof in writing. Each Secured Party agrees that, except as otherwise provided in any Loan Documents or with the written consent of Agent and Required Lenders, it will not take any Enforcement Action, accelerate Obligations (other than Secured Bank Product Obligations) or assert any rights relating to any Collateral. Agent is hereby authorized to file a proof of claim and vote claims for the Obligations in any proceeding under the Bankruptcy Code. At any foreclosure or other realization event with respect to the Collateral (including any 363 sale pursuant to the Bankruptcy Code), Agent shall be entitled to credit bid the Obligations and establish vehicles and procedures therefor.

12.5 **Ratable Sharing.** If any Secured Party obtains any payment or reduction of any Obligation, whether through set-off or otherwise, in excess of its ratable share of such Obligation, such Secured Party shall forthwith purchase from the other Secured Parties participations in the affected Obligation as are necessary to share the excess payment or reduction on a Pro Rata basis or in accordance with **Section 5.5.2**, as applicable. If any of such payment or reduction is thereafter recovered from the purchasing Secured Party, the purchase shall be rescinded and the purchase price restored to the extent of such recovery, but without interest. Notwithstanding the foregoing, if a Defaulting Lender obtains a payment or reduction of any Obligation, it shall immediately turn over the full amount thereof to Agent for application under **Section 4.2.2** and it shall provide a written statement to Agent describing the Obligation affected by such payment or reduction. No Secured Party shall set off against a Deposit Account without Agent's prior consent.

**12.6 Indemnification.** EACH SECURED PARTY SHALL INDEMNIFY AND HOLD HARMLESS AGENT INDEMNITEES AND ISSUING BANK INDEMNITEES, TO THE EXTENT NOT REIMBURSED BY OBLIGORS, ON A PRO RATA BASIS, AGAINST ALL CLAIMS THAT MAY BE INCURRED BY OR ASSERTED AGAINST ANY SUCH INDEMNITEE, PROVIDED THAT ANY CLAIM AGAINST AN AGENT INDEMNITEE RELATES TO OR ARISES FROM ITS ACTING AS OR FOR AGENT (IN THE CAPACITY OF AGENT). In Agent's discretion, it may reserve for any Claims made against an Agent Indemnitee or Issuing Bank Indemnitee, and may satisfy any judgment, order or settlement relating thereto, from proceeds of Collateral prior to making any distribution of Collateral proceeds to Secured Parties. If Agent is sued by any receiver, trustee or other Person for any alleged preference or fraudulent transfer, then any monies paid by Agent in settlement or satisfaction of such proceeding, together with all interest, costs and expenses (including attorneys' fees) incurred in the defense of same, shall be promptly reimbursed to Agent by each Secured Party to the extent of its Pro Rata share.

**12.7 Limitation on Responsibilities of Agent.** Agent shall not be liable to any Secured Party for any action taken or omitted to be taken under the Loan Documents, except for losses directly and solely caused by Agent's gross negligence or willful misconduct. Agent does not assume any responsibility for any failure or delay in performance or any breach by any Obligor, Lender or other Secured Party of any obligations under the Loan Documents. Agent does not make any express or implied representation, warranty or guarantee to Secured Parties with respect to any Obligations, Collateral, Liens, Loan Documents or Obligor. No Agent Indemnitee shall be responsible to Secured Parties for any recitals, statements, information, representations or warranties contained in any Loan Documents or Borrower Materials; the execution, validity, genuineness, effectiveness or enforceability of any Loan Documents; the genuineness, enforceability, collectability, value, sufficiency, location or existence of any Collateral, or the validity, extent, perfection or priority of any Lien therein; the validity, enforceability or collectability of any Obligations; or the assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of any Obligor or Account Debtor. No Agent Indemnitee shall have any obligation to any Secured Party to ascertain or inquire into the existence of any Default or Event of Default, the observance by any Obligor of any terms of the Loan Documents, or the satisfaction of any conditions precedent contained in any Loan Documents.

## 12.8 Successor Agent and Co-Agents.

12.8.1 Resignation; Successor Agent. Agent may resign at any time by giving at least 30 days written notice thereof to Lenders and Borrower Agent. Required Lenders may appoint a successor that is (a) a Lender or Affiliate of a Lender; or (b) a financial institution reasonably acceptable to Required Lenders and (provided no Default or Event of Default exists) Borrower Agent. If no successor is appointed by the effective date of Agent's resignation, then on such date, Agent may appoint a successor acceptable to it in its discretion (which shall be a Lender unless no Lender accepts the role) or, in the absence of such appointment, Required Lenders shall automatically assume all rights and duties of Agent. The successor Agent shall thereupon succeed to and become vested with all the powers and duties of the retiring Agent without further act. The retiring Agent shall be discharged from its duties hereunder on the effective date of its resignation, but shall continue to have all rights and protections available to Agent under the Loan Documents with respect to actions, omissions, circumstances or Claims relating to or arising while it was acting or transferring responsibilities as Agent or holding any Collateral on behalf of Secured Parties, including indemnification under **Sections 12.6 and 14.2**, and all rights and protections under this **Section 12**. Any successor to Bank of America by merger or acquisition of stock or this loan shall continue to be Agent hereunder without further act on the part of any Secured Party or Obligor.

12.8.2 Co-Collateral Agent. If appropriate under Applicable Law, Agent may appoint a Person to serve as a co-collateral agent or separate collateral agent under any Loan Document. Each right, remedy and protection intended to be available to Agent under the Loan Documents shall also be vested in such agent. Secured Parties shall execute and deliver any instrument or agreement that Agent may request to effect such appointment. If any such agent shall die, dissolve, become incapable of acting, resign or be removed, then all the rights and remedies of the agent, to the extent permitted by Applicable Law, shall vest in and be exercised by Agent until appointment of a new agent.

12.9 Due Diligence and Non-Reliance. Each Lender acknowledges and agrees that it has, independently and without reliance upon Agent or any other Lenders, and based upon such documents, information and analyses as it has deemed appropriate, made its own credit analysis of each Obligor and its own decision to enter into this Agreement and to fund Loans and participate in LC Obligations hereunder. Each Secured Party has made such inquiries as it feels necessary concerning the Loan Documents, Collateral and Obligors. Each Secured Party acknowledges and agrees that the other Secured Parties have made no representations or warranties concerning any Obligor, any Collateral or the legality, validity, sufficiency or enforceability of any Loan Documents or Obligations. No act by Agent, including any consent, amendment, acceptance of assignment or due diligence by Agent, shall be deemed to constitute a representation by Agent to any Secured Party as to any matter, including whether Agent has disclosed material information in its possession. Each Secured Party will, independently and without reliance upon any other Secured Party, and based upon such financial statements, documents and information as it deems appropriate at the time, continue to make and rely upon its own credit decisions in making Loans and participating in LC Obligations, and in taking or refraining from any action under any Loan Documents. Except for notices, reports and other information expressly requested by a Lender, Agent shall have no duty or responsibility to provide any Secured Party with any notices, reports or certificates furnished to Agent by any Obligor or any credit or other information concerning the affairs, financial condition, business or Properties of any Obligor (or any of its Affiliates) which may come into possession of Agent or its Affiliates. Each Lender represents and warrants that (a) the Loan Documents set forth the terms of a commercial lending facility, and (b) it is engaged in making, acquiring or holding commercial loans in the ordinary course, is sophisticated with respect to making such decisions and holding such loans, and is entering into this Agreement for the purpose of making, acquiring or holding commercial loans and providing other facilities as set forth herein, and not for the purpose of purchasing, acquiring or holding any other type of financial instrument. Each Lender agrees not to assert any claim in contravention of the foregoing.

