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: August 7, 2012
(Date of earliest event reported)

Hornbeck Offshore Services, Inc.

(Exact Name of Registrant as Specified in Its Charter)

Delaware	**001-32108**	**72-1375844**
(State or other jurisdiction of incorporation or organization)	**(Commission File Number)**	**(I.R.S. Employer Identification Number)**

103 Northpark Boulevard, Suite 300 **Covington, LA**	**70433**
(Address of Principal Executive Offices)	**(Zip Code)**

(985) 727-2000
(Registrant's Telephone Number, Including Area Code)

N/A
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 1.01 – Entry into a Material Definitive Agreement

On August 7, 2012, Hornbeck Offshore Services, Inc. and its significant domestic subsidiaries executed a Purchase Agreement with Barclays Capital Inc., J.P. Morgan Securities LLC and Wells Fargo Securities, LLC, as representatives of the initial purchasers, collectively referred to herein as the Initial Purchasers, under which we agreed to issue $260.0 million aggregate principal amount of our 1.500% Convertible Senior Notes due 2019, or the notes, plus up to an additional $40.0 million of notes if the initial purchasers exercised their purchase option. On August 8, 2012, the Initial Purchasers exercised this option in full to purchase additional notes. We issued $300.0 million aggregate principal amount of notes to the Initial Purchasers on August 13, 2012. The description of the Purchase Agreement in this report is a summary only, is not necessarily complete, and is qualified by the full text of the Purchase Agreement filed herewith as Exhibit 10.1 and incorporated herein by reference.

The Notes and the Indenture.

The notes are governed by an Indenture dated as of August 13, 2012 between Wells Fargo Bank, National Association, as Trustee, Hornbeck Offshore Services, Inc. and our significant domestic subsidiaries, which are the same subsidiaries that guarantee our other outstanding senior notes. The description of the notes and indenture in this report is a summary only and is qualified by the full text of the indenture filed herewith as Exhibit 4.1 and incorporated herein by reference.

The notes bear interest at a rate of 1.500% per annum. Interest on the notes accrues from August 13, 2012. Interest is payable semiannually in arrears on March 1 and September 1 of each year, beginning March 1, 2013. We will pay additional interest, if any, under the circumstances described in the indenture.

The notes will mature on September 1, 2019. Holders may convert their notes at their option at any time prior to June 1, 2019 under the following circumstances: (1) during any fiscal quarter (and only during such fiscal quarter) commencing after December 31, 2012, if the last reported sale price of our common stock is greater than or equal to 135% of the conversion price of the notes for at least 20 trading days in the period of 30 consecutive trading days ending on the last trading day of the preceding fiscal quarter; (2) during the five business-day period after any 10 consecutive trading-day period, or the measurement period, in which the trading price of $1,000 principal amount of notes for each trading day in the measurement period was less than 95% of the product of the last reported sale price of our common stock and the conversion rate on such trading day; or (3) upon the occurrence of specified corporate transactions described in the indenture. Holders may also convert their notes at their option at any time beginning on June 1, 2019, and ending at the close of business on the second scheduled trading day immediately preceding the maturity date.

Upon conversion, we will satisfy our conversion obligation by paying or delivering, as the case may be, cash, shares of our common stock or a combination of cash and shares of our common stock, at our election, based on the applicable conversion rate at such time.

The initial conversion rate of the notes is 18.5718 shares of our common stock per $1,000 principal amount of notes, equivalent to an initial conversion price of approximately $53.85 per share of common stock, subject to adjustment. The conversion rate is subject to adjustment in some events described in the indenture but will not be adjusted for accrued interest. In addition, following certain corporate transactions that constitute fundamental changes as contemplated in the indenture, we will increase the conversion rate for holders who elect to convert notes in connection with such corporate transactions in certain circumstances.

In the event that we receive a holder’s notice of conversion upon satisfaction of one or more of the conditions to conversion, we will notify the relevant holders no later than the close of business on the scheduled trading day immediately following the related conversion date (or in the case of any conversions occurring on or after June 1, 2019, no later than the close of business on the scheduled trading day immediately preceding June 1, 2019) how we will satisfy our obligation to convert the notes, whether through delivery of cash, shares of the Company’s common stock or a combination of cash and shares of the Company’s common stock.

In case of a satisfaction of our obligation to convert the notes by a combination of cash and shares of our common stock, upon conversion we will, except in the event of an exchange in lieu of conversion as described in the indenture, deliver to holders in respect of each $1,000 principal amount of notes being converted a conversion settlement amount equal to the sum of the daily settlement amounts for each of the 25 consecutive trading days in the relevant conversion period (and cash in lieu of any fractional share):

The “daily settlement amount,” for each $1,000 principal amount of notes, for each of the 25 consecutive trading days in the relevant conversion period, shall consist of:

- cash equal to the lesser of (1) the maximum cash amount per $1,000 principal amount of notes being converted to be received upon conversion as specified in the notice specifying our chosen settlement method (the “specified dollar amount”), if any, divided by 25 (such quotient the “daily measurement value”) and (2) the daily conversion value; and
- to the extent the daily conversion value exceeds the daily measurement value, a number of shares of our common stock equal to (1) the difference between the daily conversion value and the daily measurement value, divided by (2) the volume-weighted average price of our common stock on such trading day.

The “daily conversion value” for any trading day in the applicable conversion period equals 1/25th of:

- the conversion rate in effect on that trading day, multiplied by
- the volume-weighted average price of our common stock on that trading day.

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 our common stock is listed or admitted for trading. If our common stock is not so listed or admitted for trading, “scheduled trading day” means a “business day.”

The “volume-weighted average price” or “VWAP” per share of our common stock on any trading day means such price as displayed on Bloomberg (or any successor service) page HOS <EQUITY> AQR in respect of the period from 9:30 a.m. to 4:00 p.m., New York City time, on such trading day; or, if such price is not available, the volume-weighted average price means the market value per share of our common stock on such day as determined by a nationally recognized independent investment banking firm (which may be one of the initial purchasers or its affiliates) retained for this purpose by us. The “volume-weighted average price” or “VWAP” will be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours.

The notes will not be redeemable at our option prior to their maturity. No sinking fund is provided for the notes and the notes will not be subject to defeasance.

The notes are our senior unsecured obligations, and rank equal in right of payment to all of our other existing and future senior indebtedness. The notes are guaranteed on a senior, unsecured basis by our current domestic significant subsidiaries, which are the same subsidiaries that guarantee our other outstanding senior notes. Future subsidiaries that guarantee our other indebtedness will also guarantee the notes. The notes and our subsidiary guarantees will be effectively subordinated to all of our secured indebtedness and that of our subsidiary guarantors, including their indebtedness under our revolving credit facility, to the extent of the value of our assets and those of our subsidiaries collateralizing such indebtedness.

If we undergo a fundamental change, the holders of the notes will have the right, at their option, to require us to purchase all or any portion of their notes. The fundamental change purchase price will be 100% of the principal amount of the notes to be purchased plus any accrued and unpaid interest, including any additional interest, to but excluding the fundamental change purchase date. We will pay cash for all notes so purchased.

The indenture contains customary events of default. If an event of default occurs and is continuing, the trustee by notice to the Company, or the holders of at least 25% in principal amount of the outstanding

notes by notice to the Company and the trustee, may, and the trustee at the request of such holders shall, declare 100% of the principal of and accrued and unpaid interest on all the notes to be due and payable. In case of an event of default involving certain events of bankruptcy, insolvency or reorganization, 100% of the principal and accrued and unpaid interest on the notes will automatically become due and payable. Upon such a declaration, such principal and accrued and unpaid interest will be due and payable immediately.

Notwithstanding the foregoing, the indenture provides that, at our election, the sole remedy for an event of default relating to the failure to comply with the reporting obligations in the indenture will for the 365 days after the occurrence of such an event of default consist exclusively of the right to receive additional interest on the notes at an annual rate equal to 0.50% of the principal amount of the notes. On such 365th day (or earlier, if the event of default relating to the reporting obligations is cured or waived prior to such 365th day), such additional interest will cease to accrue and the notes will be subject to acceleration as provided above if the event of default is continuing.

The notes and shares of our common stock issuable in certain circumstances upon the conversion of the notes have not been registered under the Securities Act of 1933, as amended, or the Securities Act. We sold the notes to the Initial Purchasers in reliance on the exemption from registration provided by Section 4(2) of the Securities Act. The Initial Purchasers then sold the notes to qualified institutional buyers pursuant to the exemption from registration provided by Rule 144A under the Securities Act. We relied on these exemptions from registration based in part on representations made by the Initial Purchasers in the Purchase Agreement.

Convertible Note Hedge and Warrant Transactions

In connection with the sale of the notes, we entered into convertible note hedge transactions with respect to our common stock with Barclays Bank PLC, JPMorgan Chase Bank, National Association, London Branch and Wells Fargo Bank, National Association, or the dealers, each of which is an Initial Purchaser or an affiliate thereof. Each of the convertible note hedge transactions involves the purchase of call options, or the call options, that are intended to limit exposure to dilution to our stockholders upon the potential future conversion of the notes. The call options cover, subject to customary anti-dilution adjustments, the number of shares underlying the notes at a strike price equal to the conversion price of the notes. We generally may exercise the call options upon any conversion of the notes. The description of the call options in this report is a summary only and is qualified by the full text of the agreements relating to the call option confirmations filed herewith as Exhibits 4.2, 4.3, 4.4, 4.5, 4.6 and 4.7, respectively, and incorporated herein by reference.

We also entered into separate warrant transactions, or warrants, whereby we sold to the dealers warrants to acquire, subject to customary anti-dilution adjustments, 5,571,540 shares of our common stock at a strike price of $68.53 per share of common stock. On exercise of the warrants, we have the option to deliver cash or shares of our common stock equal to the difference between the then market price and strike price. The warrants will be exercisable by the dealers over a 40 trading day period beginning approximately three months after the maturity of the notes. The description of the warrants in this report is a summary only and is qualified by the full text of the agreements relating to the warrants filed herewith as Exhibits 4.8, 4.9, 4.10, 4.11, 4.12 and 4.13, respectively, and incorporated herein by reference.

The call options and the warrants described herein are intended to effectively increase the conversion price of the notes to approximately $68.53 per share of our common stock, representing a 75% premium based on the last reported sale price of $39.16 per share on August 7, 2012. The call options and warrants are separate contracts entered into by us and each of the dealers, are not part of the terms of the notes and will not affect the holders' rights under the notes.

The warrants and the underlying shares of our common stock issuable upon exercise of the warrants have not been registered under the Securities Act, and may not be offered or sold in the United States absent registration or an applicable exemption from registration requirements. This report on Form 8-K does not constitute an offer to sell, or a solicitation of an offer to buy, any security and shall not constitute an offer, solicitation or sale in any jurisdiction in which such offering would be unlawful.

Certain Relationships

The Trustee under the indenture and its affiliates, as well as certain of the Initial Purchasers and their respective affiliates, have, from time to time, performed, and may in the future perform, various financial advisory, commercial banking and investment banking services for us, for which they received or will receive customary fees and expenses. The Trustee is also a lender and the administrative agent under our revolving credit facility and the trustee under the indentures governing our other outstanding senior notes.

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

The information under Item 1.01 is incorporated herein by reference.

Item 3.02 – Unregistered Sales of Equity Securities

The information under Item 1.01 is incorporated herein by reference.

Item 8.01 – Other Events

On August 13, 2012, we announced the closing of our private offering of $300.0 million aggregate principal amount of our 1.500% Convertible Senior Notes due 2019 that were offered to qualified institutional buyers pursuant to Rule 144A under the Securities Act together with convertible note hedge and warrant transactions. A copy of the press release is attached hereto as Exhibit 99.1.

Item 9.01 – Financial Statements and Exhibits

(d) Exhibits.

4.1	Indenture dated as of August 13, 2012 by and among Hornbeck Offshore Services, Inc., the guarantors named therein, and Wells Fargo Bank, National Association, as Trustee (including form of 1.500% Convertible Senior Notes due 2019)
4.2	Confirmation of Base Call Option Transaction dated as of August 7, 2012 by and between Hornbeck Offshore Services, Inc. and Barclays Bank PLC.
4.3	Confirmation of Base Call Option Transaction dated as of August 7, 2012 by and between Hornbeck Offshore Services, Inc. and JPMorgan Chase Bank, National Association, London Branch.
4.4	Confirmation of Base Call Option Transaction dated as of August 7, 2012 by and between Hornbeck Offshore Services, Inc. and Wells Fargo Bank, National Association.
4.5	Confirmation of Additional Base Call Option Transaction dated as of August 8, 2012 by and between Hornbeck Offshore Services, Inc. and Barclays Bank PLC.
4.6	Confirmation of Additional Base Call Option Transaction dated as of August 8, 2012 by and between Hornbeck Offshore Services, Inc. and JPMorgan Chase Bank, National Association, London Branch.
4.7	Confirmation of Additional Base Call Option Transaction dated as of August 8, 2012 by and between Hornbeck Offshore Services, Inc. and Wells Fargo Bank, National Association.
4.8	Confirmation of Base Warrant dated as of August 7, 2012 by and between Hornbeck Offshore Services, Inc. and Barclays Bank PLC.

4.9 Confirmation of Base Warrant dated as of August 7, 2012 by and between Hornbeck Offshore Services, Inc. and JPMorgan Chase Bank, National Association, London Branch.

4.10 Confirmation of Base Warrant dated as of August 7, 2012 by and between Hornbeck Offshore Services, Inc. and Wells Fargo Bank, National Association.

4.11 Confirmation of Additional Warrants dated as of August 8, 2012 by and between Hornbeck Offshore Services, Inc. and Barclays Bank PLC.

4.12 Confirmation of Additional Warrants dated as of August 8, 2012 by and between Hornbeck Offshore Services, Inc. and JPMorgan Chase Bank, National Association, London Branch.

4.13 Confirmation of Additional Warrants dated as of August 8, 2012 by and between Hornbeck Offshore Services, Inc. and Wells Fargo Bank, National Association.

10.1 Purchase Agreement dated August 7, 2013 by and among Hornbeck Offshore Services, Inc., the guarantors named therein, and Barclays Capital Inc., J.P. Morgan Securities LLC and Wells Fargo Securities, LLC, as representatives of the Initial Purchasers named in Schedule I thereto.

99.1 Press Release, dated August 13, 2012.

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 thereunto duly authorized.

Hornbeck Offshore Services, Inc.

Date: August 13, 2012

By: /s/ James O. Harp, Jr.
James O. Harp, Jr.
Executive Vice President and Chief Financial Officer

EXHIBIT INDEX

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99.1	Press Release, dated August 13, 2012.

Exhibit 4.1

Execution Version

HORNBECK OFFSHORE SERVICES, INC.,

AS ISSUER,

EACH OF THE GUARANTORS PARTY HERETO,

AS GUARANTORS

AND

WELLS FARGO BANK, NATIONAL ASSOCIATION,

AS TRUSTEE

1.500% Convertible Senior Notes due 2019

INDENTURE

Dated as of August 13, 2012

TABLE OF CONTENTS

INDENTURE dated as of August 13, 2012, among HORNBECK OFFSHORE SERVICES, INC., a Delaware corporation (the "**Company**"), the Guarantors (as defined below) and WELLS FARGO BANK, NATIONAL ASSOCIATION, as Trustee (the "**Trustee**").

Each party agrees as follows for the benefit of the other parties and for the equal and ratable benefit of the Holders of the Company's 1.500% Convertible Senior Notes due 2019 (the "**Securities**") on the date hereof.

Article 1
DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.01. *Definitions.*

"**Additional Interest**" means all amounts, if any, payable pursuant to Section 3.08 and Section 7.03 hereof.

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

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

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

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

"**Business Day**" means each day that is not a Saturday, Sunday or other day on which banking institutions in New York, New York or New Orleans, Louisiana are authorized or required by law to close.

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

"**Common Equity**" of any Person means Capital Stock of such Person that is generally entitled to (1) vote in the election of directors of such Person or (2) if such Person is not a corporation, vote or otherwise participate in the selection of the governing body, partners, managers or others that will control the management or policies of such Person.

"**Common Stock**" means the Company's Common Stock, par value $0.01 per share.

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

"**Conversion Agent**" means the office or agency appointed by the Company where Securities may be presented for conversion. The Conversion Agent appointed by the Company shall initially be the Trustee.

"**Conversion Obligation**" means the Company's obligation to convert the Securities.

"**Conversion Period**" means the 25 consecutive Trading Day period:

(1) with respect to Conversion Notices received on or after June 1, 2019, beginning on, and including, the 27th Scheduled Trading Day immediately preceding the Maturity Date; and

(2) in all other cases, beginning on, and including, the third Trading Day following our receipt of the relevant Conversion Notice.

"**Conversion Price**" means, in respect of each $1,000 principal amount of Securities, $1,000 divided by the Conversion Rate, as may be adjusted from time to time as set forth herein.

"**Conversion Rate**" means, in respect of each $1,000 principal amount of Securities, at an initial rate of 18.5718 shares of Common Stock, subject to adjustments as set forth herein.

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

"**Daily Conversion Value**" for any Trading Day in the applicable Conversion Period equals 1/25th of:

(1) the Conversion Rate in effect on that Trading Day, *multiplied* by

(2) the VWAP of the Common Stock on that Trading Day.

"**Daily Measurement Value**" means the quotient of the Specified Dollar Amount divided by 25.

"**Daily Settlement Amount**" for each $1,000 principal amount of Securities, for each of the 25 consecutive Trading Days in the relevant Conversion Period, shall consist of:

(1) cash equal to the lesser of (a) the Daily Measurement Value and (b) the Daily Conversion Value; and

(2) to the extent the Daily Conversion Value exceeds the Daily Measurement Value, a number of shares of Common Stock equal to (a) the difference between the Daily Conversion Value and the Daily Measurement Value, divided by (b) the VWAP of the Common Stock on such Trading Day.

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

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

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

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

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

"**Ex-Dividend Date**" means, in respect of an issuance, a dividend or distribution to holders of Common Stock, the first date on which Common Stock trades on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question.

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

"**Fair Market Value**" means the amount that a willing buyer would pay a willing seller in an arm's length transaction.

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

A "**Fundamental Change**" shall be deemed to have occurred if any of the following occurs:

(1) any "person" or "group" within the meaning of Section 13(d) of the Exchange Act, other than the Company, any Subsidiary of the Company or any employee benefit plan of the Company or any such Subsidiary, files a Schedule TO or any other schedule, form or report under the Exchange Act disclosing that such person or group has become the Beneficial Owner of Common Equity of the Company representing more than 50% of the ordinary voting power of the Company's Common Equity;

(2) consummation of 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 any sale, lease or other transfer (in one transaction or a series of transactions) of all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, to any Person other than one of the Company's Subsidiaries; *provided*, *however*, that a transaction where the holders of more than 50% 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 entity or transferee or parent thereof immediately after such event shall not be a Fundamental Change; or

(3) the Company's Common Stock (or other Common Equity into which the Securities are then convertible) ceases to be listed on The New York Stock Exchange, The NASDAQ Global Select Market, The NASDAQ Global Market or any other national securities exchange (or any of their respective successors) for a period of 30 consecutive Scheduled Trading Days,

provided, *however*, that a Fundamental Change described in clauses (1) or (2) of the definition above shall not be deemed to have occurred if at least 90% of the consideration received or to be received by the holders of the Company's Common Stock, excluding cash payments for fractional shares and cash payments in respect of statutory dissenters' rights, in connection with the transaction or transactions constituting the Fundamental Change described in clauses (1) or (2) consists of shares of common stock traded on The New York Stock Exchange, The NASDAQ Global Select Market, The NASDAQ Global Market or any other national securities exchange (or any of their respective successors), or which shall be so traded when issued or exchanged in connection with such Fundamental Change (such securities being referred to as "**Publicly Traded Securities**") and as a result of such transaction or transactions such Publicly Traded Securities become Reference Property in accordance with Section 12.04.

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

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

"**Guarantor**" means each of (1) the Company's Subsidiaries party hereto on the date of this Indenture; and (2) any other Subsidiary of the Company that executes a notation of Subsidiary Guarantee in accordance with the provisions of this Indenture, and their respective successors and assigns.

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

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

"**Initial Purchasers**" means the several initial purchasers named in Schedule I to the Purchase Agreement.

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

"**Issue Date**" means August 13, 2012.

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

"**Last Reported Sale Price**" of the Common Stock on any date means the closing sale price per share of the Common Stock (or, if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and average ask prices) on that date as reported in the composite transactions for the principal U.S. national or regional securities exchange on which the Common Stock is listed for trading. If the Common Stock 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 mid-point of the last quoted bid and ask prices for the Common Stock in the over-the-counter market on the relevant date as reported by the National Quotation Bureau or similar organization. If the Common Stock is not so quoted, the Last Reported Sale Price shall be the average of the midpoint of the last bid and ask prices for the Common Stock on the relevant date from each of at least three nationally recognized independent investment banking firms (which may include one or more Initial Purchasers or their Affiliates) selected by the Company for this purpose; *provided*, that if such prices cannot reasonably be obtained from three such investment banking firms, but are obtained from two such investment banking firms, then the Last Reported Sale Price will be the average of the mid-points of such bid and ask prices from those two investment banking firms, and if such prices can reasonably be obtained from only one such dealer, then the Last Reported Sale Price will be the mid-point of such bid and ask prices from that investment banking firm.

"**Market Disruption Event**" means, for the purpose of the definition of Trading Day, the occurrence or existence during the one half-hour period ending on the scheduled close of trading on the principal U.S. national or regional securities exchange on which the Common Stock is listed for trading of any material suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the stock exchange or otherwise) in the Common Stock or in any options contracts or future contracts relating to the Common Stock; *provided* that for purposes of determining a Trading Day or Scheduled Trading Day in Section 12.01(d), "**Market Disruption Event**" means 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 relating to the Common Stock.

"**Maturity Date**" means September 1, 2019.

"**Offering Memorandum**" means the offering memorandum, dated August 7, 2012, relating to the offering by the Company of the Securities.

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

"**Officers' Certificate**" means a certificate signed on behalf of the Company by two Officers of the Company, one of whom must be, in the case of the Officers' Certificate referred to in Section 3.05 hereof, the principal executive officer, the principal financial officer, or the principal accounting officer of the Company, that meets the requirements of Section 14.03 hereof.

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

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

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

"**Purchase Agreement**" means the Purchase Agreement dated as of August 7, 2012 between the Company, the Guarantors named therein and the Initial Purchasers relating to the initial purchase and sale of the Securities.

"**QIB**" means any "qualified institutional buyer" (as such term is defined in Rule 144A).

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

"**Regular Record Date**" for the payment of interest on the Securities (including Additional Interest, if any), means the February 15 (whether or not a Business Day) immediately preceding an Interest Payment Date on March 1 and the August 15 (whether or not a Business Day) immediately preceding an Interest Payment Date on September 1.

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

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

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

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

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

"**Securities Custodian**" means the custodian with respect to the Global Security (as appointed by DTC), or any successor Person thereto and shall initially be the Trustee.

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

"**Significant Subsidiary**" means any Subsidiary that would be a "Significant Subsidiary" of the Company within the meaning of Rule 1-02(w) under Regulation S-X promulgated by the SEC; *provided* that, in the case of a Subsidiary that meets the criteria of clause (c) of the definition thereof but not clause (a) or (b) thereof, such Subsidiary shall not be deemed to be a Significant Subsidiary unless the Subsidiary's income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principle exclusive of amounts attributable to any non-controlling interests for the last completed fiscal year prior to the date of such determination exceeds $25 million.

"**Specified Dollar Amount**" means the maximum cash amount per $1,000 principal amount of Securities being converted to be received upon conversion as specified in the notice specifying the Settlement Method (or deemed so specified).

"**Stated Maturity**" means September 1, 2019.

"**Stock Price**" means, in respect of a Fundamental Change, the price per share of Common Stock paid in connection with such Fundamental Change, which shall be equal to (i) if such Fundamental Change is a transaction set forth in clause (2) of the definition thereof, and holders of Common Stock receive only cash in such transaction, the cash amount paid per share of Common Stock and (ii) in all other cases, the average of the Last Reported Sale Prices of the Common Stock over the five Trading Day period ending on the Trading Day preceding the Effective Date of such Fundamental Change.

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

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

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

"**Trading Price**" of the Securities on any date of determination means the average of the secondary market bid quotations per $1,000 principal amount of the Securities obtained by the Company for $5,000,000 principal amount of the Securities at approximately 3:30 p.m., New York City time, on such determination date from three independent nationally recognized securities dealers selected by the Company (which may include one or more Initial Purchasers or their Affiliates); *provided* that, if three such bids cannot reasonably be obtained by the Company 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 Company, that one bid shall be used. If the Company cannot reasonably obtain on any Trading Day at least one bid for $5,000,000 principal amount of the Securities from a nationally recognized securities dealer, then the Trading Price per $1,000 principal amount of Securities for such Trading Day will be deemed to be less than 95% of the product of the Last Reported Sale Price of the Common Stock and the applicable Conversion Rate.

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

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

"**UCC**" means the Uniform Commercial Code as in effect in the State of New York.

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

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

Section 1.02. *Other Definitions*.

Term	Defined in Section
"Additional Shares"	13.02
"Agent Members"	2.09
"Authenticating Agent"	2.04
"Averaging Period"	12.02(e)
"Company Notice"	11.02(a)
"Company Notice Date"	11.02(a)

“Company Order”	2.04
“Conversion Date”	12.01(c)
“Defaulted Interest”	2.15
“Designated Institution”	12.01(f)
“Effective Date”	12.03(b)
“Event of Default”	7.01
“Expiration Date”	12.02(e)
“Fundamental Change Purchase Date”	11.01
“Fundamental Change Purchase Notice”	11.01(b)
“Fundamental Change Purchase Price”	11.01
“Global Security Legend”	2.03(iv)
“Legal Holiday”	14.06
“Measurement Period”	12.01(a)(ii)
“Paying Agent”	2.05
“Reference Property”	12.04
“Registrar”	2.05
“Reorganization Event”	12.04
“Restricted Securities”	2.03
“Restricted Securities Legend”	2.03
“Securities Register”	2.05
“Settlement Amount”	12.01(d)
“Special Interest Payment Date”	2.15(a)
“Special Record Date”	2.15(a)
“Spin-Off”	12.02(c)
“Subsidiary Guarantee”	13.01
“Successor Company”	4.01(a)
“Valuation Period”	12.02(c)

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

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

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

(c) “or” is not exclusive;

(d) “including” means including without limitation;

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

(f) the principal amount of any non-interest bearing or other discount security at any date shall be the principal amount thereof that would be shown on a balance sheet of the issuer dated such date prepared in accordance with GAAP; and

(g) the principal amount of any Preferred Stock shall be the greater of (i) the maximum liquidation value of such Preferred Stock and (ii) the maximum mandatory redemption or mandatory repurchase price with respect to such Preferred Stock.