## **12.10 Remittance of Payments and Collections.**

12.10.1 Remittances Generally. Payments by any Secured Party to Agent shall be made by the time and date provided herein, in immediately available funds. If no time for payment is specified or if payment is due on demand and request for payment is made by Agent by 1:00 p.m. on a Business Day, then payment shall be made by the Secured Party by 3:00 p.m. on such day, and if request is made after 1:00 p.m., then payment shall be made by 11:00 a.m. on the next Business Day. Payment by Agent to any Secured Party shall be made by wire transfer, in the type of funds received by Agent. Any such payment shall be subject to Agent's right of offset for any amounts due from such payee under the Loan Documents.

12.10.2 Recovery of Erroneous Payments. Without limitation of any other provision herein, if at any time Agent makes a payment hereunder in error to any Secured Party, whether or not in respect of an Obligation due and owing by Borrowers at such time, where such payment is a Rescindable Amount, then in any such event each Secured Party receiving a Rescindable Amount severally agrees to repay to Agent forthwith on demand the Rescindable Amount received by such Secured Party in immediately available funds in the currency so received, with interest thereon for each day from and including the date such Rescindable Amount is received by it to but excluding the date of repayment to Agent, at the greater of the Federal Funds Rate and a rate determined by Agent in accordance with banking industry rules on interbank compensation. Each Secured Party irrevocably waives any and all defenses, including any defense of discharge for value (under which a creditor might otherwise claim a right to retain funds mistakenly paid by a third party in respect of a debt owed by another) or similar defense to its obligation to return any Rescindable Amount. Agent shall inform each Secured Party promptly upon determining that any payment made to such Secured Party was comprised, in whole or in part, of a Rescindable Amount.

12.10.3 Distributions. If Agent determines that an amount received by it must be returned or paid to an Obligor or other Person pursuant to Applicable Law or otherwise, then Agent shall not be required to distribute such amount to any Secured Party. If Agent is required to return any amounts applied by it to Obligations held by a Secured Party, such Secured Party shall pay to Agent, **on demand**, its share of the amounts required to be returned.

**12.11 Individual Capacities.** As a Lender, Bank of America shall have the same rights and remedies under the Loan Documents as any other Lender, and the terms "Lenders," "Required Lenders" or any similar term shall include Bank of America in its capacity as a Lender. Agent, Lenders and their Affiliates may accept deposits from, lend money to, provide Bank Products to, act as financial or other advisor to, and generally engage in any kind of business with, Obligors and their Affiliates, as if they were not Agent or Lenders hereunder, without any duty to account therefor to any Secured Party. In their individual capacities, Agent, Lenders and their Affiliates may receive information regarding Obligors, their Affiliates and their Account Debtors (including information subject to confidentiality obligations), and shall have no obligation to provide such information to any Secured Party.

**12.12 Titles.** Each Lender, other than Bank of America, that is designated in connection with this credit facility as an “Arranger,” “Bookrunner” or “Agent” of any kind shall have no right or duty under any Loan Documents other than those applicable to all Lenders, and shall in no event have any fiduciary duty to any Secured Party.

**12.13 Certain ERISA Matters.**

12.13.1 Lender Representations. Each Lender represents and warrants, as of the date it became a Lender party hereto, and covenants, from the date it became a Lender party hereto to the date it ceases being a Lender party hereto, for the benefit of, Agent and not, for the avoidance of doubt, to or for the benefit of Obligors, that at least one of the following is and will be true: (a) Lender is not using “plan assets” (within the meaning of ERISA Section 3(42) or otherwise) of one or more Benefit Plans with respect to Lender’s entrance into, participation in, administration of and performance of the Loans, Letters of Credit, Commitments or Loan Documents; (b) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to Lender’s entrance into, participation in, administration of and performance of the Loans, Letters of Credit, Commitments and Loan Documents; (c)(i) Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (ii) such Qualified Professional Asset Manager made the investment decision on behalf of Lender to enter into, participate in, administer and perform the Loans, Letters of Credit, Commitments and Loan Documents, (iii) the entrance into, participation in, administration of and performance of the Loans, Letters of Credit, Commitments and Loan Documents satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14, and (iv) to the best knowledge of Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to Lender’s entrance into, participation in, administration of and performance of the Loans, Letters of Credit, Commitments and Loan Documents; or (d) such other representation, warranty and covenant as may be agreed in writing between Agent, in its discretion, and Lender.

12.13.2 Further Lender Representation. Unless **Section 12.13.1(a) or (d)** is true with respect to a Lender, such Lender further represents and warrants, as of the date it became a Lender hereunder, and covenants, from the date it became a Lender to the date it ceases to be a Lender hereunder, for the benefit of, Agent and not, for the avoidance of doubt, to or for the benefit of any Obligor, that Agent is not a fiduciary with respect to the assets of such Lender involved in its entrance into, participation in, administration of and performance of the Loans, Letters of Credit, Commitments and Loan Documents (including in connection with the reservation or exercise of any rights by Agent under any Loan Document).

**12.14 Bank Product Providers.** Each Secured Bank Product Provider, by delivery of a notice to Agent of a Bank Product, agrees to be bound by the Loan Documents, including **Sections 5.5, 12, 14.3.3 and 14.17**, and agrees to indemnify and hold harmless Agent Indemnitees, to the extent not reimbursed by Obligors, against all Claims that may be incurred by or asserted against any Agent Indemnitee in connection with such provider’s Secured Bank Product Obligations.

**12.15 No Third Party Beneficiaries.** This Section 12 is an agreement solely among Secured Parties and Agent, and shall survive Full Payment of the Obligations. This Section 12 does not confer any rights or benefits upon Obligor or any other Person. As between Obligor and Agent, any action that Agent may take under any Loan Documents or with respect to any Obligations shall be conclusively presumed to have been authorized and directed by Secured Parties.

**Section 13. BENEFIT OF AGREEMENT; ASSIGNMENTS.**

**13.1 Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of Obligor, Agent, Lenders, Secured Parties, and their respective successors and assigns, except that (a) no Obligor may assign or delegate its rights or obligations under any Loan Documents; and (b) any assignment by a Lender must be made in compliance with Section 13.3. Agent may treat the Person which made any Loan as the owner thereof for all purposes until such Person makes an assignment in accordance with Section 13.3. Any authorization or consent of a Lender shall be conclusive and binding on any subsequent transferee or assignee of such Lender.

**13.2 Participations.**

13.2.1 Permitted Participants; Effect. Subject to Section 13.3.3, any Lender may sell to a financial institution (“Participant”) a participating interest in the rights and obligations of such Lender under any Loan Documents; provided that no participation may be sold to a Defaulting Lender or one or more natural persons (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person). Despite any sale by a Lender of participating interests to a Participant, such Lender’s obligations under the Loan Documents shall remain unchanged, it shall remain solely responsible to the other parties hereto for performance of such obligations, it shall remain the holder of its Loans and Commitments for all purposes, all amounts payable by Borrowers shall be determined as if it had not sold such participating interests, and Borrowers and Agent shall continue to deal solely and directly with such Lender in connection with the Loan Documents. Each Lender shall be solely responsible for notifying its Participants of any matters under the Loan Documents, and Agent and the other Lenders shall not have any obligation or liability to any such Participant. Borrowers agree that each Participant shall be entitled to the benefits of Sections 3.7, 3.9 and 5.8 (subject to the requirements and limitations therein, including the requirements under Section 5.9 (it being understood that the documentation required under Section 5.9 shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 13.3; provided that such Participant (i) agrees to be subject to the provisions of Section 13.4 as if it were a Lender and had acquired its interest by assignment pursuant to Section 13.3; and (ii) shall not be entitled to receive any greater payment under Section 3.7 or 5.8, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrowers’ request and expense, to use reasonable efforts to cooperate with the Borrowers to effectuate the provisions of Section 13.4 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 11.4 as though it were a Lender; provided that such Participant agrees to be subject to Sections 5.5 and 12.5 as though it were a Lender.

13.2.2 Voting Rights. Each Lender shall retain the sole right to approve, without the consent of any Participant, any amendment, waiver or other modification of a Loan Document other than that which forgives principal, interest or fees, reduces the stated interest rate or fees payable with respect to any Loan or Commitment in which such Participant has an interest, postpones the Termination Date or any date fixed for any regularly scheduled payment of principal, interest or fees on such Loan or Commitment, or releases any Borrower, Guarantor or substantially all Collateral.

13.2.3 Participant Register. Each Lender that sells a participation shall, acting as a non-fiduciary agent of Borrowers (solely for tax purposes), maintain a register in which it enters the Participant's name, address and interest in Commitments, Loans (and stated interest) and LC Obligations (the "**Participant Register**"). Entries in the register shall be conclusive, absent manifest error, and such Lender shall treat each Person recorded in the register as the owner of the participation for all purposes, notwithstanding any notice to the contrary. No Lender shall have an obligation to disclose any information in such register except to the extent necessary to establish that a Participant's interest is in registered form under the Code.

13.2.4 Benefit of Setoff. Each Participant shall have a right of set-off in respect of its participating interest to the same extent as if such interest were owing directly to a Lender, and each Lender shall also retain the right of set-off with respect to any participating interests sold by it. By exercising any right of set-off, a Participant agrees to share with Lenders all amounts received through its set-off, in accordance with **Section 12.5** as if such Participant were a Lender.

### 13.3 Assignments.

13.3.1 Permitted Assignments. A Lender may assign to an Eligible Assignee any of its rights and obligations under the Loan Documents, as long as (a) each assignment is of a constant, and not a varying, percentage of the transferor Lender's rights and obligations under the Loan Documents and, in the case of a partial assignment, is in a minimum principal amount of \$5,000,000 (unless otherwise agreed by Agent in its discretion) and integral multiples of \$1,000,000 in excess of that amount; (b) except in the case of an assignment in whole of a Lender's rights and obligations, the aggregate amount of the Commitments retained by the transferor Lender is at least \$5,000,000 (unless otherwise agreed by Agent in its discretion); and (c) the parties to each such assignment shall execute and deliver an Assignment to Agent for acceptance and recording. Nothing herein shall limit the right of a Lender to pledge or assign any rights under the Loan Documents to secure obligations of such Lender, including a pledge or assignment to a Federal Reserve Bank; provided, that no such pledge or assignment shall release the Lender from its obligations hereunder nor substitute the pledgee or assignee for such Lender as a party hereto.

13.3.2 Effect; Effective Date. Upon delivery to Agent of a fully executed and completed Assignment accompanied by a processing fee of \$3,500 (unless otherwise agreed by Agent in its discretion), the assignment specified therein shall be effective as provided in the Assignment as long as it complies with this **Section 13.3**. From such effective date, the Eligible Assignee shall for all purposes be a Lender under the Loan Documents, and shall have all rights and obligations of a Lender thereunder. Upon consummation of an assignment, the transferor Lender, Agent and Borrowers shall make appropriate arrangements for issuance of replacement and/or new notes, if applicable. The transferee Lender shall comply with **Section 5.9** and deliver, upon request, an administrative questionnaire satisfactory to Agent.

13.3.3 Certain Assignees. No assignment or participation may be made to Parent, an Obligor, an Affiliate of an Obligor or Parent (including Bud Brigham and the Brigham Family), a Defaulting Lender or one or more natural persons (or a holding company, investment vehicle or trust for, or owned and operating for the primary benefit of, a natural person). Agent shall have no obligation to determine whether any assignment is permitted under the Loan Documents. Any assignment by a Defaulting Lender must be accompanied by satisfaction of its outstanding obligations under the Loan Documents in a manner satisfactory to Agent, including payment by the Defaulting Lender or Eligible Assignee of an amount sufficient upon distribution (through direct payment, purchases of participations or other methods acceptable to Agent in its discretion) to satisfy all funding and payment liabilities of the Defaulting Lender. If any assignment by a Defaulting Lender (by operation of law or otherwise) does not comply with the foregoing, the assignee shall be deemed a Defaulting Lender for all purposes until compliance occurs.

13.3.4 Register. Agent, acting as a non-fiduciary agent of Borrowers (solely for tax purposes), shall maintain (a) a copy (or electronic equivalent) of each Assignment and Acceptance delivered to it, and (b) a register for recordation of the names, addresses and Commitments of, and the Loans, interest and LC Obligations owing to, each Lender. Entries in the register shall be conclusive, absent manifest error, and Borrowers, Agent and Lenders shall treat each Person recorded in such register as a Lender for all purposes under the Loan Documents, notwithstanding any notice to the contrary. Agent may choose to show only one Borrower as the borrower in the register, without any effect on the liability of any Obligor with respect to the Obligations. The register shall be available for inspection by Borrowers or any Lender, from time to time upon reasonable notice.

**13.4 Replacement of Certain Lenders.** If a Lender (a) within the last 120 days failed to give its consent to any amendment, waiver or action for which consent of all Lenders was required and Required Lenders consented, (b) is a Defaulting Lender, or (c) within the last 180 days gave a notice under **Section 3.5** or requested payment or compensation under **Section 3.7** or **5.8** (and has not designated a different Lending Office pursuant to **Section 3.8**), then Agent or Borrower Agent may, upon 10 days' notice to such Lender, require it to assign its rights and obligations under the Loan Documents to Eligible Assignee(s), pursuant to appropriate Assignment(s), within 20 days after the notice. Agent is irrevocably appointed as attorney-in-fact to execute any such Assignment if the Lender fails to execute it. Such Lender shall be entitled to receive, in cash, concurrently with such assignment, all amounts owed to it under the Loan Documents through the date of assignment.