Article 2
THE SECURITIES

Section 2.01. *Title; Amount and Issue of Securities; Principal and Interest*. (a) The Securities shall be known and designated as the "1.500% Convertible Senior Notes due 2019" of the Company. The aggregate principal amount of Securities which may be authenticated and delivered under this Indenture is initially limited to $300,000,000, except for Securities authenticated and delivered upon registration of, transfer of, or in exchange for, or in lieu of other Securities pursuant to Sections 2.03, 2.04, 2.08, 2.09, 2.10, 2.11, 2.13, 10.04, 11.02, or 12.01; *provided* that additional Securities may be issued in an unlimited aggregate principal amount from time to time thereafter as set forth pursuant to Section 2.04. The Securities shall be issuable in denominations of $1,000 or multiples thereof.

(b) The Securities shall mature on September 1, 2019 unless earlier converted or repurchased in accordance with the provisions hereof.

(c) Interest on the Securities shall accrue from and including the date specified on the face of such Securities until the principal thereof is paid or made available for payment. Interest shall be payable semiannually in arrears on March 1 and September 1 in each year, commencing March 1, 2013.

(d) A Holder of any Security at 5:00 p.m., New York City time, on a Regular Record Date shall be entitled to receive interest (including any Additional Interest), on such Security on the corresponding Interest Payment Date, notwithstanding the conversion of such Securities at any time after the close of business on such Regular Record Date. Securities surrendered for conversion during the period after 5:00 p.m., New York City time, on any Regular Record Date to 9:00 a.m., New York City time, on the corresponding Interest Payment Date must be accompanied by payment of an amount equal to the interest (including any Additional Interest) that the Holder is to receive on the Securities. Notwithstanding the foregoing, no such payment of interest (including any Additional Interest) need be made by any converting Holder (i) with respect to conversions following the close of business on the Regular Record Date immediately preceding the Stated Maturity of the Securities, (ii) if the Company has specified a Fundamental Change Purchase Date that is after a Regular Record Date and on or prior to the corresponding Interest Payment Date, or (iii) to the extent of any overdue interest (including any Additional Interest) existing at the time of conversion of such Security. Except as described above, no interest or Additional Interest on converted Securities will be payable by the Company on any Interest Payment Date subsequent to the date of conversion, and delivery of cash, shares of Common Stock or the combination of cash and shares of Common Stock, if applicable, pursuant to Article 12 hereunder, together with any cash payment for any fractional share, upon conversion will be deemed to satisfy in full the Company's obligation to pay the principal amount of the Securities and accrued and unpaid interest and Additional Interest, if any, to, but not including, the related Conversion Date.

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

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

Section 2.02. *Form of Securities*.

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

(b) The Securities shall be issued initially in the form of one or more permanent Global Securities, with the applicable legends as provided in Section 2.03. Each Global Security shall be duly executed by the Company and authenticated and delivered by the Trustee, and shall be registered in the name of DTC or its nominee and retained by the Trustee, as Securities Custodian, at its corporate trust office, for credit to the accounts of the Agent Members holding the Securities evidenced thereby. The aggregate principal amount of the Global Securities may from time to time be increased or decreased by adjustments made on the records of the Trustee, as Securities Custodian, and of DTC or its nominee, as hereinafter provided.

Section 2.03. *Legends*. Each Security issued hereunder shall, upon issuance, bear the legend set forth in Section 2.03(i), and each Common Stock certificate representing shares of the Common Stock issued upon conversion of any Security issued hereunder, shall, upon issuance, unless as otherwise set forth below, bear the legend set forth in Section 2.03(ii) (each such legend, a "**Restricted Securities Legend**"), and such legend shall not be removed except as provided in Section 2.03(iii). Each Security that bears or is required to bear the Restricted Securities Legend set forth in Section 2.03(i) (together with each Common Stock certificate representing shares of the Common Stock issued upon conversion of such Security that bears or

is required to bear the Restricted Securities Legend set forth in Section 2.03(ii), collectively, the "**Restricted Securities**") shall be subject to the restrictions on transfer set forth in this Section 2.03 (including the Restricted Securities Legend set forth below), and the Holder of each such Restricted Security, by such Holder's acceptance thereof, shall be deemed to have agreed to be bound by all such restrictions on transfer.

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

(i) *Restricted Securities Legend for Securities*. Prior to the date one year after the last date of original issuance of the Securities, or such shorter period of time as permitted by Rule 144 or any successor provision thereunder (the "**Delegending Date**"), each certificate representing Securities will bear the following legend (unless such Securities have been transferred pursuant to a registration statement that has been declared effective under the Securities Act or pursuant to the exemption from registration provided by Rule 144, if available):

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

(1) REPRESENTS THAT IT IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT OF 1933;

(2) AGREES THAT IT WILL NOT PRIOR TO THE DATE ONE YEAR AFTER THE LAST DATE OF ORIGINAL ISSUANCE OF THE 1.500% SENIOR CONVERTIBLE NOTES DUE 2019 OF HORNBECK OFFSHORE SERVICES, INC. (THE "COMPANY"), OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 UNDER THE SECURITIES ACT OF 1933 OR ANY SUCCESSOR PROVISION THEREUNDER, RESELL OR OTHERWISE TRANSFER THE SECURITY EVIDENCED HEREBY OR ANY COMMON STOCK THAT MAY BE ISSUABLE UPON CONVERSION OF SUCH SECURITY EXCEPT (A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, (B) TO A PERSON IT REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT OF 1933, (C) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT OF 1933 AND THAT CONTINUES TO BE EFFECTIVE AT THE TIME OF SUCH TRANSFER, OR (D) PURSUANT TO ANY OTHER EXEMPTION FROM THE REGISTRATION REQUIREMENTS UNDER THE SECURITIES ACT OF 1933, INCLUDING UNDER RULE 144 UNDER THE SECURITIES ACT OF 1933, IF AVAILABLE, SUBJECT (IN THE CASE OF CLAUSE (D)) TO THE COMPANY'S AND THE TRUSTEE'S RIGHT PRIOR TO ANY SUCH TRANSFER, TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATIONS AND/OR OTHER INFORMATION SATISFACTORY TO THE COMPANY AND THE TRUSTEE; AND

(3) AGREES THAT IT WILL DELIVER TO EACH PERSON TO WHOM THE SECURITY EVIDENCED HEREBY IS TRANSFERRED PURSUANT TO CLAUSE 2(B) OR CLAUSE 2(D) (EXCEPT A TRANSFER PURSUANT TO RULE 144 UNDER THE SECURITIES ACT OF 1933) ABOVE A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND.

(ii) *Restricted Securities Legend for the Common Stock Issued Upon Conversion of the Securities*. Until the Delegending Date, each stock certificate representing Common Stock issued upon conversion of Securities bearing a Restricted Securities Legend will bear the following legend:

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

(iii) *Removal of the Restricted Securities Legends*. The Restricted Securities Legend will be removed from the Securities on the Delegending Date, unless the Company has reasonable cause to believe that the Securities are "restricted securities" within the meaning of Rule 144 and instructs the Trustee in writing not to remove the Restricted Securities Legend. In addition, the Restricted Securities Legend may be removed from any Security or any Common Stock certificate representing shares of the Common Stock issued upon conversion of any Security if there is delivered to the Company such satisfactory evidence, which may include an opinion of independent counsel, as may be reasonably required by the Company, that neither such legend nor the restrictions on transfer set forth therein are required to ensure that transfers of such Security or shares of the Common Stock issued upon conversion of Securities, as the case may be, will not violate the registration requirements of the Securities Act or the qualification requirements under any state securities laws. Upon provision of such satisfactory evidence, at the written direction of the Company, (x) in the case of a Security, the Trustee shall authenticate and deliver in exchange for such Security another Security or Securities having an equal aggregate principal amount that do not bear such legend or (y) in the case of a Common Stock certificate representing shares of the

Common Stock, the transfer agent for the Common Stock shall authenticate and deliver in exchange for the Common Stock certificate or certificates representing such shares of Common Stock bearing such legend, one or more new Common Stock certificates representing a like aggregate number of shares of Common Stock that do not bear such legend. If the Restricted Securities Legend has been removed from a Security or Common Stock certificates representing shares of the Common Stock issued upon conversion of any Security as provided above, no other Security issued in exchange for all or any part of such Security, or no other Common Stock certificates issued in exchange for such Common Stock, shall bear such legend, unless the Company has reasonable cause to believe that such other Security is a "restricted security" (or such shares of Common Stock are "restricted securities") within the meaning of Rule 144 and instructs the Trustee in writing to cause a Restricted Securities Legend to appear thereon.

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

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

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

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

TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF DTC OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS

OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE INDENTURE REFERRED TO IN THE TERMS OF SECURITIES ATTACHED HERETO."

(v) *Legend for Definitive Securities*. Definitive Securities, in addition to the legend set forth in Section 2.03(i), will also bear a legend substantially in the following form:

"THIS SECURITY WILL NOT BE ACCEPTED IN EXCHANGE FOR A BENEFICIAL INTEREST IN A GLOBAL SECURITY UNLESS THE HOLDER OF THIS SECURITY, SUBSEQUENT TO SUCH EXCHANGE, WILL HOLD NO SECURITIES."

Section 2.04. *Execution and Authentication*. One Officer shall sign the Securities for the Company by manual or facsimile signature. If an Officer whose signature is on a Security no longer holds that office at the time the Trustee authenticates the Security, the Security shall be valid nevertheless.

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

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

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

In case the Company, pursuant to Article 4, shall be consolidated or merged with or into, or shall convey, transfer or lease all or substantially all of its properties and assets to, any Person, and the Successor Company, if not the Company, shall have executed an indenture supplemental hereto with the Trustee pursuant to Article 4, any of the Securities authenticated or delivered prior to such consolidation, merger, conveyance, transfer or lease may, from time to time, at the request of the Successor Company, be exchanged for other Securities executed in the name of the Successor Company with such changes in phraseology and form as may be appropriate, but otherwise in substance of like tenor as the Securities surrendered for such exchange and of like principal amount; and the Trustee, upon Company Order of the Successor Company, shall authenticate and deliver Securities as specified in such order for the purpose of such exchange. If Securities shall at any time be authenticated and delivered in any new name of a Successor Company pursuant to this Section 2.04 in exchange or substitution for or upon registration of transfer of any Securities, such Successor Company, at the option of the Holders but without expense to them, shall provide for the exchange of all Securities at the time outstanding for Securities authenticated and delivered in such new name.

Section 2.05. *Registrar and Paying Agent*. The Company shall maintain an office or agency where Securities may be presented for registration of transfer or for exchange (the "**Registrar**") and an office or agency where Securities may be presented for payment (the "**Paying Agent**"). The Registrar shall keep a register of the Securities and of their transfer and exchange (the "**Securities Register**"). The Company may have one or more co-registrars and one or more additional paying agents. The term "Paying Agent" includes any additional paying agent and the term "Registrar" includes any co-registrar.

The Company shall enter into an appropriate agency agreement with any Registrar or Paying Agent not a party to this Indenture. The agreement shall implement the provisions of this Indenture that relate to such agent. The Company shall notify the Trustee in writing of the name and address of each such agent. If the Company fails to maintain a Registrar or Paying Agent, the Trustee shall act as such and shall be entitled to appropriate compensation therefor pursuant to Section 8.06. The Company or any of its domestically organized, wholly owned Subsidiaries may act as Paying Agent, Registrar or transfer agent.

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

Section 2.06. *Paying Agent to Hold Money in Trust*. By no later than 11:00 a.m., New York City time, on the date on which any principal of, interest (including any Additional Interest) and premium, if any, on any Security is due and payable, the Company shall deposit with the Paying Agent a sum sufficient in immediately available funds to pay such principal, interest (including any Additional Interest) and premium, if any, when due. The Company shall

require each Paying Agent (other than the Trustee) to agree in writing that such Paying Agent shall hold in trust for the benefit of Holders or the Trustee all money held by such Paying Agent for the payment of principal of, interest (including any Additional Interest) or premium, if any, on the Securities and shall notify the Trustee in writing of any default by the Company in making any such payment. If the Company or a Subsidiary acts as Paying Agent, it shall segregate the money held by it as Paying Agent and hold it as a separate trust fund. The Company at any time may require a Paying Agent (other than the Trustee) to pay all money held by it to the Trustee and to account for any funds disbursed by such Paying Agent. Upon complying with this Section 2.06, the Paying Agent (if other than the Company or a Subsidiary) shall have no further liability for the money delivered to the Trustee. Upon any bankruptcy, reorganization or similar proceeding with respect to the Company, the Trustee shall serve as Paying Agent for the Securities.

Section 2.07. *Holder Lists*. The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Holders. If the Trustee is not the Registrar, the Company shall furnish or cause the Registrar to furnish to the Trustee, in writing at least five Business Days before each Interest Payment Date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Holders.

Section 2.08. *General Provisions Relating to Transfer and Exchange*. The Securities are issuable only in registered form. A Holder may transfer a Security only by written application to the Registrar stating the name of the proposed transferee and otherwise complying with the terms of this Indenture. No such transfer shall be effected until, and such transferee shall succeed to the rights of a Holder only upon, final acceptance and registration of the transfer by the Registrar in the Securities Register. Furthermore, any Holder of a Global Security shall, by acceptance of such Global Security, agree that transfers of beneficial interests in such Global Security may be effected only through a book-entry system maintained by the Holder of such Global Security (or its agent) and that ownership of a beneficial interest in the Global Security shall be required to be reflected in a book-entry.

When Securities are presented to the Registrar with a request to register the transfer or to exchange them for an equal aggregate principal amount of Securities of other authorized denominations, the Registrar shall register the transfer or make the exchange as requested if its requirements for such transactions are met (including that such Securities are duly endorsed or accompanied by a written instrument of transfer duly executed by the Holder thereof or by an attorney who is authorized in writing to act on behalf of the Holder). Subject to Section 2.04, to permit registrations of transfers and exchanges, the Company shall execute and the Trustee shall authenticate Securities at the Registrar’s written request. No service charge shall be made for any registration of transfer or exchange of the Securities, but the Company may require payment of a sum sufficient to cover any transfer tax or similar governmental charge required by law or permitted under the terms of this Indenture.

Neither the Company nor the Registrar shall be required to exchange or register a transfer of any Securities surrendered for conversion or, if a portion of any Security is surrendered for conversion, the portion thereof surrendered for conversion.

Neither the Trustee nor the Registrar shall have any obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Security (including any transfers between beneficial owners of any Global Security) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

Neither the Trustee nor any Agent shall have any responsibility for any actions taken or not taken by the Depositary.

Section 2.09. *Book-Entry Provisions for the Global Securities*. (a) The Global Securities initially shall:

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

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

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

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

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

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

(c) A Global Security may not be transferred, in whole or in part, to any Person other than DTC (or a nominee thereof) or to a successor thereof (or such successor's nominee), and no such transfer to any such other Person may be registered. Beneficial interests in a Global Security may be transferred in accordance with the rules and procedures of DTC and the provisions of Section 2.10.

(d) If at any time:

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

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

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

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

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

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

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

Section 2.10. *Special Transfer Provisions*. Unless a Security is no longer a Restricted Security, the following provisions shall apply to any sale, pledge or other transfer of such Securities:

(a) *Transfer of Securities to a QIB*. The following provisions shall apply with respect to the registration of any proposed transfer of Securities to a QIB:

(i) If the Securities to be transferred consist of a beneficial interest in the Global Securities, the transfer of such interest may be effected only through the book-entry systems maintained by DTC.

(ii) If the Securities to be transferred consist of Definitive Securities, the Registrar shall register the transfer if such transfer is being made by a proposed transferor who has checked the box provided for on the form of Security stating (or has otherwise advised the Company and the Registrar in writing) that the sale has been made in compliance with the provisions of Rule 144A to a transferee who has signed a certification stating or has otherwise advised the Company and the Registrar in writing that:

(A) it is purchasing the Securities for its own account or an account with respect to which it exercises sole investment discretion;

(B) it and any such account is a QIB within the meaning of Rule 144A;

(C) it is aware that the sale to it is being made in reliance on Rule 144A;

(D) it acknowledges that it has received such information regarding the Company as it has requested pursuant to Rule 144A or has determined not to request such information; and

(E) it is aware that the transferor is relying upon its foregoing representations in order to claim the exemption from registration provided by Rule 144A.

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

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

Section 2.11. *Mutilated, Destroyed, Lost or Wrongfully Taken Securities*. If a mutilated Security is surrendered to the Registrar or if the Holder of a Security claims that the Security has been lost, destroyed or wrongfully taken, the Company shall issue and the Trustee shall authenticate a replacement Security if the requirements of Section 8-405 of the UCC are met, such that the Holder (a) notifies the Company or the Trustee within a reasonable time after such Holder has notice of such loss, destruction or wrongful taking and the Registrar has not registered a transfer prior to receiving such notification, (b) makes such request to the Company or Trustee prior to the Security being acquired by a protected purchaser as defined in Section 8-303

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

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

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

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

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

Section 2.12. *Outstanding Securities*. Securities outstanding at any time are all Securities authenticated by the Trustee except for those cancelled by it, those delivered to it for cancellation and those described in this Section 2.12 as not outstanding. A Security does not cease to be outstanding in the event the Company or an Affiliate of the Company holds the Security; *provided*, *however*, that (i) for purposes of determining which Securities are outstanding for consent or voting purposes hereunder, the provisions of Section 14.04 shall apply and (ii) in determining whether the Trustee shall be protected in making a determination whether the Holders of the requisite principal amount of outstanding Securities are present at a meeting of Holders of Securities for quorum purposes or have consented to or voted in favor of any request, demand, authorization, direction, notice, consent, waiver, amendment or modification hereunder, or relying upon any such quorum, consent or vote, only Securities which a Trust Officer of the Trustee actually knows to be held by the Company or an Affiliate of the Company shall not be considered outstanding.

If a Security is replaced or paid pursuant to Section 2.11, it ceases to be outstanding unless the Trustee and the Company receive proof satisfactory to them that the replaced Security is held by a protected purchaser.

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

Section 2.13. *Temporary Securities*. In the event that Definitive Securities are to be issued under the terms of this Indenture, until such Definitive Securities are ready for delivery, the Company may prepare and upon receipt of a Company Order the Trustee shall authenticate temporary Securities. Temporary Securities shall be substantially in the form of Definitive Securities but may have variations that the Company considers appropriate for temporary Securities. Without unreasonable delay, the Company shall prepare and upon receipt of a Company Order the Trustee shall authenticate Definitive Securities. After the preparation of Definitive Securities, the temporary Securities shall be exchangeable for Definitive Securities upon surrender of the temporary Securities at any office or agency maintained by the Company for that purpose and such exchange shall be without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities, the Company shall execute, and the Trustee shall authenticate and make available for delivery in exchange therefor, one or more Definitive Securities representing an equal principal amount of Securities. Until so exchanged, the Holder of temporary Securities shall in all respects be entitled to the same benefits under this Indenture as a Holder of Definitive Securities.

Section 2.14. *Cancellation*. The Company at any time may deliver Securities to the Trustee for cancellation. The Registrar, the Conversion Agent and the Paying Agent shall forward to the Trustee any Securities surrendered to them for registration of transfer, exchange, conversion or payment. The Trustee and no one else shall cancel all Securities surrendered for registration of transfer, exchange, conversion, payment or cancellation and dispose of such Securities in accordance with its internal policies and customary procedures including delivery of a certificate describing such Securities disposed of (subject to the record retention requirements of the Exchange Act). The Company may not issue new Securities to replace Securities it has paid for or converted or delivered to the Trustee for cancellation for any reason other than in connection with a transfer or exchange.

At such time as all beneficial interests in a Global Security have either been exchanged for Definitive Securities, transferred, repurchased, converted or canceled, such Global Security shall be returned by the Securities Custodian to the Trustee for cancellation or retained and canceled by the Trustee. At any time prior to such cancellation, if any beneficial interest in a Global Security is exchanged for Definitive Securities, transferred in exchange for an interest in another Global Security, repurchased, converted or canceled, the principal amount of Securities represented by such Global Security shall be reduced and an adjustment shall be made on the books and records of the Trustee (if it is then the Securities Custodian for such Global Security) with respect to such Global Security, by the Trustee or the Securities Custodian, to reflect such reduction.

Section 2.15. *Payment of Interest; Defaulted Interest*. Interest (including any Additional Interest) on any Security which is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name such Security (or one or more

predecessor Securities) is registered at the close of business on the Regular Record Date for such payment at the office or agency of the Company maintained for such purpose pursuant to Section 2.05.

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

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

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

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

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

Section 2.17. *CUSIP and ISIN Numbers*. The Company in issuing the Securities may use "CUSIP" and "ISIN" numbers (if then generally in use) and, if so, the Trustee shall use "CUSIP" and "ISIN" numbers in notices of redemption as a convenience to Holders; *provided, however*, that any such notice may state that no representation is made as to the correctness of such number either as printed on the Securities or as contained in any notice of redemption and that reliance may be placed only on the other identified number printed on the Securities, and any such redemption shall not be affected by any defect in or omission of such CUSIP or ISIN number. The Company shall promptly notify the Trustee in writing of any change in the CUSIP and ISIN numbers.

Article 3
COVENANTS

Section 3.01. *Payment of Securities*. The Company shall promptly pay the principal of, interest (including any Additional Interest) and premium, if any, on the Securities on the dates and in the manner provided in the Securities and in this Indenture. Principal, interest (including any Additional Interest) and premium, if any, shall be considered paid on the date due if by 11:00 a.m., New York City time, on such date the Trustee or the Paying Agent holds in accordance with this Indenture immediately available funds sufficient to pay all principal, interest (including any Additional Interest) and premium, if any, then due.

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

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

Section 3.02. *Maintenance of Office or Agency*. The Company will maintain an office or agency where the Securities may be presented or surrendered for payment, where, if applicable, the Securities may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Company in respect of the Securities and this Indenture may be served. The Company will give prompt written notice to the Trustee of any change in the location of any such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served to the Trustee, and the Company hereby appoints the Trustee as its agent to receive all such presentations, surrenders, notices and demands.

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

Section 3.03. *Corporate Existence*. Except as otherwise provided in Article 4 or Article 13, each of the Company and the Guarantors will do or cause to be done all things necessary to preserve and keep in full force and effect (i) its existence and (ii) the material rights (charter and statutory), licenses and franchises of the Company, except, in the case of clause (ii), to the extent the Company otherwise reasonably determines it no longer desirable.

Section 3.04. *Payment of Taxes and Other Claims*. The Company will pay or discharge or cause to be paid or discharged, before the same shall become delinquent, (i) all material taxes, assessments and governmental charges levied or imposed upon the Company or any Subsidiary or upon the income, profits or property of the Company or any Subsidiary and (ii) all lawful claims for labor, materials and supplies, which, if unpaid, might by law become a material liability or lien upon the property of the Company or any Subsidiary; *provided*, *however*, that the Company shall not be required to pay or discharge or cause to be paid or discharged any such tax, assessment, charge or claim whose amount, applicability or validity is being contested in good faith by appropriate proceedings and for which appropriate reserves, if necessary (in the good faith judgment of management of the Company), are being maintained in accordance with GAAP or where the failure to effect such payment will not be disadvantageous to the Holders.

Section 3.05. *Compliance Certificate*. The Company shall deliver to the Trustee within 120 days after the end of each fiscal year of the Company an Officers' Certificate, one of the signers of which shall be the principal executive officer, principal financial officer or principal accounting officer of the Company, stating that in the course of the performance by the signers of their duties as Officers of the Company they would normally have knowledge of any Default or Event of Default and whether or not the signers know of any Default or Event of Default that occurred during such period. If they do, the certificate shall describe each Default or Event of Default, its status and the action the Company is taking or proposes to take with respect thereto.

Section 3.06. *Further Instruments and Acts*. Upon request of the Trustee, the Company will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purpose of this Indenture.

Section 3.07. *Statement by Officers as to Default*. The Company shall deliver to the Trustee, within 30 days after the Company becomes aware of the occurrence of any Event of Default or Default, an Officers' Certificate setting forth the details of such events which would constitute an Event of Default or Default, its status and the action which the Company proposes to take with respect thereto.

Section 3.08. *Additional Interest*.

(a) 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 Securities, the Company fails to timely file any document or report that the Company is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act, as applicable (after giving effect to all applicable grace periods thereunder and other than current reports on Form 8-K), or the Securities are not

otherwise freely tradable by Holders other than the Company's Affiliates or Persons that were Affiliates of the Company during the immediately preceding three months as a result of restrictions pursuant to U.S. securities law or the terms of this Indenture or the Securities, the Company shall pay Additional Interest on the Securities at the rate of 0.50% per annum of the principal amount of Securities outstanding for each day during such period for which the Company's failure to file has occurred and is continuing. In no event shall Additional Interest (including any Additional Interest that may accrue under Section 7.03) accrue at a rate per year in excess of 0.50% pursuant to the Indenture, regardless of the number of events or circumstances giving rise to the requirement to pay such Additional Interest.

Notwithstanding the foregoing, no Additional Interest will accrue or be payable under this Section 3.08 for each day on which the Company makes available to Holders an effective registration statement permitting the resale of the Securities and the shares of Common Stock issued upon conversion thereof. After the Company has made available such an effective shelf registration statement for the six-month period described above, no further Additional Interest will be payable under this Section 3.08.

Additional Interest will be payable in arrears on each Interest Payment Date following accrual in the same manner as regular interest on the Securities. No Additional Interest will accrue after such six-month period, regardless of whether such failure has occurred or is continuing. The Company will not pay any Additional Interest or other amounts on Common Stock, if any, received upon conversion.

(b) The Company shall use its reasonable best efforts to cause the Securities to be assigned an unrestricted CUSIP number as of the 366th day after the last date of original issuance of the Securities.

(c) If Additional Interest is payable by the Company pursuant to this Section 3.08 or Section 7.03, the Company shall deliver to the Trustee an Officers' 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 Trust Officer of the Trustee receives such a certificate, the Trustee may assume without inquiry that no Additional Interest is payable. If the Company has paid Additional Interest directly to the persons entitled to it, the Company shall deliver to the Trustee an Officers' Certificate setting forth the particulars of such payment.