**Section 14. MISCELLANEOUS.**

**14.1 Consents, Amendments and Waivers**

14.1.1 Amendment. No Modification of a Loan Document shall be effective without the prior written agreement of Agent (with the consent of Required Lenders) and each Obligor party to such Loan Document; provided, that:

(a) without the prior written consent of Agent, no Modification shall alter any provision in a Loan Document that relates to any rights, duties or discretion of Agent;

(b) without the prior written consent of Issuing Bank, no Modification shall alter **Section 2.2** or any other provision in a Loan Document that relates to Letters of Credit or any rights, duties or discretion of Issuing Bank;

(c) without the prior written consent of each affected Lender, including a Defaulting Lender, no Modification shall (i) increase the Commitment of such Lender; (ii) reduce the amount of, or waive or delay payment of, any principal, interest or fees payable to such Lender (except as provided in **Section 4.2** and excluding any waiver of the Default Rate of interest); (iii) extend the Termination Date applicable to such Lender's Obligations; (iv) change **Section 5.5.2** or any other provision hereof in a manner that alters the ratable reduction of Commitments or the pro rata sharing of payments; or (v) amend this clause (c);

(d) without the prior written consent of all Lenders (except any Defaulting Lender), no Modification shall (i) alter this **Section 14.1.1**; (ii) amend the definition of (A) Pro Rata, (B) Required Lenders, or (C) Super Majority Lenders; (iii) subordinate, or have the effect of subordinating, the Obligations hereunder to any other Debt or other obligation; (iv) subordinate, or have the effect of subordinating, the Liens on the ABL Priority Collateral securing the Obligations to Liens securing any other Debt or other obligation; (v) release all or substantially all Collateral; (vi) except in connection with a merger, disposition or similar transaction expressly permitted hereby, release any Obligor from liability for any Obligations; or (vii) change any Loan Document provision requiring consent or action by all Lenders;

(e) without the prior written consent of the Super Majority Lenders, (i) increase the advance rates set forth in the definition of Accounts Formula Amount, Inventory Formula Amount or Hercules Formula Amount or add new categories of eligible assets included in the Borrowing Base or (ii) otherwise amend the definition of Borrowing Base, Accounts Formula Amount, Inventory Formula Amount or Hercules Formula Amount (or the defined terms therein) if the effect of such amendment is to increase borrowing availability; and

(f) if Real Estate secures any Obligations, no Modification of a Loan Document shall add, increase, renew or extend any credit line hereunder until the completion of flood diligence and documentation as required by Flood Laws or as otherwise satisfactory to all Lenders. Each Lender shall promptly notify Agent of the completion of its flood diligence.

14.1.2 Limitations. Notwithstanding anything in any Loan Document to the contrary, Agent may make or adopt Conforming Changes from time to time in consultation with Borrower Agent and any amendment or notice implementing such changes will become effective without further action or consent of any other party; provided, that Agent shall post or otherwise provide same to Borrowers and Lenders reasonably promptly after it becomes effective. Only the consent of the parties to any agreement relating to fees or a Bank Product shall be required for Modification of such agreement, and no Bank Product provider (in such capacity) shall have any right to consent to Modification of any Loan Document. Any waiver or consent granted by Agent, Issuing Bank or Lenders hereunder shall be effective only if in writing and only for the matter specified. Each Lender irrevocably authorizes the Agent of its behalf, and without further consent of any Lender (but with the consent of Borrowers and the Agent), to amend and restate this Agreement and other Loan Documents if, upon giving effect to such amendment and restatement, such Lender shall no longer be a party to this Agreement (as so amended and restated), the Commitments of such Lender shall have been terminated, such Lender shall have no other commitment or other obligation hereunder and shall have be paid in full all principal, interest and other amounts owing to it or accrued for its account under this Agreement and the other Loan Documents.

14.1.3 Corrections. Without action or consent by any other party to this Agreement, (a) Agent and Borrower Agent may amend a Loan Document to cure an ambiguity, omission, mistake, typographical error, or other defect in any provision, schedule or exhibit thereof; and (b) Agent may revise **Schedule 1.1** to reflect changes in Commitments from time to time.

**14.2 Indemnity. EACH OBLIGOR SHALL INDEMNIFY AND HOLD HARMLESS THE INDEMNITEES AGAINST ANY CLAIMS THAT MAY BE INCURRED BY OR ASSERTED AGAINST ANY INDEMNITEE, INCLUDING CLAIMS ASSERTED BY ANY OBLIGOR OR OTHER PERSON OR ARISING FROM THE NEGLIGENCE OF AN INDEMNITEE.** Notwithstanding the foregoing, in no event shall any party to a Loan Document have any obligation thereunder to indemnify or hold harmless an Indemnitee with respect to a Claim that is determined in a final, non-appealable judgment by a court of competent jurisdiction to result from the gross negligence or willful misconduct of such Indemnitee. The Obligors' obligations under this **Section 14.2** shall be subject to the Legal Expenses Limitation. This **Section 14.2** shall not apply to Taxes, except any Taxes that represent liabilities, obligations, losses, damages, penalties, claims, demands, actions, prepayments, suits, costs, expenses and disbursements arising from any non-Tax claims.

### **14.3 Notices and Communications**

14.3.1 Notice Address. Subject to **Section 14.3.2**, all Communications by or to a party hereto shall be in writing and shall be given to any Obligor, at Borrower Agent's address shown on the signature pages hereof, and to any other Person at its address shown on the signature pages hereof (or, in the case of a Person who becomes a Lender after the Closing Date, at the address shown on its Assignment), or at such other address as a party may hereafter specify by notice in accordance with this **Section 14.3**. In addition, a Communication from Agent to Lenders or Obligors may, to the extent permitted by law, be delivered electronically (i) by transmitting the Communication to the electronic address specified to Agent in writing by the applicable Lender or Borrower Agent from time to time, or (ii) by posting the Communication on a website and sending the Lender or Borrower Agent notice (electronically or otherwise) that the Communication has been posted and providing instructions (at such time or prior to delivery of such Communication) for viewing it. Each Communication shall be effective only (a) if given by facsimile transmission, when transmitted to the applicable facsimile number, if confirmation of receipt is received; (b) if given by mail, three Business Days after deposit in the U.S. mail, with first-class postage pre-paid, addressed to the applicable address; (c) if given by personal delivery, when duly delivered to the notice address with receipt acknowledged; or (d) if provided electronically by Agent to Lenders or Obligors, when the Communication (or notice advising of its posting to a website) is sent to the Lender's or Borrower Agent's electronic address. Notwithstanding the foregoing, no notice to Agent pursuant to **Section 2.1.4, 2.2, 3.1.2** or **4.1.1** shall be effective until actually received by the individual to whose attention at Agent such notice is required to be sent. Any written Communication not sent in conformity with the foregoing provisions shall nevertheless be effective on the date actually received by the noticed party. Any notice received by Borrower Agent shall be deemed received by all Obligors.

14.3.2 Communications. Electronic and telephonic Communications (including e-mail, messaging, voice mail and websites) may be used only in a manner acceptable to Agent and Borrower Agent. Agent makes no assurance as to the privacy or security of electronic or telephonic Communications. E-mail and voice mail shall not be effective notices under the Loan Documents except as expressly provided herein.

14.3.3 Platform. Borrower Materials shall be delivered pursuant to procedures approved by Agent, including electronic delivery (if requested by Agent) to an electronic system maintained by it (“Platform”). Borrower Agent shall notify Agent of each posting of Borrower Materials on the Platform and the materials shall be deemed received by Agent only upon its receipt of such notice. Communications and other information relating to this credit facility may be made available to Secured Parties on the Platform. The Platform is provided “as is” and “as available.” Agent does not warrant the accuracy or completeness of any information on the Platform nor the adequacy or functioning of the Platform, and expressly disclaims liability for any errors or omissions in the Borrower Materials or any issues involving the Platform. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY AGENT WITH RESPECT TO BORROWER MATERIALS OR THE PLATFORM. No Agent Indemnitee shall have any liability to Obligors, Secured Parties or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) relating to use by any Person of the Platform, including any unintended recipient, nor for delivery of Borrower Materials and other information via the Platform, internet, e-mail, or any other electronic platform or messaging system except to the extent that is determined in a final, non-appealable judgment by a court of competent jurisdiction to result from the gross negligence or willful misconduct of such Agent Indemnitee. Agent may, but is not obligated to, make Communications available to Obligors and Lenders by posting them on IntraLinks™, DebtDomain, SyndTrak, ClearPar or other electronic platform.

14.3.4 Public Information. Obligors and Secured Parties acknowledge that “public” information may not be segregated from material non-public information on the Platform. Secured Parties acknowledge that Borrower Materials may include Obligors’ material non-public information, which should not be made available to personnel who do not wish to receive such information or may be engaged in trading, investment or other market-related activities with respect to an Obligor’s securities.

14.3.5 Non-Conforming Communications. Agent and Lenders may rely on any Communication purportedly given by or on behalf of an Obligor even if it is not made in a manner specified herein, incomplete or not confirmed, or if the terms thereof, as understood by the recipient, vary from an earlier Communication or later confirmation. Each Obligor shall indemnify and hold harmless each Indemnitee from any liabilities, losses, costs and expenses arising from any Communication purportedly given by or on behalf of any Obligor, except to the extent that such liabilities, losses, costs or expenses are determined in a final, non-appealable judgment by a court of competent jurisdiction to result from the gross negligence or willful misconduct of such Indemnitee.

14.3.6 Reliance on Communications. No Secured Party shall be responsible for or have any duty to ascertain or inquire into the sufficiency, validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document (including, for the avoidance of doubt, in connection with an Electronic Signature transmitted by telecopy, emailed .pdf or other electronic means). Secured Parties may rely on, and shall incur no liability under or in respect of any Loan Document by acting on, any Communication (which may be a fax, electronic message, internet or intranet website posting, or other distribution, or signed by an Electronic Signature) or any statement made to it orally or by telephone and believed by it to be genuine and signed or sent or otherwise authenticated (whether or not such Person in fact meets the requirements set forth in the Loan Documents for being the maker thereof). Agent shall be entitled to rely on the e-mail addresses and telephone numbers provided by Obligors, Lenders and their authorized representatives. Each Obligor hereby waives (a) any argument, defense or right to contest the legal effect, validity or enforceability of any Loan Document or other Communication based solely on the lack of a paper original copy thereof, and (b) waives any claim against any Indemnitee for liabilities arising from its reliance on or use of Electronic Signatures, including liabilities relating to an Obligor's failure to use a security measure in connection with execution, delivery or transmission of an Electronic Signature.

**14.4 Performance of Obligors' Obligations**. Agent may, in its discretion at any time and from time to time, at Obligors' expense, pay any amount or do any act required of an Obligor under any Loan Documents (to the extent such Obligor has failed to do so on or prior to the date required for such performance) to (a) after the occurrence and during the continuation of an Event of Default, enforce any Loan Documents or collect any Obligations; (b) protect, insure, maintain or, after the occurrence and during the continuation of an Event of Default, realize upon any Collateral; or (c) defend or maintain the validity or priority of Agent's Liens in any Collateral, including any payment of a judgment, insurance premium, warehouse charge, finishing or processing charge, or landlord claim, or any discharge of a Lien. All documented out-of-pocket payments, costs and expenses (including Extraordinary Expenses) of Agent under this Section shall be reimbursed to Agent by Obligors, within one Business Day of written demand therefor, with interest from the date of Agent's demand therefor until paid in full, at the rate applicable to Base Rate Loans. Any payment made or action taken by Agent under this Section shall be without prejudice to any right to assert an Event of Default or to exercise any other rights or remedies under the Loan Documents.

**14.5 Credit Inquiries.** Agent and Lenders may (but shall have no obligation) to respond to usual and customary credit inquiries from third parties concerning any Obligor or Subsidiary.

**14.6 Severability.** Wherever possible, each provision of the Loan Documents shall be interpreted in such manner as to be valid under Applicable Law. If any provision is found to be invalid under Applicable Law, it shall be ineffective only to the extent of such invalidity and the remaining provisions of the Loan Documents shall remain in full force and effect.

**14.7 Cumulative Effect; Conflict of Terms.** The provisions of the Loan Documents are cumulative. The parties acknowledge that the Loan Documents may use several limitations or measurements to regulate similar matters, and they agree that these are cumulative and that each must be performed as provided. Except as otherwise provided in another Loan Document (by specific reference to the applicable provision of this Agreement), if any provision contained herein is in direct conflict with any provision in another Loan Document, the provision herein shall govern and control.

**14.8 Execution; Electronic Records.** Any Loan Document, including any required to be in writing, may (if agreed by Agent) be in the form of an Electronic Record and may be executed using Electronic Signatures. An Electronic Signature on or associated with any Communication shall be valid and binding on each Obligor and other party thereto to the same extent as a manual, original signature, and any Communication entered into by Electronic Signature shall constitute the legal, valid and binding obligation of each party, enforceable to the same extent as if a manually executed original signature were delivered. A Communication may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Communication. The parties may use or accept manually signed paper Communications converted into electronic form (such as scanned into pdf), or electronically signed Communications converted into other formats, for transmission, delivery and/or retention. Agent and Lenders may, at their option, create one or more copies of a Communication in the form of an imaged Electronic Record ("Electronic Copy"), which shall be deemed created in the ordinary course of the Person's business, and may destroy the original paper document. Any Communication in the form or format of an Electronic Record, including an Electronic Copy, shall be considered an original for all purposes, and shall have the same legal effect, validity and enforceability as a paper record. Notwithstanding anything herein, (a) Agent is under no obligation to accept an Electronic Signature in any form unless expressly agreed by it pursuant to procedures approved by it; (b) each Secured Party shall be entitled to rely on any Electronic Signature purportedly given by or on behalf of an Obligor without further verification and regardless of the appearance or form of such Electronic Signature; and (c) upon request by Agent, any Loan Document using an Electronic Signature shall be promptly followed by a manually executed original counterpart.

**14.9 Entire Agreement.** This Agreement shall be effective when executed by Agent and when Agent has received counterparts hereof that, taken together, bear the signature of each other party hereto. Time is of the essence with respect to all Loan Documents and Obligations. The Loan Documents constitute the entire agreement, and supersede all prior understandings and agreements, among the parties relating to the subject matter thereof.

**14.10 Relationship with Lenders.** The obligations of each Lender hereunder are several, and no Lender shall be responsible for the obligations or Commitments of any other Lender. Amounts payable hereunder to each Lender shall be a separate and independent debt. It shall not be necessary for Agent or any other Lender to be joined as an additional party in any proceeding for such purposes. Nothing in this Agreement and no action of Agent, Lenders or any other Secured Party pursuant to the Loan Documents or otherwise shall be deemed to constitute Agent and any Secured Party to be a partnership, joint venture or similar arrangement, nor to constitute control of any Obligor.