Section 3.09. *Additional Subsidiary Guarantees*. If any of the Company's Subsidiaries (including a Foreign Subsidiary) that is not already a Guarantor, guarantees any indebtedness of the Company or a Domestic Subsidiary, then such Subsidiary will become a Guarantor and execute and deliver to the Trustee a supplemental indenture in substantially the form attached hereto as Exhibit C, a notation of Subsidiary Guarantee and an Officers' Certificate and an Opinion of Counsel in accordance with Section 10.05, within 10 Business Days of the date on which it guarantees such indebtedness of the Company or a Domestic Subsidiary. The form of such notation of Subsidiary Guarantee is attached as Exhibit B hereto.

Article 4
SUCCESSOR COMPANY

Section 4.01. *Consolidation, Merger and Sale of Assets*. The Company shall not consolidate with or merge with or into, or convey, transfer or lease all or substantially all its properties and assets to, another Person, unless:

(a) the resulting, surviving or transferee Person (the "**Successor Company**"), if not the Company, shall expressly assume, by supplemental indenture, executed and delivered to the Trustee, in form satisfactory to the Trustee, all the obligations of the Company under the Securities and this Indenture; and

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

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

For purposes of this Section 4.01, the conveyance, transfer or lease of all or substantially all of the properties and assets of one or more Subsidiaries of the Company, which properties and assets, if held by the Company instead of such Subsidiaries, would constitute all or substantially all of the properties and assets of the Company on a consolidated basis, shall be deemed to be the transfer of all or substantially all of the properties and assets of the Company.

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

Article 5
REPORTING OBLIGATIONS

Section 5.01. *Reporting Obligations*. (a) The Company shall deliver to the Trustee, within 15 days after it is required to file the same (after giving effect to any grace period provided by rule 12b-25 under the Exchange Act or otherwise) with the SEC, copies of its annual reports and of information, documents and other reports (or copies of such portions of any of the foregoing as the SEC may by rules and regulations prescribe) which the Company is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act.

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

(c) Delivery of reports, information and other documents under this Section 5.01 to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates).

Article 6
[RESERVED]

Article 7
DEFAULTS AND REMEDIES

Section 7.01. *Events of Default*. Each of the following is an "**Event of Default**":

(a) default in any payment of interest (including Additional Interest) on any Security when the same becomes due and payable, and such default continues for a period of 30 days;

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

(c) failure by the Company to comply with its obligation to deliver any shares of Common Stock, cash or a combination thereof, as applicable, due upon conversion of Securities in accordance with this Indenture, upon exercise of a Holder's conversion right and such failure continues for a period of 10 days;

(d) failure by the Company to give a Company Notice of the occurrence of a Fundamental Change to Holders pursuant to Section 11.01 or notice of a specified corporate transaction (as described in Section 12.01(a)(iii)) to Holders, in each case when due;

(e) failure by the Company to comply with its obligations under Article 4;

(f) failure by the Company for a period of 60 days after written notice from the Trustee or Holders of at least 25% in principal amount of Securities then outstanding has been received to comply with any obligation, covenant or agreement in this Indenture or under the Securities (other than those referred to in Section 7.01(a) through (e) and Section 7.01(g) through (i));

(g) default by the Company or any Subsidiary in the payment of the principal or interest on 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 $25,000,000 in the aggregate of the Company and/or any such Subsidiary, whether such indebtedness now exists or shall hereafter be created, resulting in such indebtedness becoming or being declared due and payable, and such acceleration shall not have been rescinded or annulled within 30 days after written notice of such acceleration has been received by the Company or such Subsidiary from the Trustee (or to the Company and the Trustee from Holders of at least 25% in principal amount of outstanding Securities);

(h) the Company or any Significant Subsidiary pursuant to or within the meaning of any Bankruptcy Law:

(i) commences a voluntary case or proceeding;

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

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

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

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

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

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

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

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

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

(iii) orders the winding up or liquidation of the Company or Significant Subsidiary;

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

(j) except as permitted by this Indenture, any Subsidiary Guarantee shall be held in any final judicial proceeding to be unenforceable or invalid or shall cease for any reason to be in full force and effect or any Guarantor, or any Person acting on behalf of any Guarantor, shall deny or disaffirm its obligations under its Subsidiary Guarantee.

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

Notwithstanding the foregoing, a Default under clause (f) or (g) of this Section 7.01 will not constitute an Event of Default until the Trustee notifies the Company (or the Holders of 25% or more in principal amount of the outstanding Securities notify the Company and the Trustee) of the Default in writing and the Company does not cure such Default within the time specified in clause (f) or (g) of this Section 7.01 after receipt of such notice.

Section 7.02. *Acceleration*. Subject to Section 7.03, if an Event of Default (other than an Event of Default specified in Section 7.01(h) or Section 7.01(i) above) occurs and is continuing, the Trustee by notice to the Company, or the Holders of at least 25% in outstanding principal amount of the outstanding Securities by notice to the Company and the Trustee, may, and the Trustee at the request of such Holders shall, declare the principal of and accrued and unpaid interest, if any, and Additional Interest, if any, on all the Securities to be due and payable. Upon such a declaration, such principal, and accrued and unpaid interest and Additional Interest, if any, shall be due and payable immediately. If an Event of Default specified in Section 7.01(h) or Section 7.01(i) above occurs and is continuing, the principal of and accrued and unpaid interest, if any, and Additional Interest, if any, on all the Securities outstanding shall be immediately due and payable with no further action by the Trustee or the Holders.

Section 7.03. *Sole Remedy for Failure to Report*. Notwithstanding any other provision of this Indenture, at the Company's election, the sole remedy for an Event of Default relating to the failure to comply with the reporting obligations under Article 5 of this Indenture will, for the 365 days after the occurrence of such an Event of Default, consist exclusively of the right to receive Additional Interest on the principal amount of the Securities at a rate equal to 0.50% per annum. The Additional Interest will accrue on all outstanding Securities from and including the date on which an Event of Default relating to a failure to comply with Article 5 first occurs to but not excluding the 365th day thereafter (or such earlier date on which the Event of Default relating to the reporting obligations under Article 5 shall have been cured or waived). On such 365th day (or earlier, if the Event of Default relating to such reporting obligations is cured or waived prior to such 365th day), such Additional Interest will cease to accrue and the Securities will be subject to acceleration and other remedies as provided in this Article 7 if the Event of Default is continuing. For the avoidance of doubt, the provisions of this Section 7.02 will not affect the rights of Holders of Securities in the event of the occurrence of any other Event of Default. In no event will Additional Interest (including any Additional Interest that may accrue as a result of Section 3.08) accrue at a rate per year in excess of 0.50% pursuant to the Indenture, regardless of the number of events or circumstances giving rise to the requirement to pay such Additional Interest.

Section 7.04. *Other Remedies*. If an Event of Default other than an Event of Default specified in Section 7.01(f), occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of principal, interest (including any Additional Interest) or premium, if any, on the Securities or to enforce the performance of any provision of the Securities or this Indenture.

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

Section 7.05. *Waiver of Past Defaults*. The Holders of a majority in principal amount of the outstanding Securities by notice to the Trustee may (a) waive, by their consent (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Securities), an existing Default or Event of Default and its consequences

except (i) a Default or Event of Default resulting from the non-payment of the principal, interest (including any Additional Interest) or premium, if any, on a Security, (ii) a Default or Event of Default resulting from the failure to deliver, upon conversion, shares of Common Stock, cash or the combination of cash and shares of Common Stock, if any, upon the conversion of the Security or (iii) a Default or Event of Default in respect of a provision that under Section 10.02 cannot be amended without the consent of each Holder affected and (b) rescind any such acceleration with respect to the Securities and its consequences if (i) rescission would not conflict with any judgment or decree of a court of competent jurisdiction and (ii) all existing Events of Default, other than the nonpayment of the principal of, interest (including any Additional Interest) or premium, if any, on the Securities that have become due solely by such declaration of acceleration, have been cured or waived. When a Default or Event of Default is waived, it is deemed cured, but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any consequent right.

Section 7.06. *Control by Majority*. The Holders of a majority in principal amount of the outstanding Securities may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture or, subject to Sections 8.01 and 8.02, that the Trustee determines is unduly prejudicial to the rights of other Holders or would involve the Trustee in personal liability; *provided*, *however*, that the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction.

Section 7.07. *Limitation on Suits*. Subject to Section 7.08, a Holder may not pursue any remedy with respect to this Indenture or the Securities unless:

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

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

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

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

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

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

Section 7.08. *Rights of Holders to Receive Payment*. Notwithstanding any other provision of this Indenture (including, without limitation, Section 7.07), the right of any Holder to receive payment of principal of, interest (including any Additional Interest) or premium, if

any, on the Securities held by such Holder, on or after the respective due dates expressed in the Securities, or delivery of consideration due upon conversion of such Securities when due, or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

Section 7.09. *Collection Suit by Trustee*. If an Event of Default specified in clauses (a) or (b) of Section 7.01 occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Company for the whole amount then due and owing (together with interest on any unpaid interest (including any Additional Interest) to the extent lawful) and the amounts provided for in Section 8.06.

Section 7.10. *Trustee May File Proofs of Claim*. The Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and the Holders allowed in any judicial proceedings relative to the Company, the Guarantors or its or their respective creditors or properties and, unless prohibited by law or applicable regulations, may be entitled and empowered to participate as a member of any official committee of creditors appointed in such matter, and may vote on behalf of the Holders in any election of a trustee in bankruptcy or other Person performing similar functions, and any Custodian in any such judicial proceeding is hereby authorized by each Holder to make payments to the Trustee and, 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 for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and its counsel, and any other amounts due to the Trustee under Section 8.06.

Section 7.11. *Priorities*. If the Trustee collects any money or property pursuant to this Article 7, it shall pay out the money or property in the following order:

FIRST: to the Trustee for amounts due under Section 8.06;

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

THIRD: to the Company.

The Trustee may fix a record date and payment date for any payment to Holders pursuant to this Section 7.11. At least 15 days before such record date, the Company shall mail to each Holder and the Trustee a notice that states the record date, the payment date and amount to be paid.

Section 7.12. *Restoration of Rights and Remedies*. If the Trustee or any Holder has instituted a proceeding to enforce any right or remedy under this Indenture and the proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to the Holder, then, subject to any determination in the proceeding, the Company, the

Trustee, the Guarantors and the Holders will be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Company, the Trustee, the Guarantors and the Holders will continue as though no such proceeding had been instituted.

Section 7.13. *Undertaking of Costs*. In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 7.13 does not apply to a suit by the Trustee, a suit by the Company, a suit by a Holder pursuant to Section 7.08 or a suit by Holders of more than 10% in outstanding principal amount of the Securities.

Article 8
TRUSTEE

Section 8.01. *Duties of Trustee*. (a) If an Event of Default has occurred and is continuing, the Trustee shall exercise the rights and powers vested in it by this Indenture and use the same degree of care and skill in its exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

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

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

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

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

(i) this paragraph does not limit the effect of paragraph (b) of this Section 8.01;

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

(iii) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 7.06.

(d) Every provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (a), (b) and (c) of this Section 8.01.

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

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

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

(h) Every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 8.01 and to the provisions of the TIA.

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

Section 8.02. *Rights of Trustee*. Subject to Section 8.01:

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

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

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

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

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

(f) The Trustee shall not be responsible or liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit), unless the Trustee's conduct constitutes willful misconduct or gross negligence.

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

(h) The Trustee may request that the Company deliver a certificate setting forth the names of individuals and/or titles of Officers authorized at such time to take specified actions pursuant to this Indenture.

(i) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney at the sole cost of the Company and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation.

(j) The Trustee shall not be deemed to have notice of any Default or Event of Default unless a Trust Officer has actual knowledge thereof or unless written notice of any event which is in fact such a default is received by the Trustee at the address of the Trustee set forth in Section 14.02 (or any alternative address given to the Company by the Trustee), and such notice references the Securities and this Indenture;

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

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

Section 8.03. *Individual Rights of Trustee*. The Trustee in its individual or any other capacity may become the owner or pledgee of Securities and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not Trustee. Any Paying Agent or Registrar may do the same with like rights. However, the Trustee must comply with Sections 8.09 and 8.10. In addition, the Trustee shall be permitted to engage in transactions with the Company; *provided*, *however*, that if, during the continuance of any Default, the Trustee acquires any conflicting interest the Trustee must (i) eliminate such conflict within 90 days of acquiring such conflicting interest, (ii) apply to the SEC for permission to continue acting as Trustee or (iii) resign.

Section 8.04. *Trustee's Disclaimer*. The Trustee shall not be responsible for and makes no representation as to the validity or adequacy of this Indenture or the Securities, shall not be accountable for the Company's use of the proceeds from the Securities, shall not be responsible for the use or application of any money received by any Paying Agent other than the Trustee and shall not be responsible for any statement of the Company in this Indenture or in any document issued in connection with the sale of the Securities or in the Securities other than the Trustee's certificate of authentication.

Section 8.05. *Notice of Defaults*. If a Default or Event of Default occurs and is continuing and if a Trust Officer of the Trustee has actual knowledge thereof, the Trustee shall mail by first class mail to each Holder at the address set forth in the Securities Register notice of the Default or Event of Default within 90 days after it occurs. Except in the case of a Default or Event of Default in payment of principal of, or interest on any Security (including payments pursuant to the required repurchase provisions of such Security, if any), the Trustee may withhold the notice if and so long as it determines in good faith that withholding the notice is in the interests of Holders.

Section 8.06. *Compensation and Indemnity*. The Company shall pay to the Trustee from time to time such compensation for its acceptance of this Indenture and services hereunder as the Company and the Trustee shall from time to time agree in writing. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. In addition to the compensation the Company shall reimburse the Trustee upon request for all reasonable out-of-pocket expenses incurred or made by it. Such expenses shall include the reasonable compensation and out-of-pocket expenses, disbursements and advances of the Trustee's agents, counsel, accountants and experts. The Company and the Guarantors, jointly and severally, shall indemnify the Trustee against any and all loss, liability, damages, claims or expense (including reasonable attorneys' fees and expenses) incurred by it without negligence or willful misconduct on its part in connection with the administration of this trust and the performance of its duties hereunder, including the costs and expenses of enforcing this Indenture (including this Section 8.06) and of defending itself against any claims (whether asserted by any Holder, the Company, any Guarantor or otherwise). The Trustee shall notify the Company promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Company shall not relieve the Company or any of the Guarantors of its obligations hereunder. The Company and such Guarantor shall defend the claim and the Trustee shall provide reasonable cooperation at the Company's expense in the defense. The Trustee may have separate counsel and the Company shall pay the fees and expenses of such counsel, provided that the Company shall not be required to pay such fees and expenses if it assumes the Trustee's defense, and, in the reasonable judgment of outside counsel to the Trustee, there is no conflict of interest between the Company or any Guarantor and the Trustee in connection with such defense. The Company and the Guarantors need not reimburse any expense or indemnify against any loss, liability or expense incurred by the Trustee through the Trustee's own willful misconduct or negligence.

To secure the Company's and the Guarantors' payment obligations in this Section 8.06, the Trustee shall have a lien prior to the Securities on all money or property held or collected by the Trustee other than money or property held in trust to pay principal of, interest (including any Additional Interest) and premium, if any, on particular Securities. Such lien shall survive the satisfaction and discharge of this Indenture. The Trustee's right to receive payment of any amounts due under this Section 8.06 shall not be subordinate to any other unsecured liability or debt of the Company or any Guarantor.

The Company's and the Guarantors' payment obligations pursuant to this Section 8.06 shall survive the discharge of this Indenture. When the Trustee incurs expenses after the occurrence of a Default specified in Section 7.01(h) or Section 7.01(i) with respect to the Company or any Guarantor, the expenses are intended to constitute expenses of administration under any Bankruptcy Law.

Section 8.07. *Replacement of Trustee*. The Trustee may resign at any time by so notifying the Company. The Holders of a majority in principal amount of the Securities may remove the Trustee by providing the Trustee with 30 days' written notice and may appoint a successor Trustee. The Company shall remove the Trustee if:

(a) the Trustee fails to comply with Section 8.09;

(b) the Trustee is adjudged bankrupt or insolvent;

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

(d) the Trustee otherwise becomes incapable of acting.

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

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Thereupon the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall mail a notice of its succession to Holders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee, subject to the lien provided for in Section 8.06.

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

If the Trustee fails to comply with Section 8.09, any Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

Notwithstanding the replacement of the Trustee pursuant to this Section 8.07, the Company's obligations under Section 8.06 shall continue for the benefit of the retiring Trustee.

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

Section 8.08. *Successor Trustee by Merger*. If the Trustee consolidates with, merges or converts into, or transfers all or substantially all its corporate trust business or assets to, another corporation or banking association, the resulting, surviving or transferee corporation or banking association without any further act shall be the successor Trustee.

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

Section 8.09. *Eligibility; Disqualification*. The Trustee shall at all times satisfy the requirements of TIA § 310(a). The Trustee shall have a combined capital and surplus of at least $100 million as set forth in its most recent published annual report of condition. The Trustee shall comply with TIA § 310(b); *provided*, *however*, that there shall be excluded from the operation of TIA § 310(b)(1) any indenture or indentures under which other securities or certificates of interest or participation in other securities of the Company are outstanding, if the requirements for such exclusion set forth in TIA § 310(b)(1) are met.

Section 8.10. *Preferential Collection of Claims Against Company*. The Trustee shall comply with TIA § 311(a), excluding any creditor relationship listed in TIA § 311(b). A Trustee who has resigned or been removed shall be subject to TIA § 311(a) to the extent indicated.

Article 9
DISCHARGE OF INDENTURE

Section 9.01. *Discharge of Liability on Securities*. When (1) the Company shall deliver to the Registrar for cancellation all Securities theretofore authenticated (other than any Securities which have been mutilated, destroyed, lost or wrongfully taken and in lieu of or in substitution for which other Securities shall have been authenticated and delivered) and not theretofore canceled, or (2) all the Securities not theretofore canceled or delivered to the Registrar for cancellation shall have (a) been deposited for conversion (after all related Conversion Periods have elapsed) and the Company shall deliver to the Holders shares of Common Stock or a combination of cash and shares of Common Stock, as applicable, sufficient to pay all amounts owing in respect of all Securities (other than any Securities which shall have been mutilated, destroyed, lost or wrongfully taken and in lieu of or in substitution for which other Securities shall have been authenticated and delivered) not theretofore canceled or delivered to the Registrar for cancellation or (b) become due and payable on the Stated Maturity or Fundamental Change Purchase Date, as applicable, and the Company shall deposit with the Trustee cash and shares of Common Stock, as applicable, sufficient to pay all amounts owing in respect of all Securities (other than any Securities which shall have been mutilated, destroyed, lost or wrongfully taken and in lieu of or in substitution for which other Securities shall have been

authenticated and delivered) not theretofore canceled or delivered to the Registrar for cancellation, including the principal amount and interest (including any Additional Interest) accrued and unpaid to such Stated Maturity or Fundamental Change Purchase Date, as the case may be, and if in either case (1) or (2) the Company shall also pay or cause to be paid all other sums payable hereunder by the Company, then this Indenture with respect to the Securities shall cease to be of further effect (except as to (i) remaining rights of registration of transfer, substitution and exchange and conversion of Securities; (ii) rights hereunder of Holders to receive from the Trustee payments of the amounts then due, including interest (including any Additional Interest), if any, with respect to the Securities and the other rights, duties and obligations of Holders, as beneficiaries hereof solely with respect to the amounts, if any, so deposited with the Trustee; and (iii) the rights, obligations and immunities of the Trustee, Authenticating Agent, Paying Agent, Conversion Agent and Registrar under this Indenture with respect to the Securities), and the Trustee, on demand of the Company accompanied by an Officers' Certificate and an Opinion of Counsel as required by Section 9.03 and at the cost and expense of the Company, shall execute proper instruments acknowledging satisfaction of and discharging this Indenture with respect to the Securities; however, the Company hereby agrees to reimburse the Trustee, Authenticating Agent, Paying Agent, Conversion Agent and Registrar for any costs or expenses thereafter reasonably and properly incurred by the Trustee, Authenticating Agent, Paying Agent, Conversion Agent and Registrar and to compensate the Trustee, Authenticating Agent, Paying Agent, Conversion Agent and Registrar for any services thereafter reasonably and properly rendered by the Trustee, Authenticating Agent, Paying Agent, Conversion Agent and Registrar in connection with this Indenture with respect to the Securities.

Section 9.02. *Reinstatement*. If the Trustee or the Paying Agent is unable to apply any money to the Holders entitled thereto by reason of any order or judgment of any court of governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's obligations under this Indenture with respect to the Securities shall be revived and reinstated as though no deposit had occurred pursuant to Section 9.01 until such time as the Trustee or the Paying Agent is permitted to apply all such money in accordance with this Indenture and the Securities to the Holders entitled thereto; *provided*, *however*, that if the Company makes any payment of principal amount of, or interest (including any Additional Interest), if any, on any Security following the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Securities to receive such payment from the money held by the Trustee or Paying Agent.

Section 9.03. *Officers' Certificate; Opinion of Counsel*. Upon any application or demand by the Company to the Trustee to take any action under Section 9.01, the Company shall furnish to the Trustee an Officers' Certificate or Opinion of Counsel stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with.

Section 10.01. *Without Consent of Holders*. The Company, the Guarantors and the Trustee may amend this Indenture, the Securities and the Subsidiary Guarantees without notice to or consent of any Holder:

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

(b) to comply with Article 4 or Section 13.04 in respect of the assumption by a Successor Company of an obligation of the Company under this Indenture or any successor Guarantor under any Subsidiary Guarantee;

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

(d) to secure the Securities;

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

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

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

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

(i) to irrevocably elect or eliminate one or more Settlement Methods or, in the case of Combination Settlement, irrevocably elect a Specified Dollar Amount;

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

(k) to conform the text of this Indenture, any Subsidiary Guarantee or the Securities to the “Description of Notes” section of the Offering Memorandum as set forth in an Officers’ Certificate.

After an amendment under this Section 10.01 becomes effective, the Company shall mail to Holders a notice briefly describing such amendment. The failure to give such notice to all Holders, or any defect therein, shall not impair or affect the validity of an amendment under this Section 10.01.

Section 10.02. *With Consent of Holders*. The Company, the Guarantors and the Trustee may amend this Indenture, the Subsidiary Guarantees and the Securities without notice to any Holder but with the written or electronic consent of the Holders of at least a majority in principal amount of the Securities then outstanding (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Securities), and subject to the provisions of Section 7.05 past Defaults or compliance with the provisions of this Indenture or the Securities issued hereunder or related Subsidiary Guarantees may be waived with the written consent of the Holders of at least a majority in principal amount of the Securities then

outstanding (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Securities). However, without the consent of each Holder affected, an amendment or waiver may not:

(a) reduce the percentage in aggregate principal amount of Securities whose Holders must consent to an amendment or waive any past default;

(b) reduce the rate of or extend the stated time for payment of interest, including Additional Interest, or premium, on any Security;

(c) reduce the principal of or change the Stated Maturity of any Security;

(d) otherwise impair the right of any Holder to receive payment of principal of, interest (including any Additional Interest) or premium, if any, on such Holder's Securities on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such Holder's Securities;

(e) make any change that impairs or adversely affects the conversion rights of any Securities, subject to Section 12.04;

(f) release any Guarantor from any of its obligations under its Subsidiary Guarantee or this Indenture, except in accordance with this Indenture;

(g) reduce the Fundamental Change Purchase Price or amend or modify in any manner adverse to Holders of the Securities the Company's obligation to make any such payment;

(h) make any Security payable in currency other than that stated in the Security (it being understood that all references to cash in this Indenture and the Securities are to U.S. legal tender); or

(i) make any changes to the amendment provisions which require each Holder's consent or to the waiver provisions.

It shall not be necessary for the consent of the Holders under this Section 10.02 to approve the particular form of any proposed amendment or waiver, but it shall be sufficient if such consent approves the substance thereof. A consent to any amendment or waiver under this Indenture by any Holder of the Securities given in connection with a tender or exchange of such Holder's Securities will not be rendered invalid by such tender or exchange.

After an amendment under this Section 10.02 becomes effective, the Company shall mail to Holders a notice briefly describing such amendment. The failure to give such notice to all Holders, or any defect therein, shall not impair or affect the validity of an amendment under this Section 10.02.

Section 10.03. *Revocation and Effect of Consents and Waivers*. A consent to an amendment or a waiver by a Holder of a Security shall bind the Holder and every subsequent Holder of that Security or portion of the Security that evidences the same debt as the consenting

Holder's Security, even if notation of the consent or waiver is not made on the Security. However, any such Holder or subsequent Holder may revoke the consent or waiver as to such Holder's Security or portion of the Security if the Trustee receives the notice of revocation before the date the amendment or waiver becomes effective or otherwise in accordance with any related solicitation documents. After an amendment or waiver becomes effective, it shall bind every Holder. An amendment or waiver shall become effective upon receipt by the Trustee of the requisite number of written or electronic consents under Section 10.01 or 10.02, as applicable.

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

Section 10.04. *Notation on or Exchange of Securities*. If an amendment changes the terms of a Security, the Trustee may require the Holder of the Security to deliver it to the Trustee. The Trustee may place an appropriate notation on the Security regarding the changed terms and return it to the Holder. Alternatively, if the Company or the Trustee so determines, the Company in exchange for the Security shall issue and the Trustee shall authenticate a new Security that reflects the changed terms. Failure to make the appropriate notation or to issue a new Security shall not affect the validity of such amendment.

Section 10.05. *Trustee to Sign Amendments*. The Trustee shall sign any amendment authorized pursuant to this Article 10 if the amendment does not adversely affect the rights, duties, liabilities or immunities of the Trustee. If it does, the Trustee may but need not sign it. In signing such amendment the Trustee shall receive and (subject to Sections 8.01 and 8.02) shall be fully protected in relying upon an Officers' Certificate and an Opinion of Counsel stating (i) that such amendment is authorized or permitted by this Indenture and (ii) that such amendment is the valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, which opinion may contain customary exceptions and qualifications.

Article 11
PURCHASE AT THE OPTION OF HOLDERS UPON A FUNDAMENTAL CHANGE; PURCHASE AT THE OPTION OF HOLDERS

Section 11.01. *Purchase at the Option of the Holder Upon a Fundamental Change*. If a Fundamental Change shall occur at any time, each Holder shall have the right, at such Holder's option, to require the Company to purchase any or all of such Holder's Securities on a date specified by the Company that is no later than the 35th calendar day after the date of the Company Notice of the occurrence of such Fundamental Change (subject to extension to comply with applicable law, as provided in Section 11.02(d) (the **"Fundamental Change Purchase Date**")). The Company shall purchase such Securities at a price (the **"Fundamental Change**

Purchase Price"), which shall be paid in cash, equal to 100% of the principal amount of the Securities to be purchased plus accrued and unpaid interest, including any Additional Interest, to but excluding the Fundamental Change Purchase Date, unless the Fundamental Change Purchase Date is between a Regular Record Date and the Interest Payment Date to which it relates, in which case the Fundamental Change Purchase Price shall equal 100% of the principal amount of Securities to be purchased and accrued and unpaid interest, including Additional Interest, shall be paid to the Holder of record on the Regular Record Date.