**14.11 No Advisory or Fiduciary Responsibility.** In connection with all aspects of each transaction contemplated by any Loan Document, Obligors acknowledge and agree that (a)(i) this credit facility and any arranging or other services by Agent, any Lender, any of their Affiliates or any arranger are arm's-length commercial transactions between Obligors and their Affiliates, on one hand, and Agent, any Lender, any of their Affiliates or any arranger, on the other hand; (ii) Obligors have consulted their own legal, accounting, regulatory, tax and other advisors to the extent they have deemed appropriate; and (iii) Obligors are capable of evaluating, and understand and accept, the terms, risks and conditions of the transactions contemplated by the Loan Documents; (b) each of Agent, Lenders, their Affiliates and any arranger is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for Obligors, their Affiliates or any other Person, and has no obligation with respect to the transactions contemplated by the Loan Documents except as expressly set forth therein; and (c) Agent, Lenders, their Affiliates and any arranger may be engaged in a broad range of transactions that involve interests that differ from those of Obligors and their Affiliates, and have no obligation to disclose any of such interests to Obligors or their Affiliates. To the fullest extent permitted by Applicable Law, each Obligor hereby waives and releases any claims that it may have against Agent, Lenders, their Affiliates and any arranger with respect to any breach of agency or fiduciary duty in connection with any transaction contemplated by a Loan Document.

**14.12 Confidentiality.** Each of Agent, Lenders and Issuing Bank shall maintain the confidentiality of all Information (as defined below), except that Information may be disclosed (a) to its Affiliates, and to its and their partners, directors, officers, employees, agents, auditors, advisors, attorneys, consultants, service providers and other representatives (provided they are informed of the confidential nature of the Information and instructed to keep it confidential); (b) to the extent requested by any governmental, regulatory or self-regulatory authority purporting to have jurisdiction over it or its Affiliates; (c) to the extent required by Applicable Law or by any subpoena or other legal process; (d) to any other party hereto; (e) in connection with any action or proceeding relating to any Loan Documents or Obligations; (f) subject to an agreement containing provisions substantially the same as this Section, to any Transferee or any actual or prospective party (or its advisors) to any Bank Product or to any swap, derivative or other transaction under which payments are to be made by reference to an Obligor or Obligor's obligations; (g) to the extent such Information is (i) publicly available other than as a result of a breach of this Section, (ii) available to Agent, any Lender, Issuing Bank or any of their Affiliates on a nonconfidential basis from a source other than Borrowers, or (iii) independently discovered or developed by a party hereto without utilizing any Information or violating this Section; (h) on a confidential basis to a provider of a Platform; or (i) with the consent of Borrower Agent. Agent and Lenders may disclose information regarding this Agreement and the credit facility hereunder to market data collectors, similar service providers to the lending industry, and service providers to Agent and Lenders in connection with the Loan Documents and Commitments. As used herein, "Information" means information received from an Obligor or Subsidiary relating to it or its business that is identified as confidential when delivered. A Person required to maintain confidentiality of Information pursuant to this Section shall be deemed to have complied if it exercises a degree of care similar to that accorded its own confidential information. Each of Agent, Lenders and Issuing Bank acknowledges that (i) Information may include material non-public information; (ii) it has developed compliance procedures regarding the use of such information; and (iii) it will handle the material non-public information in accordance with Applicable Law.

14.13 [Reserved].

14.14 GOVERNING LAW. UNLESS EXPRESSLY PROVIDED IN ANY LOAN DOCUMENT, THIS AGREEMENT, THE OTHER LOAN DOCUMENTS AND ALL CLAIMS SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ANY CONFLICT OF LAW PRINCIPLES EXCEPT FEDERAL LAWS RELATING TO NATIONAL BANKS.

14.15 Consent to Forum

14.15.1 Forum. EACH PARTY HERETO CONSENTS TO THE EXCLUSIVE JURISDICTION OF ANY STATE COURT SITTING IN NEW YORK COUNTY, NEW YORK, OR THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, IN ANY DISPUTE, ACTION, LITIGATION OR OTHER PROCEEDING RELATING IN ANY WAY TO ANY LOAN DOCUMENTS, AND AGREES THAT ANY DISPUTE, ACTION, LITIGATION OR OTHER PROCEEDING SHALL BE BROUGHT BY IT SOLELY IN ANY SUCH COURT. EACH OBLIGOR IRREVOCABLY AND UNCONDITIONALLY WAIVES ALL CLAIMS, OBJECTIONS AND DEFENSES THAT IT MAY HAVE REGARDING ANY SUCH COURT'S PERSONAL OR SUBJECT MATTER JURISDICTION, VENUE OR INCONVENIENT FORUM. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 14.3.1. A final judgment in any proceeding of any such court shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or any other manner provided by Applicable Law.

14.15.2 Other Jurisdictions. Nothing herein shall limit the right of Agent to bring proceedings against any Obligor in any other court Agent deems necessary or appropriate in order to realize on the Collateral or other security for the Obligations or enforce any judgment, nor limit the right of any party to serve process in any other manner permitted by Applicable Law. Nothing in this Agreement shall be deemed to preclude enforcement by Agent of any judgment or order obtained in any forum or jurisdiction.

**14.16 Waivers.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH OBLIGOR WAIVES (A) PRESENTMENT, DEMAND, PROTEST, NOTICE OF PRESENTMENT, DEFAULT, NON-PAYMENT, MATURITY, RELEASE, COMPROMISE, SETTLEMENT, EXTENSION OR RENEWAL OF ANY COMMERCIAL PAPER, ACCOUNTS, DOCUMENTS, INSTRUMENTS, CHATTEL PAPER AND GUARANTIES AT ANY TIME HELD BY AGENT ON WHICH AN OBLIGOR MAY IN ANY WAY BE LIABLE, AND HEREBY RATIFIES ANYTHING AGENT MAY DO IN THIS REGARD; (B) NOTICE PRIOR TO TAKING POSSESSION OR CONTROL OF ANY COLLATERAL; (C) ANY BOND OR SECURITY THAT MIGHT BE REQUIRED BY A COURT PRIOR TO ALLOWING AGENT TO EXERCISE ANY RIGHTS OR REMEDIES; (D) THE BENEFIT OF ALL VALUATION, APPRAISEMENT AND EXEMPTION LAWS; AND (E) NOTICE OF ACCEPTANCE HEREOF. EACH OBLIGOR ACKNOWLEDGES THAT THE FOREGOING WAIVERS ARE A MATERIAL INDUCEMENT TO AGENT, ISSUING BANK AND LENDERS ENTERING INTO THIS AGREEMENT AND THAT THEY ARE RELYING UPON THE FOREGOING IN THEIR DEALINGS WITH OBLIGORS. EACH PARTY HEREBY (i) IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN; (ii) IRREVOCABLY WAIVES, TO THE MAXIMUM EXTENT NOT PROHIBITED BY LAW, ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER ANY SPECIAL, INDIRECT, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES IN ANY WAY RELATING TO THE LOAN DOCUMENTS OR THE TRANSACTIONS RELATING HERETO (BUT WITHOUT LIMITATION TO THE INDEMNITEES ABILITY TO REQUEST INDEMNIFICATION FOR SUCH DAMAGES INCURRED BY INDEMNITEES AS PART OF A THIRD PARTY CLAIM) (iii) CERTIFIES THAT NO PARTY HERETO NOR ANY REPRESENTATIVE OR AGENT OF COUNSEL FOR ANY PARTY HERETO HAS REPRESENTED, EXPRESSLY OR OTHERWISE, OR IMPLIED THAT SUCH PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVERS, AND (iv) ACKNOWLEDGES THAT IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT, THE LOAN DOCUMENTS AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS CONTAINED IN THIS SECTION 14.16. Each party hereto has reviewed the foregoing waivers with its legal counsel and has knowingly and voluntarily waived its jury trial and other rights following consultation with legal counsel. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