(a) *Notice of Fundamental Change*. The Company, or at its request (which must be received by the Paying Agent at least three Business Days (or such lesser period as agreed to by the Paying Agent) prior to the date the Paying Agent is requested to give such notice as described below) the Paying Agent, in the name of and at the expense of the Company, shall mail to all Holders and the Trustee a Company Notice of the occurrence of a Fundamental Change and of the purchase right arising as a result thereof, including the information required by Section 11.02(a) hereof, on or before the 20th calendar day after the occurrence of such Fundamental Change. The Company shall promptly furnish to the Paying Agent a copy of such Company Notice.

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

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

(ii) the portion of the principal amount of the Securities which the Holder shall deliver to be purchased, which portion must be $1,000 in principal amount or a multiple thereof; and

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

(c) *Procedures*. The Company shall purchase from a Holder, pursuant to this Section 11.01, Securities if the principal amount of such Securities is $1,000 or a multiple of $1,000 if so requested by such Holder.

Any purchase by the Company contemplated pursuant to the provisions of this Section 11.01 shall be consummated by the delivery of the Fundamental Change Purchase Price to be received by the Holder promptly following the later of the Fundamental Change Purchase Date or the time of book-entry transfer or delivery of the Securities.

Notwithstanding anything herein to the contrary, any Holder delivering to the Paying Agent the Fundamental Change Purchase Notice contemplated by this Section 11.01 shall have the right at any time prior to the close of business on the Business Day prior to the Fundamental Change Purchase Date to withdraw such Fundamental Change Purchase Notice (in whole or in part) by delivery of a written notice of withdrawal to the Paying Agent in accordance with Section 11.02(b).

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

At or before 11:00 a.m. (New York City time) on the Fundamental Change Purchase Date, the Company shall deposit with the Paying Agent (or if the Company or an Affiliate of the Company is acting as the Paying Agent, shall segregate and hold in trust) cash sufficient to pay the aggregate Fundamental Change Purchase Price of the Securities to be purchased pursuant to this Section 11.01. Payment by the Paying Agent of the Fundamental Change Purchase Price for such Securities shall be made promptly following the later of the Fundamental Change Purchase Date or the time of book-entry transfer or delivery of such Securities. If the Paying Agent holds, in accordance with the terms of this Indenture, cash sufficient to pay the Fundamental Change Purchase Price of such Securities on the Fundamental Change Purchase Date, then, on and after such date, such Securities shall cease to be outstanding and interest (including any Additional Interest), on such Securities shall cease to accrue, whether or not book-entry transfer of such Securities is made or such Securities are delivered to the Paying Agent, and all other rights of the Holder shall terminate (other than the right to receive the Fundamental Change Purchase Price and previously accrued and unpaid interest (including any Additional Interest), upon delivery or transfer of the Securities). Nothing herein shall preclude any withholding tax required by law.

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

Section 11.02. *Further Conditions and Procedures for Purchase at the Option of the Holder Upon a Fundamental Change.*

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

(i) the applicable Fundamental Change Purchase Price;

(ii) if conversion is permitted under Section 12.01(a)(iii), the Conversion Rate at the time of such notice and any expected adjustments to the Conversion Rate;

(iii) the applicable Fundamental Change Purchase Date and the last date on which a Holder may exercise its repurchase rights under Section 11.01;

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

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

(vi) that Securities as to which a Fundamental Change Purchase Notice has been delivered may be surrendered for conversion only if the applicable Fundamental Change Purchase Notice has been withdrawn in accordance with the terms of this Indenture;

(vii) that the Fundamental Change Purchase Price for any Securities as to which a Fundamental Change Purchase Notice has been given and not withdrawn shall be paid by the Paying Agent promptly following the later of the Fundamental Change Purchase Date or the time of book-entry transfer or delivery of such Securities;

(viii) the procedures the Holder must follow under Section 11.01 and Section 11.02;

(ix) the conversion rights of the Securities;

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

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

(xii) the procedures for withdrawing a Fundamental Change Purchase Notice; and

(xiii) the events causing a Fundamental Change and the effective date of the Fundamental Change.

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

(b) *Adequacy and Effect of Fundamental Change Purchase Notice; Withdrawal; Effect of Event of Default*. The Company shall reasonably determine whether the Fundamental Change Purchase Notice delivered by the relevant Holders satisfies the conditions set out in Section 11.01(b) and Section 11.02 for such notices. The Company's determination under this Section 11.02(b) will be binding and conclusive, absent manifest error.

Upon receipt by the Company of the Fundamental Change Purchase Notice specified in Section 11.01(b), the Holder of the Securities in respect of which such Fundamental Change Purchase Notice was given shall (unless such Fundamental Change Purchase Notice is withdrawn as specified in the following two paragraphs) thereafter be entitled to receive solely the Fundamental Change Purchase Price with respect to such Securities. Such Fundamental Change Purchase Price shall be paid by the Paying Agent to such Holder promptly following the later of (x) the Fundamental Change Purchase Date with respect to such Securities (provided the conditions in this Article 11 have been satisfied) and (y) the time of delivery or book-entry transfer of such Securities to the Paying Agent by the Holder thereof in the manner required by Section 11.01. Securities in respect of which a Fundamental Change Purchase Notice, as the case may be, has been given by the Holder thereof may not be converted on or after the date of the delivery of such Fundamental Change Purchase Notice unless such Fundamental Change Purchase Notice has first been validly withdrawn as specified in the following two paragraphs.

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

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

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

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

There shall be no purchase of any Securities pursuant to Section 11.01 if an Event of Default has occurred and is continuing (other than a default that is cured by the payment of the Fundamental Change Purchase Price). The Paying Agent shall promptly return to the respective Holders thereof any Securities (x) with respect to which a Fundamental Change Purchase Notice has been withdrawn in compliance with this Indenture, or (y) held by it during the continuance of an Event of Default (other than a default that is cured by the payment of the Fundamental Change Purchase Price) in which case, upon such return, the Fundamental Change Purchase Notice with respect thereto shall be deemed to have been withdrawn.

(c) *Securities Purchased in Part*. Any Securities that are to be purchased only in part shall be surrendered at the office of the Paying Agent (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or such Holder’s attorney duly authorized in writing) and the Company shall execute and the Trustee or the Authenticating

Agent shall authenticate and deliver to the Holder of such Securities, without service charge, a new Security or Securities, of any authorized denomination as requested by such Holder in aggregate principal amount equal to, and in exchange for, the portion of the principal amount of the Securities so surrendered which is not purchased.

(d) *Covenant to Comply with Securities Laws Upon Purchase of Securities*. In connection with any offer to purchase Securities under Section 11.01, the Company shall, to the extent applicable, (a) comply with Rules 13e-4 and 14e-1 (and any successor provisions thereto) under the Exchange Act, if applicable; (b) file the related Schedule TO (or any successor schedule, form or report) under the Exchange Act, if applicable; and (c) otherwise comply with all applicable federal and state securities laws so as to permit the rights and obligations under Section 11.01 to be exercised in the time and in the manner specified in Section 11.01.

(e) *Repayment to the Company*. Subject to applicable abandoned property laws, the Trustee and the Paying Agent shall return to the Company any cash or property that remains unclaimed, as provided in paragraph 8 of the Securities, together with interest that the Trustee or Paying Agent, as the case may be, has expressly agreed in writing to pay, if any, that is held by them for the payment of a Fundamental Change Purchase Price; *provided*, *however*, that to the extent that the aggregate amount of cash or property deposited by the Company pursuant to Section 11.01(c) exceeds the aggregate Fundamental Change Purchase Price of the Securities or portions thereof which the Company is obligated to purchase as of the Fundamental Change Purchase Date, then promptly on and after the Business Day following the Fundamental Change Purchase Date, the Trustee and the Paying Agent shall return any such excess to the Company together with interest that the Trustee or Paying Agent, as the case may be, has expressly agreed in writing to pay, if any.

(f) *Officers' Certificate*. At least five Business Days before the Company Notice Date, the Company shall deliver an Officers' Certificate to the Trustee specifying whether the Company desires the Trustee to give the Company Notice required by Section 11.02(a) herein.

Article 12
CONVERSION

Section 12.01. *Conversion of Securities*. (a) *Right to Convert*. Subject to the procedures for conversion set forth in this Article 12, a Holder may convert its Securities on or prior to the close of business on the second Scheduled Trading Day immediately preceding Stated Maturity at the Conversion Rate when one or more of the conditions specified below are met and during the related specified period. Whenever the Securities shall become convertible upon one or more of the conditions stated in clauses (i), (ii), (iii)(A) or (iii)(B) below, the Company or, at the Company's request, the Trustee in the name and at the expense of the Company, shall notify the Holders of the event triggering such convertibility in the manner provided in Section 14.01. For the avoidance of doubt, the Trustee has no duty to determine if Securities have become convertible, and its only obligation is to notify Holders of such at the Company's request. Any notice so given shall be conclusively presumed to have been duly given, whether or not the Holder receives such notice.

(i) *Conversion Upon Satisfaction of Sale Price Condition*. Prior to June 1, 2019, a Holder may surrender all or a portion of its Securities for conversion during any fiscal quarter (and only during such fiscal quarter) commencing after December 31, 2012 if the Last Reported Sale Price for the Common Stock for at least 20 Trading Days during the period of 30 consecutive Trading Days ending on the last Trading Day of the immediately preceding fiscal quarter is greater than or equal to 135% of the Conversion Price in effect on such last Trading Day.

(ii) *Conversion Upon Satisfaction of Trading Price Condition*. Prior to June 1, 2019, a Holder may surrender its Securities for conversion during the five Business Day period after any 10 consecutive Trading Day period (the "**Measurement Period**") in which the Trading Price per $1,000 principal amount of Securities, as determined following a request by a Holder in accordance with the procedures set forth in this Section 12.01(a)(ii), for each Trading Day of the Measurement Period was less than 95% of the product of the Last Reported Sale Price of the Common Stock and the applicable Conversion Rate for such Trading Day. In connection with any conversion in accordance with this Section 12.01(a)(ii), the Trustee shall have no obligation to determine the Trading Price of the Securities unless requested by the Company; and the Company shall have no obligation to make such request unless a Holder provides the Company with reasonable evidence that the Trading Price per $1,000 principal amount of Securities would be less than 95% of the product of the Last Reported Sale Price of the Common Stock and the applicable Conversion Rate. Promptly after receiving such evidence, the Company shall determine the Trading Price of the Securities beginning on the next Trading Day and on each successive Trading Day until the Trading Price per $1,000 principal amount of Securities for any Trading Day is greater than or equal to 95% of the product of the Last Reported Sale Price of the Common Stock and the applicable Conversion Rate.

(iii) *Conversion Upon Specified Corporate Transactions*.

(A) If, prior to June 1, 2019, the Company elects to (1) distribute to all holders of Common Stock any rights or warrants (other than pursuant to a rights plan) entitling them to purchase, for a period expiring within 45 days after the Ex-Dividend Date of the distribution, shares of Common Stock at a price per share less than the average of the Last Reported Sale Price of Common Stock for the 10 consecutive Trading Day period ending on the Trading Day immediately preceding the Ex-Dividend Date for such distribution, or (2) distribute to all holders of Common Stock assets, debt securities or rights to purchase securities of the Company (other than pursuant to a rights plan), which distribution has a per share Fair Market Value, as determined by the Company's Board of Directors, exceeding 15% of the Last Reported Sale Price on the Trading Day immediately preceding the Ex-Dividend Date for such distribution, then, in each case, the Company must notify the Holders of such distribution and of their rights under this clause (A), in the manner provided in Section 14.01, at least 35 Scheduled Trading Days prior to the Ex-Dividend Date for such distribution. Once the Company has given such notice, Holders may surrender Securities for conversion at any time until the earlier of 5:00 p.m., New York City time, on the Business

Day immediately prior to such Ex-Dividend Date or the Company's announcement that such distribution will not take place even if the Securities are not otherwise convertible at such time. Notwithstanding the foregoing, Holders may not surrender Securities for conversion if the Holders participate (as a result of holding the Securities, and at the same time as holders of Common Stock participate) in any of the transactions described in this Section 12.01(iii)(A) as if such Holders of the Securities held a number of shares of Common Stock equal to the applicable Conversion Rate, multiplied by the principal amount (expressed in thousands) of Securities held by such Holder, without having to convert the Securities.

(B) If a Fundamental Change occurs (after giving effect to the proviso set forth in the definition thereof relating to Publicly Traded Securities) or the Company is party to a combination, merger, binding share exchange or sale, lease or other transfer of all or substantially all of the Company's and its Subsidiaries' assets, taken as a whole, in each case pursuant to which Common Stock would be converted into cash, securities and/or other property that does not also constitute a Fundamental Change, the Company must notify Holders of such an event and of their rights under this clause (B), in the manner provided in Section 14.01, no later than five Business Days after the effective date of such transaction. Holders may surrender Securities for conversion at any time after the effective date of such transaction until the 35th day after the effective date of such transaction or, if later, the related Fundamental Change Purchase Date.

A Holder may convert a portion of the principal amount of Securities if the portion is $1,000 or a multiple of $1,000. The amount of cash, the number of shares of Common Stock issuable or the combination of cash payable and the number of shares of Common Stock issuable, if any, upon conversion of a Security shall be determined as set forth in Section 12.01(d).

(b) *Conversion During Specified Period Immediately Prior to Stated Maturity*. Notwithstanding anything herein to the contrary, a Holder may surrender its Securities for conversion beginning on June 1, 2019, until the close of business on the second Scheduled Trading Day immediately preceding the Stated Maturity.

(c) *Conversion Procedures*. The following procedures shall apply to the conversion of Securities:

(i) In respect of a Definitive Security, a Holder must (A) complete and manually sign the conversion notice on the back of the Security, or a facsimile of such conversion notice; (B) deliver such conversion notice, which is irrevocable, and the Security to the Conversion Agent; (C) to the extent any shares of Common Stock issuable upon conversion are to be issued in a name other than the Holder's, furnish appropriate endorsements and transfer documents as may be required by the Conversion Agent; (D) if required pursuant to Section 12.01(h) below, pay all transfer or similar taxes; and (E) if required pursuant to Section 2.01(d) above, pay funds equal to interest payable on the next Interest Payment Date to which such Holder is not entitled.

(ii) In respect of a beneficial interest in a Global Security, a Beneficial Owner must comply with DTC's procedures for converting a beneficial interest in a Global Security and, if required pursuant to Section 2.01(d) above, pay funds equal to interest payable on the next Interest Payment Date to which such Beneficial Owner is not entitled, and if required, taxes or duties, if any.

The date a Holder satisfies the foregoing requirements is the "**Conversion Date**" hereunder. The Conversion Agent shall, within one Business Day of the Conversion Date, provide notice of such Conversion Date to such other parties as directed by the Company.

If a Holder converts more than one Security at the same time, the amount of cash, the number of shares of Common Stock issuable or the combination of the cash payable and number of shares of Common Stock issuable upon the conversion, if any, shall be based on the total principal amount of the Securities converted.

Upon surrender of a Security that is converted in part, the Company shall execute, and the Trustee or the Authenticating Agent shall authenticate and deliver to the Holder, a new Security in an authorized denomination equal in principal amount to the unconverted portion of the Security surrendered.

Delivery of shares of Common Stock will be accomplished by delivery to the Conversion Agent of certificates for the relevant number of shares of Common Stock, other than in the case of Holders of Global Securities in book-entry form with DTC, in which case shares of Common Stock shall be delivered in accordance with DTC customary practices.

(d) *Settlement Upon Conversion*. Subject to this Section 12.01 and Section 12.04, upon conversion of any Security, the Company may, at its election, pay or deliver, as the case may be, to the converting Holder, in respect of each $1,000 principal amount of Securities being converted either solely cash ("**Cash Settlement**"), solely shares of Common Stock (other than cash in lieu of any fractional shares) ("**Physical Settlement**") or a combination of cash and shares of Common Stock ("**Combination Settlement**"), as set forth in this Section 12.01(d).

All conversions occurring on or after June 1, 2019 shall be settled using the same Settlement Method. Prior to June 1, 2019, the Company shall use the same Settlement Method for all conversions occurring on the same Conversion Date, but the Company shall not have any obligation to use the same Settlement Method with respect to conversions that occur on different Conversion Dates. If the Company elects a Settlement Method, the Company shall inform Holders so converting of such Settlement Method through the Trustee, no later than the close of business on the Scheduled Trading Day immediately following the related Conversion Date (or, in the case of any conversions occurring on or after June 1, 2019, no later than the close of business on the Scheduled Trading Day immediately preceding June 1, 2019). If the Company does not concurrently elect a Settlement Method, the Company shall no longer have the right to elect Cash Settlement or Physical Settlement, and the Company shall be deemed to have elected Combination Settlement in respect of its Conversion Obligation, and the Specified Dollar Amount per $1,000 principal amount of Securities shall be deemed to be $1,000. If the Company elects Combination Settlement but does not timely notify converting Holders of the Specified Dollar Amount per $1,000 principal amount of Securities, such Specified Dollar Amount will be deemed to be $1,000.

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

(i) if the Company elects to satisfy its Conversion Obligation in respect of such conversion by Physical Settlement, the Company shall deliver to converting Holders in respect of each $1,000 principal amount of Securities being converted a number of shares of Common Stock equal to the Conversion Rate in effect on the Conversion Date (and cash in lieu of any fractional share as described in Section 12.01(g));

(ii) if the Company elects to satisfy its Conversion Obligation in respect of such conversion by Cash Settlement, the Company shall pay to converting Holders in respect of each $1,000 principal amount of Securities being converted cash in an amount equal to the sum of the Daily Conversion Values for each of the 25 consecutive Trading Days in the relevant Conversion Period; and

(iii) 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, to converting Holders in respect of each $1,000 principal amount of Securities being converted, a Settlement Amount equal to the sum of the Daily Settlement Amounts for each of the 25 consecutive Trading Days in the relevant Conversion Period (and cash in lieu of any fractional share as described in Section 12.01(g)).

Except as described under Sections 12.01(e), 12.02 and 12.04, if Cash Settlement or Combination Settlement is applicable, the Company shall pay and/or deliver the consideration due upon conversion on the third Business Day immediately following the final Trading Day of the related Conversion Period. If Physical Settlement is applicable, the Company shall deliver the consideration due upon conversion on the third Business Day immediately following the related Conversion Date; *provided*, that, with respect to any Conversion Date with respect to which Physical Settlement applies occurring after August 15, 2019, settlement will occur on the Maturity Date (except as otherwise provided in Sections 12.01(e), 12.02 or 12.04).

With respect to a conversion of a Security pursuant hereto, the Security shall be deemed to have been converted immediately prior to the close of business on the Conversion Date; *provided*, *however*, that the Person in whose name any shares of the Common Stock shall be issuable upon such conversion shall be treated as the holder of record of such shares as of the close of business on the Conversion Date, in the case of Physical Settlement, or the last Trading Day of the relevant Conversion Period, in the case of Combination Settlement (such date, the "**Relevant Date**"). On and after the Conversion Date with respect to a conversion of a Security pursuant hereto, all rights of the Holder of such Security shall terminate, other than the right to receive the consideration deliverable upon conversion of such Security as provided herein. A Holder of a Security is not entitled, as such, to any rights of a holder of Common Stock until, if such Holder converts such Security and is entitled pursuant hereto to receive shares of Common Stock in respect of such conversion, the close of business on the Relevant Date or respective Relevant Dates, as the case may be, with respect to such conversion.

(e) *Jones Act Restrictions on Conversion*. Notwithstanding the foregoing, in order to facilitate the Company's compliance with the provisions of the Jones Act related to ownership of Common Stock by non-U.S. citizens, no Holder who cannot establish to the Company's reasonable satisfaction that it (or, if not the Holder, the Person that the Holder has designated to receive the Common Stock issuable upon conversion of the Securities) is a U.S. citizen may receive Common Stock, if any, deliverable upon conversion of the Securities (after giving effect to the Company's option to pay cash in lieu of delivering all or a portion of the deliverable shares) to the extent receipt of such shares would cause such Person or any Person whose ownership position would be aggregated with that of such Person to exceed 4.9% of the Company's outstanding Common Stock. Instead, settlement of such shares will be suspended until such time as receipt of such shares would not result in such limit being exceeded.

In addition, no Holder who cannot establish to the Company's reasonable satisfaction that it (or, if not the Holder, the Person that the Holder has designated to receive the stock issuable upon conversion of the Securities) is a U.S. citizen shall receive any shares of Common Stock upon conversion of the Securities to the extent such shares would constitute "Excess Shares" (as defined in the Company's certificate of incorporation as in effect on the date of the Indenture) if they were issued. Instead, settlement of such shares will be suspended until such time, if any, that such shares would not constitute "Excess Shares" if they were issued. Notwithstanding anything herein to the contrary, a Holder (or, if not the Holder, the Person that the Holder has designated to receive the stock issuable upon conversion of the Securities) shall not become the record owner or Beneficial Owner of any shares the settlement of which is suspended as described above, or otherwise have any rights as a holder of Common Stock with respect to such shares, until such time as such shares would not constitute "Excess Shares" if they were issued.

(f) *Exchange in Lieu of Conversion*. When a Holder surrenders Securities for conversion, the Company may direct the Conversion Agent in writing to surrender such Securities to a financial institution designated by the Company (the "**Designated Institution**") for exchange in lieu of conversion. In order to accept any Securities surrendered for conversion, the Designated Institution must agree to deliver, in exchange for such Securities, cash, shares of Common Stock based upon the applicable Conversion Rate or a combination of cash and shares of Common Stock, if applicable, equal to the consideration due upon conversion, as determined under Section 12.01(d). By the close of business on the Scheduled Trading Day immediately preceding the start of the Conversion Period, the Company will notify the Holder surrendering Securities for conversion that (i) it has directed the Designated Institution to make an exchange in lieu of conversion and (ii) whether the Designated Institution will deliver, upon exchange, cash, shares of Common Stock based upon the applicable Conversion Rate or a combination of cash and shares of Common Stock, if applicable, equal to the consideration due upon conversion, as determined under Section 12.01(d). If the Designated Institution accepts any such Securities, it will deliver the appropriate cash, number of shares of Common Stock or cash and shares of Common Stock, if applicable, as the case may be, to the Conversion Agent and the Conversion Agent will deliver such cash, shares of Common Stock or cash and shares of Common Stock, if applicable, as the case may be, to the Holder. Any Securities exchanged by the Designated Institution will remain outstanding. If the Designated Institution agrees to accept any Securities

for exchange but does not timely deliver the related consideration, or if such Designated Institution does not accept the Securities for exchange, the Company will, as promptly as practical thereafter convert the Securities into shares of Common Stock or cash and shares of Common Stock, if applicable, in accordance with the election made by the Company in the initial notice to the Holders surrendering the Securities and based on the Conversion Period as determined under Section 12.01(d). The Company's designation of a financial institution to which the Securities may be submitted for exchange does not require the institution to accept any Securities. The Company will not pay any consideration to, or otherwise enter into any agreement with, the Designated Institution for or with respect to such designation.

(g) *Cash Payments in Lieu of Fractional Shares*. The Company shall not issue a fractional share of Common Stock upon conversion of Securities. Instead the Company shall deliver cash for the current market value of the fractional share. The current market value of a fractional share shall be determined to the nearest 1/10,000th of a share by multiplying the Closing Sale Price of a full share of Common Stock on the final Trading Day of the related Conversion Period by the fractional amount and rounding the product to the nearest whole cent.

(h) *Taxes on Conversion*. If a Holder converts Securities, the Company shall pay any documentary, stamp or similar issue or transfer tax due on the issue of shares of Common Stock upon the conversion. However, the Holder shall pay any such tax which is due because the Holder requests the shares to be issued in a name other than the Holder's name. The Conversion Agent may refuse to deliver the certificates representing the Common Stock being issued in a name other than the Holder's name until the Conversion Agent receives a sum sufficient to pay any tax which shall be due because the shares are to be issued in a name other than the Holder's name, but the Conversion Agent shall have no duty to determine if any such tax is due. Nothing herein shall preclude any withholding of tax required by law.

(i) *Certain Covenants of the Company*.

(i) The Company shall, prior to issuance of any Securities hereunder, and from time to time as may be necessary, reserve out of its authorized but unissued Common Stock or shares of Common Stock held in treasury, a sufficient number of shares of Common Stock, free of preemptive rights, to permit the conversion of the Securities.

(ii) All shares of Common Stock delivered upon conversion of the Securities shall be newly issued shares or treasury shares, shall be duly and validly issued and fully paid and nonassessable and shall be free from preemptive rights and free of any lien or adverse claim.

(iii) The Company shall endeavor promptly to comply with all federal and state securities laws regulating the issuance and delivery of shares of Common Stock upon the conversion of Securities, if any, and shall cause to have listed or quoted all such shares of Common Stock on each U.S. national securities exchange or over-the-counter or other domestic market on which the Common Stock is then listed or quoted.

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

Section 12.02. *Adjustments to Conversion Rate*. The applicable Conversion Rate shall be adjusted by the Company as follows:

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

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

where,

- CR_0 = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such dividend or distribution, or the effective date of such share split or share combination, as the case may be;
- CR' = the new Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for such dividend or distribution, or the effective date of such share split or share combination, as the case may be;
- OS_0 = the number of shares of Common Stock outstanding immediately prior to the Ex-Dividend Date for such dividend or distribution, or the effective date of such share split or share combination, as the case may be; and
- OS' = the number of shares of Common Stock outstanding immediately after such dividend or distribution, or the effective date of such share split or share combination, as the case may be.

Such adjustment shall become effective immediately after (i) the open of business on Ex-Dividend Date for such dividend or distribution or (ii) open of business on the date on which such split or combination becomes effective, as applicable. If any dividend or distribution of the type described in this Section 12.02(a) is declared but not so paid or made, the new Conversion Rate shall again be adjusted to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

(b) If the Company distributes to all holders of its Common Stock any rights or warrants entitling them to purchase, for a period of not more than 45 days after the Ex-Dividend

Date for the distribution, shares of Common Stock at a price per share less than the average of the Last Reported Sale Prices of the Common Stock for the 10 consecutive Trading Day period ending on the Trading Day immediately preceding the Ex-Dividend Date for such distribution, the Conversion Rate will be adjusted based on the following formula:

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

where,

CR_0	=	the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such distribution;
CR'	=	the new Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for such distribution;
OS_0	=	the number of shares of Common Stock outstanding immediately prior to the Ex-Dividend Date for such distribution;
X	=	the total number of shares of Common Stock issuable pursuant to such rights or warrants; and
Y	=	the number of shares of Common Stock equal to the aggregate price payable to exercise such rights 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 the Trading Day immediately preceding the Ex-Dividend Date for such distribution.

For purposes of this Section 12.02(b), in determining whether any rights or warrants entitle the Holders to subscribe for or purchase shares of Common Stock at less than the average of the applicable Last Reported Sale Prices, and in determining the aggregate exercise or conversion price payable for such shares of Common Stock, there shall be taken into account any consideration received by the Company for such rights or warrants and any amount payable on exercise or conversion thereof, with the value of such consideration, if other than cash, to be determined by the Board of Directors. If any right or warrant described in this Section 12.02(b) is not exercised or converted prior to the expiration of the exercisability or convertibility thereof, the new Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect if such right or warrant had not been so issued. Any adjustment made pursuant to this Section 12.02(b) shall become effective immediately after the open of business on the Ex-Dividend Date for the applicable distribution.

(c) If the Company distributes shares of Capital Stock, evidences of its indebtedness or other assets or property of the Company to all holders of the Common Stock, excluding:

(i) dividends or distributions referred to in clause (a) or (b) above;

(ii) dividends or distributions paid exclusively in cash; and

(iii) Spin-Offs to which the provisions set forth below in this clause (c) shall apply;

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

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

where,

CR_0	=	the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such distribution;
CR'	=	the new Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for such distribution;
SP_0	=	the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on the Trading Day immediately preceding the Ex-Dividend Date for such distribution; and
FMV	=	the average of the Fair Market Values (as determined by the Board of Directors) of the shares of Capital Stock, evidences of indebtedness, assets or property distributed with respect to each outstanding share of Common Stock over the 10 consecutive Trading-Day period ending on the Trading Day immediately preceding the Ex-Dividend Date for such distribution.

Such adjustment shall become effective immediately after the open of business on the Ex-Dividend Date for the applicable distribution.

With respect to an adjustment pursuant to this clause (c) where there has been a payment of a dividend or other distribution on the Common Stock or shares of Capital Stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit that are, or, when issued, will be traded or quoted on any United States national or regional securities exchange or market (a "**Spin-Off**"), the Conversion Rate will be adjusted based on the following formula:

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

where,

CR_0	=	the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for the Spin-Off;
CR'	=	the Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for the Spin-Off;

FMV_0 = the average of the Last Reported Sale Prices of the Capital Stock or similar equity interest distributed to holders of Common Stock applicable to one share of Common Stock over the first 10 consecutive Trading Day period after, and including, the Ex-Dividend Date for the Spin-Off (the "**Valuation Period**"); and

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

The adjustment to the Conversion Rate under the preceding paragraph will occur after the open of business on the day after the last day of the Valuation Period, but will be given effect as of the open of business on the Ex-Dividend Date for the Spin-Off. Because the adjustment to the Conversion Rate will be made at the end of the Valuation Period with retroactive effect, the Company will delay the settlement of any Securities where the final day of the related Conversion Period occurs during the Valuation Period. In such event, the Company will pay any cash and deliver any shares of Common Stock due upon conversion (based on the adjusted Conversion Rate as described above), on the third Business Day immediately following the last day of the Valuation Period.

If any such dividend or distribution described in this clause (c) is declared but not paid or made, the new Conversion Rate shall be readjusted to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

(d) If any cash dividend or distribution is made to all holders of Common Stock, the Conversion Rate will be adjusted based on the following formula:

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

where,

CR_0 = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such distribution;

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

SP_0 = the Last Reported Sale Price of the Common Stock on the Trading Day immediately preceding the Ex-Dividend Date for such distribution; and

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

An adjustment to the Conversion Rate made pursuant to this clause (d) shall become effective immediately after the open of business on the Ex-Dividend Date for the applicable dividend or distribution. If any dividend or distribution described in this clause (d) is declared but not so paid or made, the new Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

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

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

where,

- CR_0 = the Conversion Rate in effect immediately prior to the open of business on the Trading Day immediately following the Expiration Date;
- CR' = the Conversion Rate in effect immediately following the open of business on the Trading Date immediately following the Expiration Date;
- AC = the aggregate value of all cash and any other consideration (as determined in good faith by the Board of Directors) paid or payable for shares purchased in such tender offer or exchange offer as of the Expiration Date (the "**Purchased Shares**");
- OS_0 = the number of shares of Common Stock outstanding as of the last time tenders or exchanges may be made pursuant to such tender or exchange offer (the "**expiration time**") including any Purchased Shares;
- OS' = the number of shares of Common Stock outstanding at the expiration time (less any Purchased Shares); and
- SP' = the average of the Last Reported Sale Prices of Common Stock during the Averaging Period.

Any adjustment to the Conversion Rate under this clause (e) will be made immediately prior to the open of business on the day following the last day of the Averaging Period, but will be given effect as of the open of business on the Trading Day immediately following the Expiration Date. Because the adjustment to the Conversion Rate will be made at the end of the Averaging Period with retroactive effect, the Company will delay the settlement of any Securities where the final day of the related Conversion Period occurs during the Averaging Period. In such event, the Company will pay any cash and deliver any shares of Common Stock due upon conversion (based on the adjusted Conversion Rate as described above) on the third Business Day immediately following the last day of the Averaging Period. If the Company or one of its Subsidiaries is obligated to purchase Common Stock pursuant to any such tender or exchange offer but are permanently prevented by applicable law from effecting any such purchase or all such purchases are rescinded, the new Conversion Rate shall be readjusted to be the Conversion Rate that would be in effect if such tender or exchange offer had not been made.

(f) Without limiting the foregoing provisions of this Section 12.02, no adjustment will be made thereunder, nor shall an adjustment be made to the ability of a Holder to convert, for any distribution described therein if the Holder will otherwise participate in the distribution without conversion of such Holder's securities as if such Holder held a number of shares of Common Stock equal to the applicable Conversion Rate, multiplied by the principal amount (expressed in thousands) of Securities held by such Holder, without having to convert its Securities. Further, if the application of the foregoing formulas in this Section 12.02 would result in a decrease in the Conversion Rate, no adjustment to the Conversion Rate will be made (except on account of share combinations).

(g) No adjustment to the Conversion Rate will be made unless as specifically set forth in this Section 12.02 and Section 12.03.

(h) Without limiting the foregoing, no adjustment to the Conversion Rate need be made:

(i) 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 securities of the Company and the investment of additional optional amounts in shares of Common Stock under any plan;

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

(iii) upon the issuance of any shares of Common Stock pursuant to any option, warrant, right, or exercisable, exchangeable or convertible security not described in clause (ii) above and outstanding as of the Issue Date;

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

(v) for accrued and unpaid interest (including any Additional Interest); or

(vi) upon the issuance of any shares of Common Stock pursuant to the warrants contemplated by the Offering Memorandum.

(i) No adjustment to the Conversion Rate will be required unless the adjustment would require an increase or decrease of at least 1% of the Conversion Rate. If the adjustment is not made because the adjustment does not change the Conversion Rate by at least 1%, then the adjustment that is not made will be carried forward and taken into account in any future adjustment and the Company will make such carried forward adjustment, regardless of whether the aggregate adjustment is less than 1%, (1) with respect to any converted Securities, on each Trading Date in any relevant Conversion Period and (2) immediately prior to any Fundamental Change Repurchase Date. All required calculations will be made to the nearest cent or 1/1000th of a share, as the case may be.

(j) Whenever the Conversion Rate is adjusted as herein provided, the Company shall promptly file with the Trustee and any Conversion Agent other than the Trustee an Officers' Certificate setting forth the Conversion Rate after such adjustment and setting forth a brief statement of the facts requiring such adjustment. Unless and until a Trust Officer of the Trustee shall have received such Officers' Certificate, the Trustee shall not be deemed to have knowledge of any adjustment of the Conversion Rate and may assume that the last Conversion Rate of which it has knowledge is still in effect. Promptly after delivery of such certificate, the Company shall prepare a notice of such adjustment of the Conversion Rate setting forth the adjusted Conversion Rate and the date on which each adjustment becomes effective and shall mail such notice of such adjustment of the Conversion Rate to the Holder of each Security at such Holder's last address appearing on the Securities Register provided for in Section 2.05 of this Indenture within 20 days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of any such adjustment.

(k) For purposes of this Section 12.02, the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Company but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock. If the Company pays any dividend or makes any distribution on, or issues any rights, options or warrants in respect of, shares of Common Stock held in treasury by the Company, the Company shall not issue, transfer or convey such shares of Common Stock in a manner that would have the effect of circumventing the provisions of this Section 12.02.

(l) Whenever any provision of this Article 12 requires a calculation of Last Reported Sale Prices, VWAP, Daily Conversion Values or Daily Settlement Amounts over or based on a span of multiple days (including a Conversion Period, a Valuation Period or an Averaging Period), the Company will make appropriate adjustments (determined in good faith by the Board of Directors) 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 of the event occurs, at any time during the period when the Last Reported Sale Prices, VWAP, Daily Conversion Values, or Daily Settlement Amounts are to be calculated.

(m) The Company shall be permitted (subject to applicable stock exchange rules) to increase the Conversion Rate by any amount for a period of at least 20 Business Days if the Board of Directors or a committee thereof determines that such increase would be in the best interest of the Company. The Company also may (but is not required to) increase the Conversion Rate to avoid or diminish income tax to holders of Common Stock or rights to purchase shares of Common Stock in connection with a dividend or distribution of shares (or rights to acquire shares) or similar event.

(n) In the event of an increase in the Conversion Rate above that which would result in the Securities, in the aggregate, becoming convertible into shares in excess of certain limitations set forth in the listing standards of the NYSE requiring stockholder approval, the Company shall, at its option, either obtain stockholder approval of such issuances or deliver cash in lieu of any shares otherwise deliverable upon conversions in excess of such limitations based on the Closing Sale Price of the Common Stock on the relevant Conversion Date, in the case of Physical Settlement, or on the VWAP of the Common Stock on each Trading Day of the relevant Conversion Period in respect of which, in lieu of delivering shares of Common Stock, the Company delivers cash pursuant to this paragraph, in the case of Combination Settlement.

Section 12.03. *Adjustment to Common Stock Delivered Upon Certain Fundamental Changes*. (a) If a Holder elects to convert Securities pursuant to Section 12.01(a)(iii) above in connection with a corporate transaction described therein and the transaction constitutes a Fundamental Change, the Conversion Rate for such Securities shall be increased by an additional number of shares of Common Stock (the "**Additional Shares**") as described below. Any conversion will be deemed to have occurred in connection with such Fundamental Change if such Securities are surrendered beginning on the actual effective date of such Fundamental Change until the related Fundamental Change Purchase Date and notwithstanding the fact that a Security may then be convertible because another condition to conversion also has been satisfied.

(b) The number of Additional Shares will be determined by reference to the table attached as Schedule A hereto, based on the actual effective date on which the Fundamental Change occurs or becomes effective (the "**Effective Date**") and the Stock Price paid per share of Common Stock with respect to such Fundamental Change; *provided* that if the Stock Price is between two Stock Price amounts set forth in such table or the Effective Date is between two Effective Dates in the table, the number of Additional Shares will be determined by a straight-line interpolation between the number of Additional Shares set forth for the higher and lower Stock Price amounts and the two dates, as applicable, based on a 365-day year; *provided further* that if the Stock Price is greater than $140.00 per share (subject to adjustment as set forth in clause (c) below) or less than $39.16 per share (subject to adjustment as set forth in clause (c) below), then no Additional Shares will be issued upon conversion. Notwithstanding the foregoing, the Conversion Rate shall not exceed 25.5362 per $1,000 principal amount of Securities on account of adjustments pursuant to this Section 12.03, subject to adjustments set out in Section 12.02(a) through (e).

(c) The Stock Prices set forth in the first row of the table in Schedule A hereto will be adjusted as of any date on which the Conversion Rate of the Securities is otherwise adjusted pursuant to Section 12.02. The adjusted Stock Prices will 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 and the denominator of which is the Conversion Rate as so adjusted. The number of Additional Shares set forth in such table will be adjusted in the same manner as the Conversion Rate as set forth in Section 12.02.

(d) In the event of an increase in the Conversion Rate above that which would result in the Securities, in the aggregate, becoming convertible into shares in excess of certain limitations set forth in the listing standards of the NYSE requiring stockholder approval, the Company shall, at its option, either obtain stockholder approval of such issuances or deliver cash in lieu of any shares otherwise deliverable upon conversions in excess of such limitations based on the Closing Sale Price of the Common Stock on the relevant Conversion Date, in the case of Physical Settlement, or on the VWAP of the Common Stock on each Trading Day of the relevant Conversion Period in respect of which, in lieu of delivering shares of Common Stock, the Company delivers cash pursuant to this paragraph, in the case of Combination Settlement.

Section 12.04. *Effect of Recapitalizations, Reclassifications, and Changes of Common Stock*. (a) If any of the following events occur: (i) any recapitalization, reclassification or change of the outstanding shares of Common Stock (other than a subdivision or combination to which Section 12.02(a) applies), (ii) any consolidation, merger, binding share exchange or combination of the Company with another Person, or (iii) any sale or conveyance to another Person of all or substantially all of the property and assets of the Company and its Subsidiaries, in each case as a result of which 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 or transaction, a "**Reorganization Event**"), then, following the effective time of the Reorganization Event, the right to receive shares of Common Stock upon conversion of Securities, if any, will be changed into a right to receive the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) (the "**Reference Property**") that a Holder of a like number of shares of Common Stock immediately prior to such Reorganization Event would have been entitled to receive upon such Reorganization Event. If the Reorganization Event causes Common Stock to be converted into the right to receive more than a single type of consideration (determined based in part upon any form of stockholder election), the Reference Property will be deemed to be the weighted average of the types and amounts of consideration received by the holders of Common Stock that affirmatively make such an election. The Company will notify Holders of the weighted average as soon as practicable after such determination is made. If the holders of Common Stock receive only cash in such transaction, then for all conversions that occur after the effective date of such transaction (i) the consideration due upon conversion of each $1,000 principal amount of Securities shall be solely cash in an amount equal to the Conversion Rate in effect on the Conversion Date (as may be increased by an Additional Shares), multiplied by the price paid per share of Common Stock in such transaction and (ii) the Company will satisfy its Conversion Obligation by paying cash to converting Holders on the third Business Day immediately following the Conversion Date. Upon such Reorganization Event, the Company or any Successor Company will enter into a supplemental indenture consistent with the foregoing. Such supplemental indenture shall provide for provisions and adjustments which shall be as nearly equivalent as may be practicable to the provisions and adjustments provided for in this Article 12, Article 10 and Article 11 and the definition of Fundamental Change, as appropriate, as determined in good faith by the Company (which determination shall be conclusive and binding), to make such provisions apply to such other Person if different from the original issuer of the Securities.

(b) At and after the effective time of the Reorganization Event (x) the amount otherwise payable in cash upon conversion of the Securities as set forth under Section 12.01 will continue to be payable in cash (including amounts paid in respect of fractional shares), (y) the number of shares of Common Stock otherwise deliverable upon conversion of the Securities as set forth under Section 12.01 will instead be deliverable in the amount and type of Reference Property that a holder of that number of shares of Common Stock would have received in such transaction and (z) the VWAP will be calculated based on the value Of a unit of Referenced Property that a holder of one share of Common Stock would have received in such transaction.

(c) The Company shall cause notice of the execution of any supplemental indenture required by this Section 12.04 to be mailed to each Holder, at its address appearing on the Securities Register provided for in Section 2.05 of this Indenture, within 20 calendar days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of such supplemental indenture.

(d) The above provisions of this Section 12.04 shall similarly apply to successive Reorganization Events.

(e) If this Section 12.04 applies to any event or occurrence, Section 12.02 shall not apply in respect of such event or occurrence.

(f) The Company shall not become a party to any Reorganization Event unless its terms are consistent with the foregoing. None of the foregoing provisions shall affect the right of a Holder of Securities to convert the Securities as set forth in Section 12.01 prior to the effective time of such Reorganization Event.

Section 12.05. *Responsibility of Trustee*. The Trustee and any other Conversion Agent shall not at any time be under any duty or responsibility to the Company or any Holder of Securities to determine when the Securities become convertible, the Conversion Rate, or whether any facts exist which may require any adjustment of the Conversion Rate, or with respect to the nature or extent or calculation of any such adjustment when made, or with respect to the method employed 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 or property, which may at any time be issued or delivered upon the conversion of any Security; 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 cash or shares of Common Stock or stock certificates or other securities or property upon the surrender of any Security for the purpose of conversion or to comply with any of the duties, responsibilities or covenants of the Company contained in this Article 12. 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 12.04 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 Securities after any Reorganization Event or to any adjustment to be made with respect thereto, but, subject to the provisions of Section 8.01, may accept as conclusive evidence of the correctness of any such provisions, and shall be protected in relying upon, an Officers' Certificate with respect thereto.

Section 12.06. *Stockholder Rights Plan*. To the extent that the Company has a rights plan in effect upon conversion of the Securities into Common Stock, the Holder will receive upon conversion of the Securities in respect of which the Company has elected to deliver Common Stock, if applicable, the rights under the rights plan, unless prior to any conversion, the rights have separated from the Common Stock, in which case, and only in such case, the Conversion Rate will be adjusted at the time of separation as if the Company distributed to all holders of Common Stock shares of the Company's Capital Stock, evidences of indebtedness or assets as described in Section 12.02(c) above, subject to readjustment in the event of the expiration, termination or redemption of such rights. In lieu of any such adjustment, the Company may amend such applicable stockholder rights agreement to provide that upon conversion of the Securities the Holders will receive, in addition to the Common Stock issuable upon such conversion, the rights which would have attached to such Common Stock if the rights had not become separated from the Common Stock under such applicable stockholder rights agreement.

Section 12.07. *No Stockholder Rights*. For the avoidance of doubt, Holders of Securities will not have any rights as holders of Common Stock (including voting rights and rights to receive any dividends or other distributions on the Common Stock) if and until the Securities are converted into shares of Common Stock.

Section 12.08. *Withholding Taxes for Adjustments in Conversion Rate*. If the Company pays withholding taxes on behalf of a Holder as a result of an adjustment to the Conversion Rate, the Company may, at its option, set off such payments against payments of cash and shares of Common Stock on the Securities.

Article 13
SUBSIDIARY GUARANTEES

Section 13.01. *Guarantee*. (a) Subject to this Article 13, each of the Guarantors hereby, jointly and severally, unconditionally guarantees (a "**Subsidiary Guarantee**") to each Holder of a Security authenticated and delivered by the Trustee and to the Trustee and its successors and assigns, irrespective of the validity and enforceability of this Indenture, the Securities or the obligations of the Company hereunder or thereunder, that:

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

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

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

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

(c) If any Holder or the Trustee is required by any court or otherwise to return to the Company, the Guarantors or any custodian, trustee, liquidator or other similar official acting in relation to either the Company or the Guarantors, any amount paid either to the Trustee or such Holder, this Subsidiary Guarantee, to the extent theretofore discharged, will be reinstated in full force and effect.

(d) Each Guarantor agrees that it will not be entitled to any right of subrogation in relation to the Holders in respect of any obligations guaranteed hereby until payment in full of all obligations guaranteed hereby. Each Guarantor further agrees that, as between the Guarantors, on the one hand, and the Holders and the Trustee, on the other hand, (1) the maturity of the obligations guaranteed hereby may be accelerated as provided in Article 7 hereof for the purposes of this Subsidiary Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (2) in the event of any declaration of acceleration of such obligations as provided in Article 7 hereof, such obligations (whether or not due and payable) will forthwith become due and payable by the Guarantors for the purpose of this Subsidiary Guarantee. The Guarantors will have the right to seek contribution from any non-paying Guarantor so long as the exercise of such right does not impair the rights of the Holders under the Subsidiary Guarantee.

Section 13.02. *Limitation on Guarantor Liability*. Each Guarantor, and by its acceptance of Securities, each Holder, hereby confirms that it is the intention of all such parties that the Subsidiary Guarantee of such Guarantor not constitute a fraudulent transfer or conveyance for purposes of the Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state law to the extent applicable to any Subsidiary Guarantee. To effectuate the foregoing intention, the Trustee, the Holders and the Guarantors hereby irrevocably agree that the obligations of such Guarantor will be limited to the maximum amount that will, after giving effect to such maximum amount and all other contingent and fixed liabilities of such Guarantor that are relevant under such laws, and after giving effect to any collections from, rights to receive contribution from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under this Article 13, result in the obligations of such Guarantor under its Subsidiary Guarantee not constituting a fraudulent transfer or conveyance.

Section 13.03. *Execution and Delivery of Subsidiary Guarantee*. To evidence its Subsidiary Guarantee set forth in Section 13.01 hereof, each Guarantor hereby agrees that a notation of such Subsidiary Guarantee substantially in the form attached as Exhibit B hereto will be endorsed by an Officer of such Guarantor on each Security authenticated and delivered by the Trustee and that either this Indenture or a supplemental indenture substantially in the form attached as Exhibit C will be executed on behalf of such Guarantor by one of its Officers.

Each Guarantor hereby agrees that its Subsidiary Guarantee set forth in Section 13.01 hereof will remain in full force and effect notwithstanding any failure to endorse on each Security a notation of such Subsidiary Guarantee.

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

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

In the event that any of the Company's Subsidiaries (including a Foreign Subsidiary) that is not already a Guarantor guarantees any indebtedness of the Company or a Domestic Subsidiary after the date of this Indenture, the Company will cause such Subsidiary to comply with the provisions of Section 3.09 hereof and this Article 13, to the extent applicable.

Section 13.04. *Guarantors May Not Consolidate, etc., Except on Certain Terms*. No Guarantor may sell or otherwise dispose of all or substantially all of its assets to, or consolidate with or merge with or into (whether or not such Guarantor is the surviving Person) another Person, other than the Company or another Guarantor, unless (a) immediately after giving effect to such transaction, no Default or Event of Default exists, (b) in the case of such consolidation, merger, sale or disposition by the Company, the conditions in Section 4.01 are satisfied, and, unless such Guarantor's Subsidiary Guarantee is subject to release under Section 13.05, (c) the Person acquiring the assets in any such sale or disposition or the Person formed by or surviving any such consolidation or merger assumes all the obligations of that Guarantor under this Indenture and its Subsidiary Guarantee pursuant to a supplemental indenture in form and substance reasonably satisfactory to the Trustee, on the terms set forth herein or therein.

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

Section 13.05. *Releases*. Each Guarantor shall be released:

(a) in connection with any sale or other disposition of all or substantially all of the assets of that Guarantor (including by way of merger or consolidation) to a Person that is not (either before or after giving effect to such transaction) the Company or its Subsidiary, provided that any such release shall occur only to the extent that all obligations of such Guarantor under all of its guarantees of, and under all of its pledges of assets or other security interests which secure any indebtedness of the Company or the indebtedness of any of the other Guarantors shall also terminate upon such release, sale or transfer;

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

(c) upon the release of its guarantee of all other indebtedness of the Company or any of its Domestic Subsidiaries; or

(d) upon satisfaction and discharge of this Indenture in accordance with Section 9.01.

At the Company's request and expense, the Trustee shall promptly execute and deliver an appropriate instrument evidencing such release upon receipt of a request by the Company accompanied by an Officers' Certificate certifying as to the compliance with this Section 13.05. Any Guarantor not released from its obligations under its Subsidiary Guarantee as provided in this Section 13.05 will remain liable for the full amount of principal of, premium, if any, and interest on the Securities and for the other obligations of any Guarantor under this Indenture as provided in this Article 13.

Article 14
MISCELLANEOUS

Section 14.01. *Notices*. Any notice or communication shall be in writing in the English language (including telecopy or e-mail promptly confirmed in writing) and delivered in person or mailed by first-class mail addressed as follows:

if to the Company and/or any Guarantor:

Hornbeck Offshore Services, Inc.
103 Northpark Boulevard
Suite 300
Covington, Louisiana 70433
Attention: Chief Financial Officer
Fax: (985) 727-2006

With a copy to:

Winstead PC
24 Waterway Avenue
Suite 500
The Woodlands, Texas 77380
Attention: R. Clyde Parker, Jr.
Fax: (281) 681-5901

if to the Trustee:

Wells Fargo Bank, National Association
45 Broadway, 14th Floor
Attention: Corporate Trust Services – Administrator for Hornbeck Offshore Services
Fax: (212) 515-5244

The Company, any Guarantor or the Trustee by notice to the other may designate additional or different addresses (including e-mail addresses) for subsequent notices or communications.

Any notice or communication mailed to a registered Holder shall be mailed to the Holder at the Holder's address as it appears on the Securities Register and shall be sufficiently given if so mailed within the time prescribed; *provided* that notices given to Holders holding Securities in book-entry form may be given through facilities of DTC or any successor depositary.

Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders. If a notice or communication is mailed in the manner provided above, it is duly given, whether or not the addressee receives it, except that notices to the Trustee shall be effective only upon receipt.

Section 14.02. *Certificate and Opinion as to Conditions Precedent*. Upon any request or application by the Company to the Trustee to take or refrain from taking any action under this Indenture, the Company shall furnish to the Trustee:

(a) an Officers' Certificate in form and substance reasonably satisfactory to the Trustee stating that, in the opinion of the signers, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and

(b) an Opinion of Counsel in form and substance reasonably satisfactory to the Trustee stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

Section 14.03. *Statements Required in Certificate or Opinion*. Each certificate or opinion with respect to compliance with a covenant or condition provided for in this Indenture shall include:

(a) a statement that the individual making such certificate or opinion has read such covenant or condition;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(c) a statement that, in the opinion of such individual, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) a statement as to whether or not, in the opinion of such individual, such covenant or condition has been complied with.

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

Section 14.04. *When Securities Are Disregarded*. In determining whether the Holders of the required principal amount of Securities have concurred in any direction, waiver or consent, Securities owned by the Company or by any Affiliate of the Company shall be disregarded and deemed not to be outstanding, except that, for the purpose of determining whether the Trustee shall be protected in relying on any such direction, waiver or consent, only Securities which a Trust Officer of the Trustee actually knows are so owned shall be so disregarded. Also, subject to the foregoing, only Securities outstanding at the time shall be considered in any such determination.

Section 14.05. *Rules by Trustee, Paying Agent and Registrar*. The Trustee may make reasonable rules for action by, or a meeting of, Holders. The Registrar and the Paying Agent may make reasonable rules for their functions.