**14.17 Acknowledgement Regarding Supported QFCs.** To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any Swap or any other agreement or instrument that is a QFC (such support, "QFC Credit Support", and each such QFC, a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

14.17.1 **Covered Party.** If a Covered Entity that is party to a Supported QFC (each, a “Covered Party”) becomes subject to a proceeding under a U.S. Special Resolution Regime, transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regimes if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. If a Covered Party or BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regimes if the Supported QFC and Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

14.17.2 **Definitions.** As used in this Section, (a) “BHC Act Affiliate” means an “affiliate,” as defined in and interpreted in accordance with 12 U.S.C. §1841(k); (b) “Default Right” has the meaning assigned in and interpreted in accordance with 12 C.F.R. §§252.81, 47.2 or 382.1, as applicable; and (c) “QFC” means a “qualified financial contract,” as defined in and interpreted in accordance with 12 U.S.C. §5390(c)(8)(D).

**14.18 Acknowledgement and Consent to Bail-In of Affected Financial Institutions.** Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among the parties, each party hereto (including each Secured Party) acknowledges that, with respect to any Secured Party that is an Affected Financial Institution, any liability of such Secured Party arising under a Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of the applicable Resolution Authority, and each party hereto agrees and consents to, and acknowledges and agrees to be bound by, (a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liability which may be payable to it by such Secured Party; and (b) the effects of any Bail-in Action on any such liability, including (i) a reduction in full or in part or cancellation of any such liability; (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under any Loan Document; or (iii) the variation of the terms of such liability in connection with the exercise of any Write-Down and Conversion Powers.

**14.19 Patriot Act Notice.** Agent and Lenders hereby notify Obligors that pursuant to the Patriot Act, Agent and Lenders are required to obtain, verify and record information that identifies each Obligor, including its legal name, address, tax ID number and other information that will allow Agent and Lenders to identify it in accordance with the Patriot Act. Agent and Lenders will also require information regarding any personal guarantor and may require information regarding Obligors’ management and owners, such as legal name, address, social security number and date of birth. Obligors shall, promptly upon request, provide all documentation and other information as Agent, Issuing Bank or any Lender may request from time to time for purposes of complying with any “know your customer,” anti-money laundering or other requirements of Applicable Law, including the Patriot Act and Beneficial Ownership Regulation.

**14.20 Intercreditor Agreement.**

14.20.1 Acknowledgment. Each of the Lenders hereby acknowledges that it has received and reviewed the Intercreditor Agreement and agrees to be bound by the terms thereof as if such Lender was a signatory thereto. Each Lender (and each Person that agrees to become a Lender pursuant to **Section 13**) hereby authorizes and directs Agent to enter into the Intercreditor Agreement on behalf of such Lender and agrees that Agent, in its capacity thereunder, may take such actions on its behalf as is contemplated by the terms of the Intercreditor Agreement.

14.20.2 General. Notwithstanding anything to the contrary herein, Agent's Liens and the exercise of any right or remedy by Agent under this Agreement or any other Loan Document against the Collateral are subject to the provisions of the Intercreditor Agreement. In the event of a conflict between this Agreement or any other Loan Document and the Intercreditor Agreement, the Intercreditor Agreement will control.

**14.21 NO ORAL AGREEMENT. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS BETWEEN THE PARTIES. THERE ARE NO UNWRITTEN AGREEMENTS BETWEEN THE PARTIES.**

[Remainder of Page Intentionally Left Blank; Signatures Begin on Following Page]



### Atlas Energy Solutions Inc. Announces Pricing of Upsized \$390 Million Private Placement of 0.50% Convertible Senior Notes Due 2031

**Austin, Texas** – April 7, 2026 – Atlas Energy Solutions Inc. (NYSE: AESI) (together with its subsidiaries, “Atlas” or the “Company”) today announced that it has priced its previously announced private offering to persons reasonably believed to be qualified institutional buyers pursuant to Rule 144A under the Securities Act of 1933, as amended (the “Securities Act”) of \$390 million aggregate principal amount of 0.50% Convertible Senior Notes due 2031 (the “notes”). The size of the offering was increased from the previously announced \$300 million to \$390 million. The issuance and sale of the notes are scheduled to settle on April 9, 2026, subject to customary closing conditions. The Company also granted the initial purchasers of the notes an option to purchase, for settlement within a period of 13 calendar days from, and including, the date the notes are first issued, up to an additional \$60 million aggregate principal amount of notes.

The Company estimates that the net proceeds from the offering will be approximately \$377 million (or approximately \$435 million if the initial purchasers fully exercise their option to purchase additional notes), after deducting the initial purchasers’ discounts and commissions and the Company’s estimated offering expenses. The Company intends to use approximately \$43 million (or approximately \$50 million if the initial purchasers fully exercise their option to purchase additional notes) of the net proceeds to fund the cost of entering into the capped call transactions described below. In addition, the Company intends to use approximately \$66 million of the net proceeds from the offering to repay outstanding advances under its Master Lease Agreement and Interim Funding Agreement, each with Stonebriar Commercial Finance LLC, including a \$5 million termination fee in connection therewith and approximately \$75 million of the net proceeds from the offering to repay outstanding borrowings under its 2023 ABL Credit Facility. The Company expects to use the remainder of the net proceeds for general corporate purposes, including to purchase a portion of the power generation equipment under the Global Framework Agreement with Caterpillar Inc., along with balance of plant and supporting equipment.

The notes will be senior, unsecured obligations of the Company and will accrue interest at a rate of 0.50% per annum, payable semi-annually in arrears on April 15 and October 15 of each year, beginning on October 15, 2026. The notes will not be guaranteed by any subsidiary of the Company, and the Company’s subsidiaries will have no obligations under the notes. The notes will mature on April 15, 2031, unless earlier converted, redeemed or repurchased. Before January 15, 2031, noteholders will have the right to convert their notes only in certain circumstances and during specified periods. From and after January 15, 2031, noteholders may convert their notes at any time at their election until the close of business on the second scheduled trading day immediately before the maturity date. The Company will settle conversions of notes by paying or delivering, as the case may be, cash, shares of the Company’s Common Stock, par value \$0.01 per share (“Common Stock”) or a combination of cash and the Company’s Common Stock, at its election.

The initial conversion rate is 68.9275 shares of Common Stock per \$1,000 principal amount of notes, which represents an initial conversion price of approximately \$14.51 per share of Common Stock and a premium of approximately 30% over the last reported sale price of \$11.16 per share of the Company’s Common Stock on the New York Stock Exchange on April 6, 2026. The conversion rate and conversion price will be subject to adjustment upon the occurrence of certain events.

The notes will be redeemable, in whole or in part (subject to certain limitations), for cash at the Company’s option at any time, and from time to time, on or after April 20, 2029 and before the 41<sup>st</sup> scheduled trading day immediately before the maturity date, but only if the last reported sale price per share of the Company’s Common Stock equals or exceeds 130% of the conversion price then in effect for a specified period of time and certain other conditions are satisfied. The redemption price will be equal to the principal amount of the notes to be redeemed, plus accrued and unpaid interest to, but excluding, the redemption date.