Section 14.06. *Legal Holidays*. A "**Legal Holiday**" is a Saturday, a Sunday or other day on which commercial banking institutions are authorized or required to be closed in New York City or New Orleans, Louisiana. If a payment date is a Legal Holiday, payment shall be made on the next succeeding day that is not a Legal Holiday, and no interest or Additional Interest, if any, shall accrue for the intervening period. If a Regular Record Date is a Legal Holiday, such Regular Record Date shall not be affected.

Section 14.07. *Governing Law*. THIS INDENTURE, THE SECURITIES AND THE SUBSIDIARY GUARANTEES SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

Section 14.08. *No Recourse Against Others*. An incorporator, director, officer, employee, Affiliate or stockholder of the Company or a Guarantor, solely by reason of this status, shall not have any liability for any obligations of the Company or any Guarantor under the Securities, this Indenture, the Subsidiary Guarantees or for any claim based on, in respect of or by reason of such obligations or their creation. By accepting a Security, each Holder shall waive and release all such liability; *provided*, *however*, the parties acknowledge that such waiver may not be effective to waive liability under federal securities laws. The waiver and release shall be part of the consideration for the issue of the Securities.

Section 14.09. *Successors*. All agreements of the Company in this Indenture and the Securities shall bind its successors. All agreements of the Trustee in this Indenture shall bind its successors. All agreements of each Guarantor in this Indenture shall bind its successors, except as otherwise provided in Section 13.05.

Section 14.10. *Multiple Originals*. The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. One signed copy is enough to prove this Indenture. The exchange of copies of this Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

Section 14.11. *Table of Contents; Headings*. The table of contents, cross-reference sheet and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not intended to be considered a part hereof and shall not modify or restrict any of the terms or provisions hereof.

Section 14.12. *Severability Clause*. In case any provision in this Indenture shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby and such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability.

Section 14.13. *Calculations*. Except as otherwise provided herein, the Company will be responsible for making all calculations called for under this Indenture and the Securities. The Company will make all such calculations in good faith and, absent manifest error, its calculations will be final and binding on Holders. The Company upon request will provide a schedule of its calculations to each of the Trustee and the Conversion Agent, and each of the Trustee and Conversion Agent is entitled to rely conclusively upon the accuracy of the Company's calculations without independent verification. The Trustee will deliver a copy of such schedule to any Holder upon the request of such Holder.

Section 14.14. *Consent to Jurisdiction*. The Company and each Guarantor hereby irrevocably and unconditionally submits, for itself and its property, to the jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Indenture and any of the Notes, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Indenture shall affect any right that the Trustee, Agent, or Holder any otherwise have to bring any action or proceeding relating to this Indenture against the Company or any Guarantor or their properties in the courts of any jurisdiction to enforce any judgment, order or process entered by such courts situate within the State of New York or to enjoin any violations hereof or for relief ancillary hereto or otherwise to collect on loans or enforce the payment of any Notes or to enforce, protect or maintain their rights and Claims or for any other lawful purpose. The Company and each Guarantor further agrees that any action or proceeding brought against the Trustee, Agent or any Holder, if brought by the Company or any Guarantor, shall be brought only in New York State or, to the extent permitted by law, in such Federal Court.

Section 14.15. *U.S.A. PATRIOT Act.* The parties hereto acknowledge that in accordance with Section 326 of the U.S.A. PATRIOT Act, the Trustee, like all financial institutions and in

order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The parties to this Indenture agree that they will provide the Trustee with such information as it may request in order for the Trustee to satisfy the requirements of the U.S.A. PATRIOT Act.

[*Remainder of the page intentionally left blank*]

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

HORNBECK OFFSHORE SERVICES, INC.

By: /s/ James O. Harp, Jr.
Name: James O. Harp, Jr.
Title: Executive Vice President and Chief Financial Officer

GUARANTORS:

Energy Services Puerto Rico, LLC
Hornbeck Offshore Services, LLC
Hornbeck Offshore Transportation, LLC
Hornbeck Offshore Operators, LLC
HOS-IV, LLC
Hornbeck Offshore Trinidad & Tobago, LLC
HOS Port, LLC

By: /s/ James O. Harp, Jr.
Name: James O. Harp, Jr.
Title: Executive Vice President and Chief Financial Officer

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Trustee

By: /s/ Martin Reed
Name: Martin Reed
Title: Vice President

SCHEDULE A

The following table sets forth the number of Additional Shares to be received per $1,000 principal amount of Securities pursuant to Section 12.03 of this Indenture:

Stock Price

Effective Date	$ 39.16	$ 40.00	$ 45.00	$ 50.00	$ 55.00	$ 60.00	$ 65.00	$ 70.00	$ 80.00	$ 90.00	$100.00	$120.00	$140.00
August 13, 2012	6.9644	6.6953	5.3506	4.3423	3.5679	2.9628	2.4813	2.0931	1.5152	1.1157	0.8309	0.4685	0.2627
September 1, 2013	6.9644	6.6397	5.2558	4.2249	3.4391	2.8295	2.3482	1.9632	1.3964	1.0105	0.7396	0.4018	0.2157
September 1, 2014	6.9644	6.5623	5.1333	4.0775	3.2799	2.6668	2.1875	1.8077	1.2567	0.8890	0.6359	0.3288	0.1659
September 1, 2015	6.9644	6.4615	4.9746	3.8875	3.0758	2.4597	1.9845	1.6132	1.0853	0.7429	0.5138	0.2468	0.1130
September 1, 2016	6.9644	6.3608	4.7878	3.6537	2.8207	2.2000	1.7306	1.3715	0.8768	0.5700	0.3739	0.1592	0.0609
September 1, 2017	6.9644	6.2554	4.5455	3.3364	2.4710	1.8450	1.3876	1.0503	0.6115	0.3613	0.2144	0.0714	0.0161
September 1, 2018	6.9644	6.1242	4.1569	2.8075	1.8883	1.2663	0.8478	0.5672	0.2541	0.1137	0.0495	0.0043	0.0000
September 1, 2019	6.9644	6.4282	3.6504	1.4282	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

EXHIBIT A

[FORM OF FACE OF SECURITY]

[Restricted Securities Legend, if applicable]
[Global Security Legend, if applicable]

No. [ ] Principal Amount $[ ], as revised by the Schedule of Increases and Decreases in Global Security attached hereto.

CUSIP NO.: [ ]
ISIN: [ ]

1.500% Convertible Senior Notes due 2019

Hornbeck Offshore Services, Inc., a Delaware corporation, promises to pay to [ ], or registered assigns, the principal sum of [ ] Dollars, as revised by the Schedule of Increases and Decreases in Global Security attached hereto, on September 1, 2019.

Interest Payment Dates: March 1 and September 1
Regular Record Dates: February 15 and August 15

Additional provisions of this Security are set forth on the attached "Terms of Securities."

Dated: [ ]

HORNBECK OFFSHORE SERVICES, INC.

By: _____
Name:
Title:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

WELLS FARGO BANK, NATIONAL ASSOCIATION
as Trustee, certifies that this is one of the Securities
referred to in the Indenture.

By: _____
Authorized Signatory

TERMS OF SECURITIES

1.500% Convertible Senior Notes due 2019

The Company issued this Security under an Indenture dated as of August 13, 2012 (as it may be amended or supplemented from time to time in accordance with the terms thereof, the "Indenture"), among the Company, the guarantors party thereto and the Trustee, to which 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. Additional Securities may be issued under the Indenture in an unlimited aggregate principal amount subject to certain conditions specified in the Indenture.

1. Interest

Hornbeck Offshore Services, Inc., a Delaware corporation (such corporation, and its successors and assigns under the Indenture hereinafter referred to, being herein called the "Company"), promises to pay interest on the unpaid principal amount of this Security at the rate of 1.5% per annum. In certain circumstances specified in the Indenture, the Company may be required to pay Additional Interest on this Security. All references herein to "interest" include any such Additional Interest as may then be payable.

The Company will pay interest semiannually on March 1 and September 1 of each year (each, an "Interest Payment Date") commencing March 1, 2013. Interest on the Securities will accrue from the most recent date to which interest has been paid on the Securities or, if no interest has been paid, from August 13, 2012. Interest will be computed on the basis of a 360-day year of twelve 30-day months.

2. Method of Payment

By no later than 11:00 a.m. (New York City time) on the date on which any principal of, interest (including any Additional Interest) or premium, if any, on any Security is due and payable, the Company shall deposit with the Paying Agent money sufficient to pay such amount. The Company will pay principal, premium and interest in money of the United States that at the time of payment is legal tender for payment of public and private debts. Payments in respect of Securities represented by a Global Security (including principal, interest (including any Additional Interest) and premium, if any) will be made by wire transfer of immediately available funds to the accounts specified by The Depository Trust Company. The Company will pay principal of Definitive Securities at the office or agency designated by the Company for such purpose. Interest (including any Additional Interest), on Definitive Securities will be payable (i) to Holders having an aggregate principal amount of $5,000,000 or less, by check mailed to the Holders of these Securities and (ii) to Holders having an aggregate principal amount of more than $5,000,000, either by check mailed to each Holder or, upon application by a Holder to the Registrar not later than the relevant record date, by wire transfer in immediately available funds to that Holder's account within the United States, which application shall remain in effect until the Holder notifies, in writing, the Registrar to the contrary.

3. No Sinking Fund; No Redemption.

No sinking fund is provided for the Securities. The Securities are not subject to redemption at the Company's option.

4. Purchase by the Company at the Option of the Holder Upon a Fundamental Change.

If a Fundamental Change shall occur at any time, each Holder shall have the right, at such Holder's option and subject to the terms and conditions of the Indenture, to require the Company to purchase all or a portion of its Securities at a Fundamental Change Purchase Price specified in the Indenture.

5. Conversion

Subject to the conditions and procedures set forth in the Indenture, and during the periods specified in the Indenture, a Holder may convert Securities, on or prior to the close of business on the second Scheduled Trading Day immediately preceding Stated Maturity.

The initial Conversion Rate is 18.5718 shares of Common Stock per $1,000 principal amount of Securities, subject to adjustment in certain events described in the Indenture. Upon conversion, the Company will either (i) deliver shares of Common Stock based on the Conversion Rate or (ii) pay cash or cash and shares of Common Stock, if any, based on a Daily Conversion Value calculated on a proportionate basis for each day of the 25-day Conversion Period, as set forth in the Indenture. The Company shall deliver cash in lieu of any fractional share of Common Stock.

A Holder may convert a portion of the Securities only if the principal amount of such portion is $1,000 or a multiple of $1,000. No payment or adjustment shall be made for dividends on the Common Stock except as provided in the Indenture.

6. Denominations; Transfer; Exchange

The Securities are in registered form without coupons in denominations of principal amount of $1,000 and multiples of $1,000. A Holder may transfer or exchange Securities in accordance with the Indenture. The Registrar may require a Holder, among other things, to furnish appropriate endorsements or transfer documents and to pay any taxes and fees required by law or permitted by the Indenture. The Registrar need not register the transfer of or exchange of Securities surrendered for conversion or, if a portion of any Security is surrendered for conversion, the portion thereof surrendered for conversion.

7. Persons Deemed Owners

The registered Holder of this Security may be treated as the owner of it for all purposes.

8. Unclaimed Money

If money for the payment of principal, premium, if any, or interest (including any Additional Interest) remains unclaimed for two years, the Trustee or Paying Agent shall pay the money back to the Company, subject to applicable abandoned property laws. After any such payment, Holders entitled to the money must look only to the Company and not to the Trustee for payment.

9. Amendment, Waiver

Subject to certain exceptions, the Indenture contains provisions permitting an amendment of the Indenture, the Subsidiary Guarantees or the Securities with the written consent of the Holders of at least a majority in principal amount of the then outstanding Securities and the waiver of any Event of Default (other than with respect to nonpayment or in respect of a provision that cannot be amended without the written consent of each Holder affected) or noncompliance with any provision with the written consent of the Holders of a majority in principal amount of the then outstanding Securities.

In addition, the Indenture permits an amendment of the Indenture, the Subsidiary Guarantees or the Securities without the consent of any Holder under certain circumstances specified in the Indenture.

10. Defaults and Remedies

Subject to the following paragraph, if an Event of Default specified in the Indenture occurs and is continuing, the Trustee or the Holders of at least 25% in principal amount of the Securities may declare all the Securities by notice to the Company to be due and payable immediately. In addition, certain specified Events of Default will cause the Securities to become immediately due and payable without further action by the Holders.

The sole remedy for an Event of Default relating to the Company's failure to comply with the reporting obligations under Article 5 of the Indenture will, at the Company's election, for the 365 days after the occurrence of such an Event of Default consist exclusively of the right to receive Additional Interest on the principal amount of the Securities at a rate equal to 0.50% per annum.

Holders may not enforce the Indenture or the Securities except as provided in the Indenture. The Trustee may refuse to enforce the Indenture or the Securities unless it receives reasonable indemnity or security. Subject to certain limitations, Holders of a majority in principal amount of the Securities may direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Holders notice of any continuing Default or Event of Default (except a Default or Event of Default in payment of principal, interest (including any Additional Interest) or premium, if any) if it determines that withholding notice is in their interest.

11. Trustee Dealings with the Company

Subject to certain limitations set forth in the Indenture, the Trustee under the Indenture, in its individual or any other capacity, may become the owner or pledgee of Securities and may

otherwise deal with and collect obligations owed to it by the Company or its Affiliates and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not Trustee.

12. No Recourse Against Others

An incorporator, director, officer, employee, Affiliate or stockholder of the Company or a Guarantor, solely by reason of this status, shall not have any liability for any obligations of the Company or any Guarantor under the Securities, the Indenture, the Subsidiary Guarantees or for any claim based on, in respect of or by reason of such obligations or their creation. By accepting a Security, each Holder waives and releases all such liability. The waiver and release are part of the consideration for the issue of the Securities.

13. Authentication

This Security shall not be valid until an authorized signatory of the Trustee manually authenticates this Security.

14. Abbreviations

Customary abbreviations may be used in the name of a Holder or an assignee, such as TEN COM (=tenants in common), TEN ENT (=tenants by the entirety), JT TEN (=joint tenants with rights of survivorship and not as tenants in common), CUST (=custodian) and U/G/M/A (=Uniform Gift to Minors Act).

15. CUSIP Numbers

Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Company has caused CUSIP numbers to be printed on the Securities. No representation is made as to the accuracy of such numbers either as printed on the Securities and reliance may be placed only on the other identification numbers placed thereon.

16. Governing Law

This Security, the Indenture and the Subsidiary Guarantees shall be governed by, and construed in accordance with, the laws of the State of New York.

The Company will furnish to any Holder upon written request and without charge to the Holder a copy of the Indenture which has in it the text of this Security. Requests may be made to:

Hornbeck Offshore Services, Inc.
103 Northpark Boulevard
Suite 300
Covington Louisiana, 70433
Attention: Chief Financial Officer
Fax: (985) 727-2006

ASSIGNMENT FORM

To assign this Security, fill in the form below:
I or we assign and transfer this Security to

_____

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

_____

(Insert assignee's soc. sec. or tax I.D. No.)

and irrevocably appoint _____ agent to transfer this Security on the books of the Company. The agent may substitute another to act for him.

_____

Date: _____ Your Signature: _____

Signature Guarantee: _____

(Signature must be guaranteed)

_____

Sign exactly as your name appears on the other side of this Security.

The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions) with membership in an approved signature guarantee medallion program, pursuant to S.E.C. Rule 17Ad-15.

In connection with any transfer or exchange of any of the Securities evidenced by this certificate occurring prior to the date that is two years after the later of the date of original issuance of such Securities and the last date, if any, on which such Securities were owned by the Company or any Affiliate of the Company, the undersigned confirms that such Securities are being:

CHECK ONE BOX BELOW:

☐ 1 acquired for the undersigned's own account, without transfer; or

☐ 2 transferred to the Company; or

☐ 3 transferred pursuant to an effective registration statement under the Securities Act of 1933, as amended (the "Securities Act"); or

☐ 4 transferred pursuant to and in compliance with Rule 144A under the Securities Act; or

☐ 5 transferred pursuant to another available exemption from the registration requirements of the Securities Act.

Unless one of the boxes is checked, the Trustee will refuse to register any of the Securities evidenced by this certificate in the name of any Person other than the registered Holder thereof; *provided*, *however*, that if box (5) is checked, the Trustee or the Company may require, prior to registering any such transfer of the Securities, in their sole discretion, such legal opinions, certifications and other information as the Trustee or the Company may reasonably request to

confirm that such transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act, such as the exemption provided by Rule 144 under such Act.

Signature:

Signature Guarantee:

(Signature must be guaranteed)

Signature:

The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions) with membership in an approved signature guarantee medallion program, pursuant to S.E.C. Rule 17Ad-15.

TO BE COMPLETED BY PURCHASER IF (4) ABOVE IS CHECKED.

The undersigned represents and warrants that it is purchasing this Security for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act of 1933, as amended, and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Company as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon the undersigned’s foregoing representations in order to claim the exemption from registration provided by Rule 144A.

Dated:

[TO BE ATTACHED TO GLOBAL SECURITIES]

SCHEDULE OF INCREASES OR DECREASES IN GLOBAL SECURITY

The following increases or decreases in this Global Security have been made:

Date	Amount of decrease in Principal Amount of this Global Security	Amount of increase in Principal Amount of this Global Security	Principal Amount of this Global Security following such decrease or increase	Signature of authorized signatory of Trustee or Securities Custodian

FORM OF CONVERSION NOTICE

To: Hornbeck Offshore Services, Inc.

The undersigned registered Holder of this Security hereby exercises the option to convert this Security, or portion hereof (which is $1,000 principal amount or a multiple thereof) designated below in accordance with the terms of the Indenture referred to in this Security, and directs that cash, and the shares of Common Stock of Hornbeck Offshore Services, Inc., if any, issuable and deliverable upon such conversion, and any Securities representing any unconverted principal amount hereof, be issued and delivered to the registered Holder hereof unless a different name has been indicated below. If cash, shares or any portion of this Security not converted are to be issued in the name of a Person other than the undersigned, the undersigned shall pay all transfer taxes payable with respect thereto.

This notice shall be deemed to be an irrevocable exercise of the option to convert this Security.

In order to facilitate the Company's compliance with the provisions of the Jones Act related to ownership of Common Stock by non-U.S. citizens, the undersigned registered Holder of this Security represents and warrants as follows:

CHECK ONE BOX BELOW:

☐ 1 Such Holder is a U.S. citizen

☐ 2 Such Holder is a non-U.S. citizen

Dated:

Signature(s)

The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions) with membership in an approved signature guarantee medallion program, pursuant to S.E.C. Rule 17Ad-15.

Signature Guarantee

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

(Name)

Principal amount to be converted (if less than all):

$,000

(Street Address)

(City state and zip code)
Please print name and address

Social Security or Other Taxpayer Number

FORM OF FUNDAMENTAL CHANGE PURCHASE NOTICE

To: Hornbeck Offshore Services, Inc.

The undersigned registered Holder of this Security hereby acknowledges receipt of a notice from Hornbeck Offshore Services, Inc. (the "Company") as to the occurrence of a Fundamental Change with respect to the Company and requests and instructs the Company to repurchase this Security, or the portion hereof (which is $1,000 principal amount or a multiple thereof) designated below, in accordance with the terms of the Indenture referred to in this Security and directs that the check in payment for this Security or the portion thereof and any Securities representing any unrepurchased principal amount hereof, be issued and delivered to the registered Holder hereof unless a different name has been indicated below. If any portion of this Security not repurchased is to be issued in the name of a Person other than the undersigned, the undersigned shall pay all transfer taxes payable with respect thereto.

Dated:

Signature(s)

The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions) with membership in an approved signature guarantee medallion program, pursuant to S.E.C. Rule 17Ad-15.

Signature Guarantee

Fill in if a check is to be issued, or Securities are to be issued, other than to and in the name of registered Holder:

(Name)

Principal amount to be purchased (if less than all): $,000

(Street Address)

(City state and zip code)
Please print name and address

Social Security or Other Taxpayer Number

EXHIBIT B

[Date]

FORM OF NOTATION OF GUARANTEE

For value received, each Guarantor (which term includes any successor Person under the Indenture) has, jointly and severally, unconditionally guaranteed, to the extent set forth and subject to the provisions in the Indenture (the "Indenture"), dated as of August 13, 2012, among Hornbeck Offshore Services, Inc. (the "Company"), the guarantors party thereto and Wells Fargo Bank, National Association, as trustee (the "Trustee"), (a) the due and punctual payment of the principal of, premium, if any, and interest (including Additional Interest, if any) on, the Securities, whether at Stated Maturity, by acceleration, required repurchase or otherwise, and the due and punctual payment of interest on overdue principal of, premium, if any, and interest (including Additional Interest) on the Securities, if any, if lawful, and (b) in case of any extension of time of payment or renewal of any Securities or any of such other obligations, that the same will be promptly paid in full when due, whether at Stated Maturity, by acceleration or otherwise. The obligations of the Guarantors to the Holders of Securities and to the Trustee pursuant to the Subsidiary Guarantee and the Indenture are expressly set forth in Article 13 of the Indenture and reference is hereby made to the Indenture for the precise terms of the Subsidiary Guarantee. Each Holder of a Security, by accepting the same, (a) agrees to and shall be bound by such provisions and (b) appoints the Trustee attorney-in-fact of such Holder for such purpose.

Capitalized terms used but not defined herein have the meanings given to them in the Indenture.

[Signature Page Follows]

[NAME OF GUARANTOR(S)]

By: _____
Name:
Title:

EXHIBIT C

FORM OF SUPPLEMENTAL INDENTURE
TO BE DELIVERED BY SUBSEQUENT GUARANTORS

SUPPLEMENTAL INDENTURE (this "Supplemental Indenture"), dated as of , 200 , among (the "Guaranteeing Subsidiary"), a subsidiary of Hornbeck Offshore Services, Inc. (or its permitted successor), a Delaware corporation (the "Company"), the Company, the other Guarantors (as defined in the Indenture referred to herein) and Wells Fargo Bank, National Association, as trustee under the Indenture referred to below (the "Trustee").

WITNESSETH

WHEREAS, the Company has heretofore executed and delivered to the Trustee an Indenture, dated as of August 13, 2012 (the "Indenture"), providing for the issuance of 1.500% Convertible Senior Notes due 2019 (the "Securities");

WHEREAS, the Indenture provides that under certain circumstances the Guaranteeing Subsidiary shall execute and deliver to the Trustee a supplemental indenture pursuant to which the Guaranteeing Subsidiary shall unconditionally guarantee all of the Company's Obligations under the Securities and the Indenture on the terms and conditions set forth herein (the "Subsidiary Guarantee"); and

WHEREAS, pursuant to Section 3.09 of the Indenture, the Trustee is authorized to execute and deliver this Supplemental Indenture.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Guaranteeing Subsidiary and the Trustee mutually covenant and agree for the equal and ratable benefit of the Holders of the Securities as follows:

1. *Capitalized Terms*. Capitalized terms used herein without definition shall have the meanings assigned to them in the Indenture.

2. *Agreement to Guarantee*. The Guaranteeing Subsidiary hereby agrees to provide an unconditional Guarantee on the terms and subject to the conditions set forth in the Subsidiary Guarantee and in the Indenture including but not limited to Article 13 thereof.

3. *No Recourse Against Others*. No past, present or future director, officer, employee, incorporator, stockholder or agent of the Guaranteeing Subsidiary (other than the Company or a Guarantor in its capacity as a stockholder of a Subsidiary), as such, shall have any liability for any obligations of the Company or any Guaranteeing Subsidiary under the Securities, any Subsidiary Guarantees, the Indenture or this Supplemental Indenture or for any claim based on, in respect of or by reason of, such obligations or their creation. Each Holder of the Securities by accepting a Security waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Securities. Such waiver may not be effective to waive liabilities under the federal securities laws and it is the view of the SEC that such a waiver is against public policy.

4. *New York Law to Govern*. THE INTERNAL LAW OF THE STATE OF NEW YORK SHALL GOVERN AND BE USED TO CONSTRUE THIS SUPPLEMENTAL INDENTURE.

5. *Counterparts*. The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

6. *Effect of Headings*. The Section headings herein are for convenience only and shall not affect the construction hereof.

7. *The Trustee*. The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made solely by the Guaranteeing Subsidiary and the Company.

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

Dated: , 20

[GUARANTEEING SUBSIDIARY]

By: _____
Name:
Title:

HORNBECK OFFSHORE SERVICES, INC.

By: _____
Name:
Title:

[EXISTING GUARANTORS]

By: _____
Name:
Title:

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Trustee

By: _____
Authorized Signatory

Exhibit 4.2

Execution version

Barclays Bank PLC
5 The North Colonnade
Canary Wharf, London E14 4BB
Facsimile:+44(20)77736461
Telephone: +44 (20) 777 36810

c/o Barclays Capital Inc.
as Agent for Barclays Bank PLC
745 Seventh Ave
New York, NY 10019
Telephone: +1 212 412 4000

August 7, 2012

To: Hornbeck Offshore Services, Inc.
103 Northpark Boulevard, Suite 300
Covington, Louisiana, 70433
Attention: Sam Giberga, General Counsel
Facsimile No.: (985) 727-2006

Re: **Base Call Option Transaction**

The purpose of this letter agreement (this "**Confirmation**") is to confirm the terms and conditions of the Transaction entered into between Barclays Bank PLC ("**Dealer**"), through its agent Barclays Capital Inc. (the "**Agent**"), and Hornbeck Offshore Services, Inc. ("**Counterparty**") on the Trade Date specified below (the "**Transaction**"). This Confirmation constitutes a "Confirmation" as referred to in the Agreement specified below. Dealer is regulated by the Financial Services Authority. Dealer is not a member of the Securities Investor Protection Corporation ("**SIPC**").

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 have the meanings assigned to them in the Indenture to be dated on or about August 13, 2012 between Counterparty and Wells Fargo Bank, National Association, as trustee (as may be amended, modified or supplemented from time to time, but only if such amendment, modification or supplement is consented to by Dealer in writing, the "**Indenture**") relating to USD 260,000,000 principal amount of 1.500% senior convertible notes due 2019 (the "**Convertible Notes**") issued by Counterparty. In the event of any inconsistency between the Indenture and this Confirmation, this Confirmation shall govern. For the avoidance of doubt, references herein to sections of the Indenture are based on the draft of the Indenture most recently reviewed by the parties at the time of this Confirmation. If any relevant sections of the Indenture are changed, added, or renumbered following execution of this Confirmation but prior to the execution of the Indenture, the parties will amend this Confirmation in good faith to preserve the economic intent of the parties based on the draft of the Indenture so reviewed. The parties further acknowledge that 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 following its execution, any such amendment will be disregarded for purposes of this Confirmation (other than as provided in paragraph 8(t)(ii) below and other than any amendment pursuant to Section 10.01(k) of the Indenture) unless the parties agree otherwise in writing.