If certain corporate events that constitute a “fundamental change” occur, then, subject to certain conditions and exceptions, noteholders may require the Company to repurchase their notes for cash. The repurchase price will be equal to the principal amount of the notes to be repurchased, plus accrued and unpaid interest to, but excluding, the applicable repurchase date.

In connection with the pricing of the notes, the Company has entered into privately negotiated capped call transactions with an affiliate of one of the initial purchasers and certain other financial institutions (the “option counterparties”). The capped call transactions initially cover, subject to anti-dilution adjustments substantially similar to those applicable to the notes, the number of shares of the Company’s Common Stock initially underlying the notes. If the initial purchasers exercise their option to purchase additional notes, then the Company expects to enter into additional capped call transactions with the option counterparties, and will use a portion of the additional net proceeds to fund the cost of such additional capped call transactions (and the remainder for the same purposes as described above).

The capped call transactions are expected generally to reduce the potential dilution to the Company’s Common Stock upon any conversion of the notes and/or offset any potential cash payments the Company is required to make in excess of the principal amount of converted notes, as the case may be, in the event that the market price per share of the Company’s Common Stock, as measured under the terms of the capped call transactions, is greater than the strike price of the capped call transactions, which initially corresponds to the conversion price of the notes and is subject to anti-dilution adjustments substantially similar to those applicable to the conversion rate of the notes. If, however, the market price per share of the Company’s Common Stock, as measured under the terms of the capped call transactions, exceeds the cap price of the capped call transactions, there would nevertheless be dilution and/or there would not be an offset of such potential cash payments, in each case, to the extent that such market price exceeds such cap price. The cap price of the capped call transactions will initially be \$22.32 per share, representing a premium of 100% over the last reported sale price of \$11.16 per share of the Company’s Common Stock on the New York Stock Exchange on April 6, 2026.

In connection with establishing their initial hedges of the capped call transactions, the option counterparties or their respective affiliates expect to purchase shares of the Company’s Common Stock and/or enter into various derivative transactions with respect to the Company’s Common Stock concurrently with, or shortly after, the pricing of the notes. This activity could increase (or reduce the size of any decrease in) the market price of the Company’s Common Stock or the notes at that time.

In addition, the option counterparties and/or their respective affiliates may modify their hedge positions by entering into or unwinding various derivatives with respect to the Company’s Common Stock and/or purchasing or selling the Company’s Common Stock or other securities of the Company in secondary market transactions following the pricing of the notes and prior to the maturity of the notes (and are likely to do so during any observation period related to a conversion of notes or following certain repurchases or redemptions of the notes). This activity could cause or avoid an increase or a decrease in the market price of the Company’s Common Stock or the notes, which could affect the ability of noteholders to convert the notes and, to the extent the activity occurs following a conversion or during any observation period related to a conversion of notes, it could affect the number of shares of the Company’s Common Stock, if any, amount and value of the consideration that noteholders will receive upon conversion of the notes.

The offer and sale of the notes and any shares of the Company's Common Stock issuable upon conversion of the notes have not been, and will not be, registered under the Securities Act or any other securities laws. As a result, the notes and any such shares of the Company's Common Stock issuable upon conversion of the notes may not be offered or sold except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act and other applicable securities laws. Accordingly, the notes are being offered only to persons reasonably believed to be qualified institutional buyers in compliance with Rule 144A under the Securities Act.

This communication shall not constitute an offer to sell, or the solicitation of an offer to buy, the securities described herein, nor shall there be any sale of these securities in any state or jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state or jurisdiction.

#### **About Atlas Energy Solutions Inc.**

Atlas Energy Solutions Inc. (NYSE: AESI) is a leading solutions provider to the energy industry. Atlas's portfolio of offerings includes oilfield logistics, distributed power systems, and the largest proppant supply network in the Permian Basin. With a focus on leveraging technology, automation, and remote operations to enhance efficiencies, Atlas is centered on a core mission of improving human access to the hydrocarbons that power our lives and, by doing so, maximizing value creation for our shareholders.

#### **Cautionary Statement Regarding Forward-Looking Information**

This press release contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Statements that are predictive or prospective in nature, that depend upon or refer to future events or conditions or that include the words "may," "assume," "forecast," "position," "strategy," "potential," "continue," "could," "will," "plan," "project," "budget," "predict," "pursue," "target," "seek," "objective," "believe," "expect," "anticipate," "intend," "estimate" and other expressions that are predictions of or indicate future events and trends and that do not relate to historical matters identify forward-looking statements. Examples of forward-looking statements include, but are not limited to statements regarding: the anticipated terms of the notes being offered, the completion, timing and size of the proposed offering, the intended use of proceeds and the anticipated terms of, and the effects of entering into, the capped call transactions described above.

Although forward-looking statements reflect our good faith beliefs at the time they are made, we caution you that these forward-looking statements are subject to a number of risks and uncertainties, most of which are difficult to predict and many of which are beyond our control. These risks include but are not limited to: uncertainties as to whether our business strategy will achieve its anticipated benefits and projected results within the expected time period or at all; our ability to participate in and execute on opportunities in the private grid power market; the continued growth of demand in the private grid power market; changes in local, state and federal regulations that may impact the private grid power market; unforeseen or unknown liabilities, future capital expenditures and potential litigation; unexpected future capital expenditures; commodity price volatility, including volatility stemming from the ongoing armed conflicts between Russia and Ukraine, Israel and Hamas, and the United States and Israel and Iran; increasing hostilities and instability in the Middle East; higher than expected costs to operate our proppant production and processing facilities or the Dune Express; the volume of proppant we are able to sell and our ability to enter into supply contracts for our proppant on acceptable terms; the prices we are able to charge, and the margins we are able to realize, from our sales of proppant, logistics services, or mobile power generation; the demand for and price of proppant and power generation, particularly in the Permian Basin; the domestic and foreign supply of and demand for oil and natural gas; the effects of actions by, or disputes among or between, members of OPEC+ with respect to production levels or other matters related to the prices of oil and natural gas; customer concentration, the potential for future consolidation amongst current or potential customers and the possibility that customers may not continue to outsource their power system needs, which could affect demand for our products and services, especially in the power generation industry; inability of our customers to take delivery; any planned or future expansion projects or capital expenditures; inaccuracies in estimates of volumes and qualities of our frac sand reserves; changes in tariffs, trade barriers, price and exchange controls and other regulatory requirements, including such changes that may be implemented by U.S. and foreign governments; volatility in political, legal and regulatory environments; and other factors discussed or referenced in our filings made from time to time with the U.S. Securities and Exchange Commission (“SEC”), including those discussed under the heading “Risk Factors” in our Annual Report on Form 10-K, filed with the SEC on February 24, 2026 and any subsequently filed Quarterly Reports on Form 10-Q and Current Reports on Form 8-K. Readers are cautioned not to place undue reliance on forward-looking statements, which speak only as of the date hereof. Factors or events that could cause our actual results to differ may emerge from time to time, and it is not possible for us to predict all of them. We undertake no obligation to publicly update or revise any forward-looking statement, whether as a result of new information, future developments or otherwise, except as may be required by law.

**Investor Contact**

Kyle Turlington  
5918 W Courtyard Drive, Suite #500  
Austin, Texas 78730  
United States  
T: 512-220-1200  
IR@atlas.energy