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 supplement, form a part of, and be subject to an agreement in the form of the ISDA 2002 Master Agreement (the "**Agreement**") as if Dealer and Counterparty had executed an agreement in such form (but without any Schedule except for (i) the election of the laws of the State of New York as the governing law, (ii) the election of US Dollars ("**USD**") as the Termination Currency, and (iii) the other provisions set forth under paragraph 8(u) below) on the Trade Date. In the event of any inconsistency between provisions of that Agreement and this Confirmation, this Confirmation will prevail for the purpose of the Transaction to which this Confirmation relates. The parties hereby agree that no Transaction other than the Transaction to which this Confirmation relates shall be governed by the Agreement.

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

General Terms:

Trade Date:	August 7, 2012.
Effective Date:	The closing date for the initial issuance of the Convertible Notes.
Option Style:	Modified American, as described below under "Procedures for Exercise".
Option Type:	Call.
Buyer:	Counterparty.
Seller:	Dealer.
Shares:	The common stock, par value USD 0.01 per share, of Counterparty (Ticker symbol "HOS").
Number of Options:	260,000. For the avoidance of doubt, the Number of Options shall be reduced by any Options exercised by Counterparty. In no event will the Number of Options be less than zero.
Option Entitlement:	As of any date, a number of Shares per Option equal to the Applicable Percentage *multiplied by* the "Conversion Rate" (as defined in the Indenture) as of such date (but without regard to any adjustments to the "Conversion Rate" pursuant to Section 12.02(m) or Section 12.03 of the Indenture).
Strike Price:	As provided in Schedule A to this Confirmation.
Applicable Percentage:	30.0%.
Premium:	As provided in Schedule A to this Confirmation.
Premium Payment Date:	The Effective Date.
Exchange:	New York Stock Exchange.
Related Exchange(s):	All Exchanges.

Procedures for Exercise:

Exercise Dates:	Each Conversion Date.
Conversion Dates:	Each "Conversion Date" (as defined in the Indenture) occurring during the Exercise Period for Convertible Notes in denominations of USD 1,000 principal amount that are surrendered for conversion on such Conversion Date in accordance with the terms of the Indenture, subject to "Notice of Exercise" below (such Convertible Notes, the "**Relevant Convertible Notes**"); *provided* that 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 Convertible Note surrendered 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 12.01(f) of the Indenture and such designation is accepted by such financial institution, except to the extent that (i) such financial institution fails to pay or deliver, as the case may be, any consideration due upon conversion of such Convertible Note, or (ii) such Convertible Note is subsequently resubmitted to Counterparty for conversion in accordance with the terms of the Indenture.
Exercisable Options:	In respect of each Conversion Date, a number of Options equal to the number of Relevant Convertible Notes in denominations of USD 1,000 principal amount surrendered for conversion on such Conversion Date in accordance with the terms of the Indenture, subject to "Notice of Exercise" below, but no greater than the Number of Options.
Free Convertibility Date:	June 1, 2019.
Exercise Period:	The period from and including the Effective Date to and including the Expiration Date.
Expiration Date:	Notwithstanding anything to the contrary in section 3.1(f) of the Equity Definitions, "Expiration Date" shall mean the earlier of (x) the last day on which any Convertible Notes remain outstanding and (y) the Scheduled Trading Day immediately preceding the "Maturity Date" (as defined in the Indenture).
Multiple Exercise:	Applicable, as provided under "Exercisable Options" above.
Automatic Exercise:	Applicable, subject to "Notice of Exercise" below.
Notice of Exercise:	Notwithstanding anything to the contrary in the Equity Definitions or under "Exercisable Options" above, in order to exercise any Exercisable Options, Counterparty must notify Dealer in writing prior to 5:00 p.m., New York City time, on the day that is at least two Scheduled Trading Days' prior to the first day of the applicable Conversion Period for such Options (the "**Notice Deadline**") of (i) the aggregate principal amount of Convertible Notes as to which such Conversion Date has occurred (including, if applicable, whether all or any portion of the Convertible Notes relating to such Options are Convertible Notes as to which additional Shares would be added to the "Conversion Rate" (as defined in the Indenture) pursuant to Section 12.03 of the Indenture (the "**Make-Whole Convertible Notes**")), (ii) the scheduled first day of the applicable Conversion Period and the scheduled Settlement Date, (iii) the Relevant Settlement Method for such Options and (iv) if the Relevant Settlement Method for such Options is not Net Share Settlement, Settlement in Shares or Settlement in Cash (each as defined below), the fixed amount of cash per Relevant Convertible Note that Counterparty has elected to deliver to "Holders" (as defined in the Indenture) of the related Relevant Convertible Notes (the "**Specified Cash Amount**"), and such notice shall also include the information, representations, acknowledgements and agreements required pursuant to "Settlement Method Election Conditions" below; *provided* that, notwithstanding the foregoing, in the case of any Options relating to Convertible Notes surrendered for conversion in respect of which Counterparty has elected to designate

a financial institution for exchange in lieu of conversion pursuant to Section 12.01(f) of the Indenture and such designation is accepted by such financial institution, such notice (and the related automatic exercise of such Options) shall be effective if given after the relevant Notice Deadline but prior to 5:00 p.m. (New York City time) on the 50th Scheduled Trading Day following the Notice Deadline, in which event the Calculation Agent shall have the right to adjust the number of Shares and/or amount of cash deliverable by Dealer with respect to such Options as appropriate to reflect the additional costs (including, but not limited to, hedging mismatches and market losses) and expenses incurred by Dealer in connection with its hedging activities (including the unwinding of any hedge position) as a result of Dealer not having received such notice on or prior to the Notice Deadline; provided, further, that in respect of any Options relating to Relevant Convertible Notes with a Conversion Date occurring on or after the Free Convertibility Date, (A) such notice may be given on or prior to the Expiration Date and need only specify the information required in clause (i) above (provided that any such notice given on the Expiration Date shall be given prior to 12:00 p.m., New York City time, on such date), and (B) if the Relevant Settlement Method for such Options is not Net Share Settlement with a Specified Cash Amount equal to USD 1,000, Dealer shall have received a separate notice (the "*Notice of Final Settlement Method*") in respect of all such Relevant Convertible Notes before 5:00 p.m., New York City time, on or prior to the Free Convertibility Date specifying the information required in clauses (iii) and (iv) above, as well as the information, representations, acknowledgements and agreements required pursuant to "Settlement Method Election Conditions" below.

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 the Settlement Method Election Conditions have been satisfied and Counterparty shall have notified Dealer of the Relevant Settlement Method in the Notice of Exercise or Notice of Final Settlement Method, as applicable, for such Option.
Relevant Settlement Method:	In respect of any Option, subject to the Settlement Method Election Conditions: (i) if Counterparty has elected to settle its conversion obligations in respect of the related Relevant Convertible Note (A) entirely in Shares pursuant to Section 12.01(d)(i) 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 12.01(d)(iii) 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 12.01(d)(iii) 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 Relevant Convertible Note in a combination of cash and Shares pursuant to Section 12.01(d)(iii) 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 Relevant Convertible Note entirely in cash pursuant to Section 12.01(d)(ii) of the Indenture (such settlement method, "Settlement in Cash"), then the Relevant **Settlement Method** for such Option shall be Cash Settlement.

Settlement Method Election Conditions: For any Relevant Settlement Method other than Net Share Settlement with a Specified Cash Amount equal to USD 1,000, such Relevant Settlement Method shall apply to an Option only if the Notice of Exercise or Notice of Final Settlement Method for such Option, as applicable, contains:

(i) a representation that, on the date of such Notice of Exercise or Notice of Final Settlement Method, as applicable, none of Counterparty and its officers and directors is aware or in possession of any "material non-public information" (within the meaning of Section 10(b) of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), and the rules promulgated thereunder) with respect to Counterparty or the Shares;

(ii) a representation that Counterparty is electing the settlement method for the related Relevant Convertible Note and such Relevant Settlement Method in good faith and not as part of a plan or scheme to evade the prohibitions of Rule 10b-5 under the Exchange Act;

(iii) a representation that Counterparty has not entered into or altered any hedging transaction relating to the Shares corresponding to or offsetting the Transaction;

(iv) a representation that Counterparty is not electing the settlement method for the related Relevant Convertible Note and such Relevant Settlement Method 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; and

(v) an acknowledgment by Counterparty that (A) any transaction by Dealer following Counterparty's election of the settlement method for the related Relevant Convertible Note and such Relevant Settlement Method shall be made at Dealer's sole discretion and for Dealer's own account and (B) Counterparty does not have, and shall not attempt to exercise, any influence over how, when, whether or at what price to effect such transactions, including, without limitation, the price paid or received per Share pursuant to such transactions, or whether such transactions are made on any securities exchange or privately.

Net Share Settlement: If Net Share Settlement is applicable to any Option exercised or deemed exercised hereunder, in lieu of the obligations set forth in Sections 8.1 and 9.1 of the Equity Definitions, Dealer will deliver to Counterparty, on the relevant Settlement Date for each such Option, an aggregate number of Shares and cash in lieu of fractional shares,

	if any, (the "**Net Share Settlement Amount**") equal to the product of (x) the Applicable Percentage and (y) the number of Shares that Counterparty would be obligated to deliver to the "Holder(s)" (as defined in the Indenture) of the Relevant Convertible Notes converted on such Conversion Date pursuant to Section 12.01(d) of the Indenture and cash in lieu of fractional shares, if any, pursuant to Section 12.01(g) of the Indenture, as if Counterparty had elected to satisfy its conversion obligation in respect of such Relevant Convertible Notes with a Specified Cash Amount equal to USD 1,000 per Relevant Convertible Note, notwithstanding any different Specified Cash Amount actually elected by Counterparty with respect to the settlement of such Relevant Convertible Notes, and determined on the basis of the applicable Conversion Period set forth opposite the caption "Conversion Period" below; provided that such obligation shall be determined excluding any Shares and/or cash that Counterparty is obligated to deliver to holder(s) of the Relevant Convertible Notes as a result of any adjustments to the "Conversion Rate" pursuant to Section 12.02(m) or Section 12.03 of the Indenture; and *provided further* that, with respect to any Settlement in Shares or Low Cash Combination Settlement, for any Option exercised or deemed exercised hereunder on a Conversion Date occurring on or after the Free Convertibility Date, 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 the Relevant Convertible Notes relating to such Option.
Combination Settlement:	If Combination Settlement is applicable to any Option exercised or deemed exercised hereunder, in lieu of the obligations set forth in Sections 8.1 and 9.1 of the Equity Definitions, Dealer will deliver to Counterparty, on the relevant Settlement Date for each such Option: (i) cash equal to the *product* of (A) the Applicable Percentage *and* (B) the *excess* of (x) the cash that Counterparty is obligated to deliver to the "Holder(s)" (as defined in the Indenture) of the Relevant Convertible Note converted on such Conversion Date pursuant to Section 12.01(d) of the Indenture (including cash paid in respect of fractional shares but excluding any cash paid in respect of interest) *over* (y) USD 1,000 per Relevant Convertible Note (the "**Combination Settlement Cash Amount**"); and (ii) a number of Shares equal to the *product* of (A) the Applicable Percentage *and* (B) the number of Shares that Counterparty is obligated to deliver to the "Holder(s)" (as defined in the Indenture) of the Relevant Convertible Note converted on such Conversion Date pursuant to Section 12.01(d) of the Indenture.
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 *product* of (A) the Applicable Percentage *and* (B) the *excess* of (x) the cash that Counterparty is obligated to deliver to the "Holder(s)" (as defined in the Indenture) of the Relevant Convertible Note converted on such Conversion Date pursuant to Section 12.01(d) of the Indenture (including cash paid in respect of fractional shares but excluding any cash paid in respect of interest) *over* (y) USD 1,000 per Relevant Convertible Note.

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, delivered to the Holder of the related Relevant Convertible Note upon conversion of such Relevant Convertible Note and (B) the number of Shares, if any, delivered to the Holder of the related Relevant Convertible Note, in each case pursuant to the terms of the Indenture, upon conversion of such Relevant Convertible Note *multiplied by* the Applicable Limit Price on the settlement date for the Relevant Convertible Notes relating to such Option, over (ii) USD 1,000.
Applicable Limit Price:	On any day, the opening price as displayed under the heading “Op” on Bloomberg page HOS <equity> (or any successor thereto).
Trading 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, “Trading Day” means a Business Day.
Scheduled Trading Day:	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 Shares are listed or admitted for trading. If the Shares are not so listed or admitted for trading, “Scheduled Trading 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 or banks in the State of Texas are authorized or required by law or executive order to close or be closed.
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, the occurrence or existence prior to 1:00 p.m. New York City time on any Scheduled Trading 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.”
Conversion Period:	For any Option and regardless of the Settlement Method applicable to such Option: (i) if the related Conversion Date occurs prior to the Free Convertibility Date, the 25 consecutive Trading Days commencing on, and including, the third Trading Day immediately following such Conversion Date; *provided* that if the Notice of Exercise for such Option specifies that Settlement in Shares or Low Cash Combination Settlement applies to the related Relevant Convertible Note, the Conversion Period shall be the 50 consecutive Trading Day period commencing on, and including, the third Trading Day immediately following such Conversion Date;

	(ii) if the related Conversion Date occurs on or following the Free Convertibility Date, the 25 consecutive Trading Days commencing on, and including, the 27th Scheduled Trading Day immediately prior to the "Maturity Date" (as defined in the Indenture); provided that if the Notice of Exercise or Notice of Final Settlement Method, as applicable, for such Option specifies that Settlement in Shares or Low Cash Combination Settlement applies to the related Relevant Convertible Note, the Conversion Period shall be the 50 consecutive Trading Days commencing on, and including, the 53rd Scheduled Trading Day immediately prior to the "Maturity Date" (as defined in the Indenture).
Settlement Date:	For any Option, the third Business Day immediately following the final Trading Day of the applicable Conversion Period for such Option.
Settlement Currency:	USD.
Other Applicable Provisions:	To the extent Dealer is obligated to deliver Shares hereunder, the provisions of Sections 9.4 (except that "Settlement Date" shall be as defined above, unless a Settlement Disruption Event prevents delivery of such Shares on that date), 9.8, 9.9, 9.10, 9.11 and 9.12 of the Equity Definitions shall be applicable as if "Physical Settlement" applied to the Transaction; *provided* that the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by excluding any restrictions, obligations, limitations or requirements under applicable securities laws as a result of the fact that Counterparty is the issuer of the Shares.
Restricted Certificated Shares:	Notwithstanding anything to the contrary in the Equity Definitions, Dealer may, in whole or in part, deliver any Shares required to be delivered hereunder in certificated form to Counterparty in lieu of delivery through the Clearance System. With respect to such certificated Shares, the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by deleting the remainder of the provision after the word "encumbrance" in the fourth line thereof.
Share Adjustments:	
Method of Adjustment:	Calculation Agent Adjustment, which means that, notwithstanding Section 11.2(c) of the Equity Definitions, upon any adjustment to the "Conversion Rate" (as defined in the Indenture) and/or the nature of the Shares under the Convertible Notes pursuant to the Indenture (other than an increase in the "Conversion Rate" pursuant to Section 12.02(m) or Section 12.03 of the Indenture), the Calculation Agent will make a corresponding adjustment to any one or more of the Strike Price, the Option Entitlement and any other term relevant to the exercise, settlement, payment or other terms of the Transaction. Counterparty agrees that it will notify Dealer prior to the effectiveness of any such adjustment and, to the extent such adjustment requires an exercise of discretion by Counterparty under the terms of the Indenture, it shall use good faith efforts to consult with the Calculation Agent in order to achieve a commercially reasonable adjustment, determination or calculation (it being understood for the avoidance of doubt that notwithstanding any such consultation, Counterparty shall remain entitled to make such adjustments as permitted in accordance with the terms of the Indenture).

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 Sections 12.02(a), (b), (c), (d) and (e) of the Indenture that would result in an adjustment to the "Conversion Rate" (as defined in the Indenture) of the Convertible Notes; *provided* that in no event shall there be any adjustment hereunder as a result of an adjustment to the "Conversion Rate" pursuant to Section 12.02(m) or Section 12.03 of the Indenture.
Extraordinary Events:	
Merger Events:	Notwithstanding Section 12.1(b) of the Equity Definitions (which shall not apply for the purposes hereof), a "Merger Event" means the occurrence of any event or condition set forth in Section 12.04(a) of the Indenture.
Notice of Merger Consideration:	Upon the occurrence of a Merger Event that causes the Shares to be converted into or exchanged for more than a single type of consideration (determined based in part upon the form of election of the holders of the Shares), Counterparty shall promptly notify the Calculation Agent in writing of the types and amounts of consideration that holders of Shares have affirmatively elected to receive upon consummation of such Merger Event; *provided* that in no event shall the date of such notification be later than the date on which such Merger Event is consummated.
Consequences of Merger Events:	Notwithstanding Section 12.2 of the Equity Definitions (which shall not apply for the purposes hereof), upon the occurrence of a Merger Event, to the extent an adjustment is made under the Indenture in respect of such Merger Event, the Calculation Agent shall make an analogous adjustment in respect of any adjustment under the Indenture to any one or more of the nature of the Shares, the Strike Price, the Number of Options, the Option Entitlement and any other term relevant to the exercise, settlement, payment or other terms of the Transaction; *provided*, *however*, that such adjustment shall be made without regard to any adjustment to the "Conversion Rate" (as defined in the Indenture) for the issuance of additional shares as set forth in Section 12.02(m) or Section 12.03 of the Indenture.
Nationalization, Insolvency or Delisting:	Cancellation and Payment (Calculation Agent Determination) *provided* that, for purposes of Section 12.6(a)(iii) of the Equity Definitions, it will 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), a Delisting shall not have occurred and such exchange or quotation system shall thereafter be deemed to be the Exchange.
Additional Disruption Events:	
Change in Law:	Applicable; *provided* that Section 12.9(a)(ii) of the Equity Definitions is hereby amended by replacing the word "Shares" where it appears in clause (X) thereof with the words "Hedge Position".

Failure to Deliver:	Not Applicable.
Insolvency Filing:	Applicable.
Hedging Disruption:	Applicable for the period commencing on the Trade Date and ending on the Effective Date; Not Applicable after the Effective Date.
Increased Cost of Hedging:	Not Applicable
Hedging Party:	Dealer or an affiliate of Dealer that is involved in the hedging of this Transaction for all applicable Additional Disruption Events. Section 13.2(b) of the Equity Definitions is hereby amended by adding the words "(or an Affiliate of such party)" following the words "by a party" in the third line thereof.
Determining Party:	Dealer for all applicable Extraordinary Events.

Acknowledgments:

Non-Reliance:	Applicable.
Agreements and Acknowledgments Regarding Hedging Activities:	Applicable.
Additional Acknowledgments:	Applicable.

3. Calculation Agent: Dealer, whose judgments, determinations and calculations shall be made in good faith and in a commercially reasonable manner. Following any determination or calculation by the Calculation Agent hereunder, upon a request by Counterparty, the Calculation Agent 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 determination or calculation (including any assumptions used in making such determination or calculation), it being understood that the Calculation Agent shall not be obligated to disclose any proprietary models used by it for such determination or calculation.

4. Account Details:

(a) Account for payments to Counterparty:

Capital One, N.A.
New Orleans, LA
ABA 065-000-090

For credit to:
Hornbeck Offshore Services, Inc.
103 Northpark Blvd., Suite 300
Covington, LA 70433
Account 812519859

Account for delivery of Shares to Counterparty:

To be provided under separate cover by Counterparty.

(b) Account for payments to Dealer:

Bank: Barclays Bank plc NY
ABA# 026 00 2574
BIC: BARCUS33
Acct: 50038524
Beneficiary: BARCGB33
Ref: Barclays Bank plc London Equity Derivatives

5. Offices: The Office of Counterparty for the Transaction is: Inapplicable, Counterparty is not a Multibranch Party. The Office of Dealer for the Transaction is: Inapplicable, Dealer is not a Multibranch Party.

6. Notices: For purposes of this Confirmation:

(a) Address for notices or communications to Counterparty:

Hornbeck Offshore Services, Inc.
103 Northpark Boulevard, Suite 300
Covington, Louisiana, 70433
Attention: Sam Giberga, General Counsel
Facsimile No.: (985) 727-2006

(b) Address for notices or communications to Dealer:

Barclays Capital Inc.
745 Seventh Ave.
New York, NY 10019
Attention: General Counsel
Telephone: (+1) 212-412-4000
Facsimile: (+1) 212-412-7519

with a copy to:

Barclays Capital Inc.
745 Seventh Ave.
New York, NY 10019
Attn: Paul Robinson
Telephone: (+1) 212-526-0111
Facsimile: (+1) 917-522-0458

and

Barclays Bank PLC, 5 The North Colonnade
Canary Wharf, London E14 4BB
Facsimile: 44(20) 777 36461
Phone: 44(20) 777 36810

7. Representations and Warranties of Counterparty

(A) Counterparty hereby represents and warrants to Dealer that:

(a) It is an "eligible contract participant" (as such term is defined in the Commodity Exchange Act, as amended (the "**CEA**"));

(b) Counterparty is not, on the date hereof, in possession of any material non-public information with respect to Counterparty;

(c) (x) On any day during any Conversion Period, neither Counterparty nor any "affiliate" or "affiliated purchaser" (each as defined in Rule 10b-18 of the Exchange Act ("**Rule 10b-18**")) shall directly or indirectly (including, without limitation, by means of any cash-settled or other derivative instrument) purchase, offer to purchase, place any bid or limit order that would effect a purchase of, or commence any tender offer relating to, any Shares (or an equivalent interest, including a unit of beneficial interest in a trust or limited partnership or a depository share) or any security convertible into or exchangeable or exercisable for Shares, except through Dealer;

(y) Counterparty agrees that it (A) will not, on any day during any Conversion Period, make, or permit to be made, any public announcement (as defined in Rule 165(f) under the Securities Act of 1933, as amended (the "**Securities Act**")) of any Merger Transaction or potential Merger Transaction unless such public announcement is made prior to the opening or after the close of the regular trading session on the Exchange for the Shares; (B) shall promptly (but in any event prior to the next opening of the regular trading session on the Exchange) notify Dealer following any such announcement that such announcement has been made; and (C) shall promptly (but in any event prior to the next opening of the regular trading session on the Exchange) provide Dealer with written notice specifying (i) Counterparty's average daily Rule 10b-18 Purchases (as defined in Rule 10b-18) during the three full calendar months immediately preceding the announcement date that were not effected through Dealer or its affiliates and (ii) the number of Shares purchased pursuant to the proviso in Rule 10b-18(b)(4) under the Exchange Act for the three full calendar months preceding the announcement date. Such written notice shall be deemed to be a certification by Counterparty to Dealer that such information is true and correct. In addition, Counterparty shall promptly notify Dealer of the earlier to occur of the completion of such transaction and the completion of the vote by target shareholders. "**Merger Transaction**" means any merger, acquisition or similar transaction involving a recapitalization as contemplated by Rule 10b-18(a)(13)(iv) under the Exchange Act.

(d) Without limiting the generality of Section 13.1 of the Equity Definitions, Counterparty acknowledges that Dealer is not making any representations or warranties 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, 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 under FASB's Liabilities & Equity Project;

(e) Counterparty has not received notice that it is the subject of a tender offer made under Section 14(d)(1) of the Exchange Act and has not commenced any tender offer that would be subject to Rule 13e-4 under the Exchange Act;

(f) Prior to or on the Trade Date, Counterparty shall deliver to Dealer a resolution of Counterparty's board of directors authorizing the Transaction;

(g) Counterparty is not, and after giving effect to 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;

(h) On the Trade Date (A) the assets of Counterparty at their fair valuation exceed the liabilities of Counterparty, including contingent liabilities, (B) the capital of Counterparty is adequate to conduct the business of Counterparty and (C) Counterparty has the ability to pay its debts and obligations as such debts mature and does not intend to, or does not believe that it will, incur debt beyond its ability to pay as such debts mature;

(i) Counterparty understands that no obligations of Dealer to it hereunder will be entitled to the benefit of deposit insurance or securities investor protection and that such obligations will not be guaranteed by any affiliate of Dealer (except as expressly set forth herein) or any governmental agency;

(j) The Convertible Notes have been duly authorized by Counterparty, and, when issued and delivered as provided in the Purchase Agreement and duly authenticated pursuant to the Indenture (assuming due authentication of the Convertible Notes by the trustee) will be duly executed, authenticated, issued and delivered and will constitute valid and legally binding obligations of Counterparty entitled to the benefits provided by the Indenture; and the Convertible Notes will conform, in all material respects, to the descriptions thereof in the Offering Memorandum;

(k) The Indenture has been duly authorized, executed and delivered by Counterparty and the guarantors named therein, and (assuming the authorization, execution and delivery by the trustee), constitutes a valid and legally binding instrument of Counterparty, enforceable against Counterparty in accordance with its terms, subject as to enforcement, to bankruptcy, insolvency, fraudulent transfer, fraudulent conveyance, moratorium, reorganization and laws of general applicability relating to or affecting creditors' rights and general equity principles (regardless of whether enforceability is considered in a proceeding in equity or at law); and the Indenture conforms, in all material respects, to the description thereof in the Offering Memorandum;

(l) Upon issuance and delivery of the Convertible Notes in accordance with the Purchase Agreement and the Indenture, the Convertible Notes will be convertible at the option of the holder thereof into Shares, cash or a combination of cash and Shares, if applicable, in accordance with the terms of the Convertible Notes; the Shares reserved for issuance upon conversion of the Convertible Notes have been duly authorized and reserved and, when issued upon conversion of the Convertible Notes in accordance with the terms of the Convertible Notes, will be validly issued, fully paid and non-assessable, and the issuance of the Shares will not be subject to any preemptive or similar rights;

(m) Neither Counterparty nor any controlled affiliate (as defined in Rule 501(b) of Regulation D of the Securities Act of 1933, as amended (the "**Securities Act**")) of Counterparty has directly, or through any agent, sold, offered for sale, solicited offers to buy or otherwise negotiated in respect of, any security (as defined in the Securities Act) which is or will be integrated with the sale of the Convertible Notes in a manner that would require the registration under the Securities Act of the offering contemplated by the Offering Memorandum;

(n) None of Counterparty, any controlled affiliate of Counterparty or any person acting on its or their behalf (other than the Initial Purchasers for whom we make no representation) has offered or sold the Convertible Notes by means of any general solicitation or general advertising within the meaning of Rule 502(c) under the Securities Act;

(o) The Convertible Notes satisfy the requirements set forth in Rule 144A(d)(3) under the Securities Act;

(p) The issue and sale of the Convertible Notes, the issuance by Counterparty of the Shares upon conversion of the Convertible Notes and the compliance by Counterparty with all of the provisions of the Convertible Notes, the Indenture, the Purchase Agreement and this Confirmation and the consummation of the transactions herein and therein contemplated (A) will not conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, any material indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Counterparty or any of its subsidiaries is a party or by which Counterparty or any of its subsidiaries is bound or to which any of the property or assets of Counterparty or any of its subsidiaries is subject, except such conflict, breach or violation as would not have a Material Adverse Effect, (B) will not result in any violation of the provisions of the certificate of incorporation or bylaws of Counterparty, and (C) will not result in the violation of any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over Counterparty or any of its subsidiaries or any of its properties, except such violations as would not have a Material Adverse Effect; and except as disclosed in the Offering Memorandum, to Counterparty's knowledge, no consent, approval, authorization, order, registration or qualification of or with any such court or governmental agency or body is required for the issue and sale of the Convertible Notes or the consummation by Counterparty of the transactions contemplated by the Purchase Agreement or the Indenture, except for the filing and effectiveness of a registration statement by Counterparty with the Commission pursuant to the Securities Act, the qualification of the Indenture under the Trust Indenture Act of 1939 ("**Trust Indenture Act**") in relation to the Shares and such consents, approvals, authorizations, registrations or qualifications as may be required under state Securities or Blue Sky laws in connection with the purchase and distribution of the Convertible Notes by the Initial Purchasers in the manner contemplated by the Purchase Agreement and Offering Memorandum and except for such consents the failure to obtain would not have a Material Adverse Effect. "**Material Adverse Effect**" means any change in the capital stock, increase in long-term debt or any decreases in consolidated net current assets or stockholders' equity of Counterparty or any of its subsidiaries or any material adverse change, or any development involving a prospective material adverse change, in or affecting the general affairs, management, current or future consolidated financial position, stockholders' equity or results of operations of Counterparty and its subsidiaries taken as a whole;

(q) Counterparty is subject to Section 13 or 15(d) of the Exchange Act;

(r) Prior to the Trade Date, Counterparty has not taken any action which is designed to or which has constituted or which might have been expected to cause or result in stabilization or manipulation of the price of any security of Counterparty in connection with the offering of the Convertible Notes;

(s) None of Counterparty or any of its subsidiaries is in violation of its certificate of incorporation or certificate of formation, or its bylaws or limited liability company agreement (or other organizational documents), or in default in the performance or observance of any material obligation, covenant or condition contained in any material indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which it is a party or by which it or any of its properties may be bound, other than such defaults that individually or in the aggregate would not have a Material Adverse Effect;

(t) Other than as set forth in the Offering Memorandum, there are no legal or governmental proceedings pending to which Counterparty or any of its subsidiaries is a party or of which any property of Counterparty or any of its subsidiaries is the subject which, if determined adversely to Counterparty or any of its subsidiaries, would individually or in the aggregate have a Material Adverse Effect; and, to the best of Counterparty's knowledge, no such proceedings are threatened or contemplated by governmental authorities or threatened by others.

(u) (x) Counterparty is acting for its own account, and it has made its own independent decisions to enter into the Transaction and as to whether the Transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary, (y) Counterparty is not relying on any communication (written or oral) of Dealer or any of its affiliates as investment advice or as a recommendation to enter into the Transaction (it being understood that information and explanations related to the terms and conditions of the Transaction shall not be considered investment advice or a recommendation to enter into the Transaction) and (z) no communication (written or oral) received from Dealer or any of its affiliates shall be deemed to be an assurance or guarantee as to the expected results of the Transaction; and

(v) The assets used in the Transaction (1) are not assets of any "plan" (as such term is defined in Section 4975 of the United States 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.

(B) Each party makes to the other the representations and warranties set forth in Sections 3(a) through (f) of the Agreement with respect to the Agreement as supplemented by this Confirmation; *provided* that Dealer makes the representation and warranty set forth in Section 3(e) and Counterparty makes the representation and warranty set forth in Section 3(f). In addition, each of Dealer and Counterparty acknowledges that the offer and sale of the Transaction to Counterparty is intended to be exempt from registration under the Securities Act, by virtue of Section 4(2) thereof. Accordingly, Counterparty represents and warrants to Dealer that (i) it has the financial ability to bear the economic risk of its investment in the Transaction and is able to bear a total loss of its investment and its investments in and liabilities in respect of the Transaction, which it understands are not readily marketable, are not disproportionate to its net worth, and it is able to bear any loss in connection with the Transaction, including the loss of its entire investment in the Transaction, (ii) it is an "accredited investor" as that term is defined in Regulation D as promulgated under the Securities Act, (iii) it is entering into the Transaction for its own account and without a view to the distribution or resale thereof, (iv) the assignment, transfer or other disposition of the Transaction has not been and will not be registered under the Securities Act and is restricted under this Confirmation, the Securities Act and state securities laws, and (v) its financial condition is such that it has no need for liquidity with respect to its investment in the Transaction and no need to dispose of any portion thereof to satisfy any existing or contemplated undertaking or indebtedness and is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of the Transaction.

8. Other Provisions:

(a) *Opinions*. Counterparty shall deliver to Dealer an opinion of counsel, dated as of the Trade Date, with respect to the matters set forth in Section 3(a) of the Agreement and Section 7(A)(g) of this Confirmation; *provided* that such opinion may contain customary exceptions and qualifications, including, without limitation, exceptions and qualifications relating to indemnification provisions.

(b) *Repurchase Notices*. Counterparty shall, on any day on which Counterparty effects any repurchase of Shares, give Dealer a written notice of such repurchase (a "**Repurchase Notice**") on such day if following such repurchase the Notice Percentage as determined on such day is (i) greater than 4.5% and (ii) greater by 0.5% than the Notice Percentage included in the immediately preceding Repurchase Notice (or, in the case of the first such Repurchase Notice, greater than the Notice Percentage as of the date hereof). The "**Notice Percentage**" as of any day is the fraction, expressed as a percentage, the numerator of which is the product of the Number of Options and the Option Entitlement and the denominator of which is the number of Shares outstanding on such day.

(c) *Regulation M*. Counterparty is not on the date hereof 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 engage in any such distribution (x) until the second Scheduled Trading Day immediately following the Trade Date and (y)(A) on any day during any Conversion Period, the Shares or securities that are convertible into, or exchangeable or exercisable for Shares, are not, and shall not be, subject to a "restricted period," as defined in Regulation M and (B) Counterparty shall not engage in any "distribution," as such term is defined in Regulation M, other than a distribution meeting the requirements of the exceptions set forth in sections 101(b)(10) and 102(b)(7) of Regulation M, until the second Exchange Business Day immediately following the last day in such Conversion Period.

(d) *No Manipulation*. Counterparty is not entering into this 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) *Number of Repurchased Shares*. Counterparty represents that it could have purchased Shares, in an amount equal to the product of the Number of Options and the Option Entitlement, on the Exchange or otherwise, in compliance with applicable law, its organizational documents and any orders, decrees, contractual agreements binding upon Counterparty, on the Trade Date.

(f) *Early Unwind*. In the event the sale of Convertible Notes is not consummated with the initial purchasers for any reason by the close of business in New York on August 13, 2012 (or such later date as agreed upon by the parties) (August 13, 2012 or such later date as agreed upon being the "**Early Unwind Date**"), this 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; *provided* that, Counterparty shall reimburse Dealer for reasonable costs or expenses (including market losses) relating to the unwinding of its, or the Hedging Party's, Hedging Activities in connection with the Transaction (including any loss or cost incurred as a result of its terminating, liquidating, obtaining or reestablishing any hedge or related trading position) unless the sale of Convertible Bonds is not consummated with the initial purchasers as a result of breach of the Purchase Agreement by the initial purchasers (in which case no such reimbursement will be payable). The amount of any such reimbursement shall be determined by Dealer in good faith and in a commercially reasonable manner. Dealer shall notify Counterparty of such amount and Counterparty shall deliver Share Termination Delivery Property or, at the election of Counterparty, pay such amount in immediately available funds on the Early Unwind Date. Dealer and Counterparty represent and acknowledge to the other that, subject to the proviso included in this paragraph, upon an Early Unwind, all obligations with respect to the Transaction shall be deemed fully and finally discharged. Notwithstanding anything herein or in the Agreement to the contrary, in no event shall Counterparty be required to deliver an aggregate number of Shares in connection with the Early Unwind in excess of 1,448,601 Shares, subject to adjustment from time to time as a result of actions of Counterparty or events within Counterparty's control and in accordance with the provisions of this Confirmation and the Equity Definitions.

(g) *Transfer or Assignment*. Neither party may transfer any of its rights or obligations hereunder and under the Transaction and Agreement without the prior written consent of the non-transferring party (such consent not to be unreasonably withheld); *provided* that, subject to applicable law, Dealer may transfer or assign without any consent of Counterparty its rights and obligations hereunder, in whole or in part, to any of its affiliates of credit quality at least equivalent to that of Dealer as of the Trade Date or to any other of its affiliates *provided* that Counterparty shall receive a full guaranty of such affiliate's obligations from Dealer in form and substance reasonably satisfactory to Counterparty if (i) an Event of Default, Potential Event of Default or Termination Event will not occur as a result of such transfer or assignment and (ii) as a result of such transfer or assignment, Counterparty will not be required to pay the transferee on any payment date an amount under Section 2(d)(i)(4) of the Agreement greater than an amount that Counterparty would have been required to pay to Dealer in the absence of such transfer or assignment. Except for the transfer or assignment contemplated in the proviso to the first sentence of this paragraph 8(g), in the case of a transfer or assignment by Counterparty or Dealer of its rights and obligations hereunder and under the Agreement, in whole or in part (any Options so transferred or assigned, the "**Transfer Options**"), to any party, withholding of consent by the other party (the "**Remaining Party**") shall not be considered unreasonable if such transfer or assignment does not meet the following reasonable conditions that the Remaining Party may impose: (i) with respect to any Transfer Options, Counterparty shall not be released from its notice and indemnification obligations pursuant to paragraph 8(b) ("Repurchase Notices") or any obligations under paragraph 2 regarding Extraordinary Events or paragraph 8(m) ("Registration") of this Confirmation; (ii) any Transfer Options shall only be transferred or assigned to a third party that is a U.S. person (as defined in the Internal Revenue Code of 1986, as amended); (iii) such transfer or assignment shall be effected on terms, including any reasonable undertakings by such transferee (including, but not limited to, undertakings with respect to compliance with applicable securities laws in a manner that, in the reasonable judgment of the Remaining Party, will not expose the Remaining Party 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 transferee and the transferor as are reasonably requested and reasonably satisfactory to the Remaining Party; (iv) the Remaining Party will not, as a result of such transfer or assignment, be required to pay the transferee on any payment date an amount under Section 2(d)(i)(4) of the Agreement greater than an amount that the Remaining Party would have been required to pay to the transferor in the absence of such transfer or assignment; (v) an Event of Default, Potential Event of Default or Termination Event will not occur as a result of such transfer or assignment; (vi) without limiting the generality of clause (ii), the transferor shall have caused the transferee to make such Payee Tax Representations and to provide such tax documentation as may be reasonably requested by the Remaining Party to permit the Remaining Party to determine that results described in clauses (iv) and (v) will not occur upon or after such transfer or assignment; and (vii) the transferor shall be responsible for all reasonable costs and expenses, including reasonable counsel fees, incurred by the Remaining Party in connection with such transfer or assignment.

Notwithstanding the foregoing, at any time at which a transaction proposed to be entered into by Dealer would cause the Articles Ownership Percentage to exceed 4.9%, unless Counterparty provides an acknowledgment to Dealer to the effect that the Shares owned or controlled by Dealer or any of its affiliates will not be deemed as owned or controlled by an "Alien" (as defined in Article Twelve Section 6 of Counterparty's Certificate of Incorporation), Dealer may (or shall, if requested by Counterparty) transfer or assign to a third party such portion of the Transaction that would otherwise cause the Articles Ownership Percentage to exceed 4.9% (it being understood and agreed that Dealer would make such a transfer or assignment to (a) one of its U.S. affiliates, if, in Counterparty's view, such a transfer or assignment would result in the Shares owned or controlled by such U.S. affiliates not being owned or controlled by an "Alien" for purposes of Article Twelve of Counterparty's Certificate of Incorporation) or (b) unless otherwise consented by Counterparty, to a third party who is not an "Alien" for purposes of Article Twelve of Counterparty's Certificate of Incorporation, if the transfer or assignment would otherwise result in such Shares deemed owned or controlled by an "Alien" for purposes of Article Twelve of Counterparty's Certificate of Incorporation); *provided further* that if Dealer is unable to effect a transfer or assignment to a third party after its commercially reasonable efforts on pricing terms reasonably acceptable to Dealer (or to one of its U.S. affiliates, if, in Counterparty's view, such a transfer or assignment would result in the Shares owned or controlled by such U.S. affiliates not being owned or controlled by an "Alien" for purposes of Article Twelve of Counterparty's Articles of Incorporation) such that the Articles Ownership Percentage does not exceed 4.9%, Dealer may designate any Scheduled Trading Day as an Early Termination Date with respect to a portion (the "**Articles Terminated Portion**") of the Transaction, such that the Articles Ownership Percentage following such partial termination will be equal to 4.9%.

Notwithstanding the foregoing, at any time at which (1) the Option Equity Percentage exceeds 9.0% or (2) Dealer, Dealer Group (as defined below) or any person whose ownership position would be aggregated with that of Dealer or Dealer Group (Dealer, Dealer Group or any such person, a "**Dealer Person**") under any relevant state corporate law or any state or federal bank holding company or banking laws, or other federal, state or local laws, regulations or regulatory orders applicable to ownership of Shares ("**Applicable Laws**"), owns, beneficially owns, constructively owns, controls, holds the power to vote or otherwise meets a relevant definition of ownership in excess of a number of Shares equal to (x) the number of Shares that, in the good faith determination of the relevant Dealer Person, would give rise to materially burdensome reporting or registration obligations or other requirements (including obtaining prior approval by a state or federal regulator) of a Dealer Person under Applicable Laws (including, without limitation, "interested stockholder" or "acquiring person" status under Section 203 of the Delaware General Corporation Law, but excluding any report or filing required pursuant to Section 13 of the Exchange Act and the rules promulgated thereunder) and with respect to which such requirements have not been met or the relevant approval has not been received *minus* (y) 1.0% of the number of Shares outstanding on the date of determination (either such condition described in clause (1) or (2), an "**Excess Ownership Position**") and Dealer is unable, after commercially reasonable efforts, to eliminate such Excess Ownership Position or effect a transfer or assignment to a third party with a rating (or whose guarantor has a rating) for its long term, unsecured and unsubordinated indebtedness at least equal to that of Dealer as of the Trade Date on pricing terms and within a time period reasonably acceptable to it of all or a portion of the Transaction such that an Excess Ownership Position no longer exists, Dealer may designate any Scheduled Trading Day as an Early Termination Date with respect to a portion (the "**Reporting Terminated Portion**") of the Transaction, such that an Excess Ownership Position no longer exists.

In the event that Dealer so designates an Early Termination Date with respect to an Articles Terminated Portion or a Reporting Terminated Portion, a payment shall be made pursuant to Section 6 of the Agreement as if (i) an Early Termination Date had been designated in respect of a Transaction having terms identical to this Transaction and a Number of Options equal to the Articles Terminated Portion or the Reporting Terminated Portion, as the case may be, (ii) Counterparty shall be the sole Affected Party with respect to such partial termination and (iii) such Transaction shall be the only Terminated Transaction (and, for the avoidance of doubt, the provisions of paragraph 8(k) shall apply to any amount that is payable by Dealer to Counterparty pursuant to this sentence).

The "**Articles Ownership 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 its affiliates "own or control" (within the meaning of Article 12 Section 2 of Counterparty's Certificate of Incorporation) on such day, and (B) the denominator of which is the number of Shares outstanding on such day.

The "**Option Equity Percentage**" as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the sum of (i) the number of Shares that Dealer and any of its affiliates subject to aggregation with Dealer, for purposes of the "beneficial ownership" test under Section 13 of the Exchange Act, and all persons who may form a "group" (within the meaning of Rule 13d-5(b)(1) under the Exchange Act) with Dealer ("**Dealer Group**") "beneficially owns" (within the meaning of Section 13 of the Exchange Act) on such day, other than any Shares so owned as a hedge of the Transaction, and (ii) the product of the Number of Options and the Option Entitlement and (B) the denominator of which is the number of Shares outstanding on such day. For purposes of this Section 8(g), the term "Dealer" shall include any of the Dealer's permitted successors or assigns.

(h) *Staggered Settlement*. If upon advice of counsel with respect to applicable legal and regulatory requirements, including any requirements relating to Dealer's, or the Hedging Party's, Hedge Activities hereunder, Dealer reasonably determines that it would not be advisable to deliver, or to acquire Shares to deliver, any or all of the Shares to be delivered by Dealer on the 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 (each of which will be on or prior to 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) if the Settlement terms set forth above were to apply on the Nominal Settlement Date, then the Settlement terms will apply on each Staggered Settlement Date, except that the Shares to be delivered pursuant to such terms will be allocated among such Staggered Settlement Dates as specified by Dealer in the notice referred to in clause (i) above.

(i) *Role of Agent*. Each of Dealer and Counterparty acknowledges to and agrees with the other party hereto and to and with the Agent that (i) the Agent is acting as agent for Dealer under the Transaction pursuant to instructions from such party, (ii) the Agent is not a principal or party to the Transaction, and may transfer its rights and obligations with respect to the Transaction, (iii) the Agent shall have no responsibility, obligation or liability, by way of issuance, guaranty, endorsement or otherwise in any manner with respect to the performance of either party under the Transaction, (iv) Dealer and the Agent have not given, and Counterparty is not relying (for purposes of making any investment decision or otherwise) upon, any statements, opinions or representations (whether written or oral) of Dealer or the Agent, other than the representations expressly set forth in this Confirmation or the Agreement, and (v) each party agrees to proceed solely against the other party, and not the Agent, to collect or recover any money or securities owed to it in connection with the Transaction. Each party hereto acknowledges and agrees that the Agent is an intended third party beneficiary hereunder. Counterparty acknowledges that the Agent is an affiliate of Dealer. Dealer will be acting for its own account in respect of this Confirmation and the Transaction contemplated hereunder. Dealer appoints Agent as Dealer's Process Agent for purposes of Section 13(c) of the Agreement.

(j) *No Collateral or Setoff*. Notwithstanding any provision of the Agreement or any other agreement between the parties, the obligations of Dealer hereunder are not secured by any collateral. In addition obligations under the Transaction shall not be netted, recouped or set off (including pursuant to Section 6 of the Agreement) against any other obligations of the parties, whether arising under the Agreement, this Confirmation, under any other agreement between the parties hereto, by operation of law or otherwise, and no other obligations of the parties shall be netted, recouped or set off (including pursuant to Section 6 of the Agreement) against obligations under the Transaction, whether arising under the Agreement, this Confirmation, under any other agreement between the parties hereto, by operation of law or otherwise, and each party hereby waives any such right of setoff, netting or recoupment; *provided* that both parties agree that subparagraph (ii) of Section 2(c) of the Agreement shall apply to the Transaction.

(k) *Alternative Calculations and Payment on Early Termination and on Certain Extraordinary Events*. If in respect of this Transaction, an amount is payable by Dealer to Counterparty (i) pursuant to Section 12.2 of the Equity Definitions and "Consequences of Merger Events" above, or Sections 12.3, 12.6, 12.7 or 12.9 of the Equity Definitions, (ii) pursuant to Section 6(d)(ii) of the Agreement or (iii) pursuant to "Early Unwind" above (each, a "**Payment Obligation**"), Dealer shall satisfy any such Payment Obligation by the Share Termination Alternative (as defined below) unless Counterparty elects for Dealer to satisfy such Payment Obligation by delivery of cash or in the event of a Nationalization, Insolvency or a Merger Event, in each case, in which the consideration to be paid to holders of Shares consists solely of cash, or 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)(i), (ii), (iii), (iv), (v) or (vi) of the Agreement in each case that resulted from an event or events outside Counterparty's control, in which case the provisions of Sections 12.2, 12.3, 12.6, 12.7 or 12.9 of the Equity Definitions or Section 6(d)(ii) of the Agreement, as the case may be, shall apply in lieu of the provisions set forth in this paragraph 8(k). Counterparty shall give irrevocable telephonic notice to Dealer of any such selection, confirmed in writing within one Currency Business Day, no later than 12:00 p.m. New York local time on the Merger Date, the Announcement Date (in the case of Nationalization or Insolvency), the Early Termination Date or date of cancellation, as applicable; where such notice shall include a representation and

warranty from Counterparty that it is not, as of the date of the telephonic notice and the date of such written notice, aware of any "material non-public information" (within the meaning of Section 10(b) of the Exchange Act and the rules promulgated thereunder) concerning itself or the Shares. In calculating any amounts under Section 6(e) of the Agreement, notwithstanding anything to the contrary in the Agreement, (1) separate amounts shall be calculated as set forth in Section 6(e) with respect to (i) this Transaction and (ii) all other Transactions, and (2) such separate amounts shall be payable pursuant to Section 6(d)(ii) of the Agreement.

Share Termination Alternative:	Applicable, if elected as per above, and means that Dealer shall deliver to Counterparty the Share Termination Delivery Property on the date when the Payment Obligation would otherwise be due pursuant to "Consequences of Merger Events" above or Section 12.7 or 12.9 of the Equity Definitions or Section 6(d)(ii) and 6(e) of the Agreement, as applicable (the "Share Termination Payment Date"), 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 on the date such Share Termination Delivery Units are to be delivered as Share Termination Delivery Property, 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.
Share Termination Delivery Unit:	In the case of a Termination Event, Event of Default, Delisting, one Share or, in the case of an Insolvency, Nationalization or Merger Event, one Share or a unit consisting of the number or amount of each type of 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 Insolvency, Nationalization or Merger Event, as applicable. If such Insolvency, Nationalization or Merger Event involves a choice of consideration to be received by holders, such holder shall be deemed to have elected to receive the maximum possible amount of cash.
Failure to Deliver:	Applicable
Other applicable provisions:	If this Transaction is to be Share Termination Settled, the provisions of Sections 9.1(c), 9.8, 9.9, 9.11, 9.12 and 10.5 (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 this Transaction means that Share Termination Alternative is applicable to this Transaction.

(l) *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 this 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 this Transaction, as applicable, by, among other things, the mutual waivers and certifications provided herein.

(m) *Registration*. Counterparty hereby agrees that if, in the good faith and 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 this Transaction cannot be sold in the public market by Dealer without registration under 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 enter into an agreement substantially similar in underwriting agreements customary for registered secondary offerings of a substantially similar size, in form and substance reasonably satisfactory to Dealer (*provided however*, that if Dealer, in its 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 Section shall apply at the election of Counterparty); (ii) in order to allow Dealer to sell the Hedge Shares in a private placement, enter into a private placement agreement substantially similar to private placement purchase agreements customary for private placements of equity offerings of a substantially similar size, in form and substance reasonably satisfactory to Dealer (in which case, the Calculation Agent shall make any adjustments to the terms of this 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 closing price on such Exchange Business Days, and in the amounts, reasonably requested by Dealer.

(n) *Tax Disclosure*. Effective from the date of commencement of discussions concerning the Transaction, each party and each of their respective 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) relating to such tax treatment and tax structure.

(o) *Status of Claims in Bankruptcy*. Dealer acknowledges and agrees that this Confirmation is not intended to convey to Dealer rights with respect to the Transaction that are senior to the claims of common stockholders in any U.S. 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.

(p) *Securities Contract*. Each of Dealer and Counterparty agrees and acknowledges that Dealer is one or more of a "financial institution" and "financial participant" within the meaning of sections 101(22) and 101(22A) of Title 11 of the United States Code (the "**Bankruptcy Code**"). The parties further agree and acknowledge (A) that this Confirmation is 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 is a "settlement payment" (as such term is defined in Section 741(8) of the Bankruptcy Code) or a "transfer" within the meaning of section 546 of the Bankruptcy Code and (B) that is the parties are entitled to the protections afforded by, among other sections, section 362(b)(6), 362(b)(27), 362(o), 546(e), 546(j), 548(d)(2), 555 and 561 of the Bankruptcy Code.

(q) *Additional Provisions*. Counterparty covenants and agrees that, as promptly as practicable following the public announcement of any consolidation, merger and binding share exchange to which Counterparty is a party, or any sale of all or substantially all of Counterparty's assets, in each case pursuant to which the Shares will be converted into cash, securities or other property, Counterparty shall notify Dealer in writing of the types and amounts of consideration that holders of Shares have elected to receive upon consummation of such transaction or 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 transaction or event is consummated.

(r) *Method of Delivery.* Whenever delivery of funds or other assets is required hereunder by or to Dealer, such delivery shall be effected through Agent.

(s) *Regulatory Provisions.* The time of dealing for the Transaction will be confirmed by Dealer upon written request by Counterparty. The Agent will furnish to Counterparty upon written request a statement as to the source and amount of any remuneration received or to be received by the Agent in connection with the Transaction.

(t) *Additional Termination Events*.

(i) The occurrence of an event of default with respect to Counterparty under the terms of the Convertible Notes as set forth in Section 7.01 of the Indenture that results in an acceleration of the Convertible Notes pursuant to the terms of the Indenture shall be 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.

(ii) The occurrence of an Amendment Event shall be 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. "**Amendment Event**" means that Counterparty amends, modifies, supplements or obtains a waiver in respect of any term of the Indenture or the Convertible Notes governing the principal amount, coupon, maturity, repurchase obligation of Counterparty, redemption right of Counterparty, any term relating to conversion of the Convertible Notes (including changes to the conversion price, conversion settlement dates or conversion conditions) that may adversely affect the rights or obligations of Dealer hereunder, or any term that would require consent of the holders of not less than 100% of the principal amount of the Convertible Notes to amend, in each case without the prior consent of Dealer, such consent not to be unreasonably withheld.

(iii) If any Repurchase Event occurs, (A) Counterparty shall notify Dealer as promptly as practicable of such event, (B) such an event shall be an Additional Termination Event, (C) an Early Termination Date shall be deemed to occur automatically on the date of such notice with respect to a portion of the Transaction relating to a number of Options equal to the number of Convertible Securities in denominations of USD 1,000 principal amount so repurchased, exchanged or repaid in connection with such Repurchase Event (the "Affected Portion"), but payment of the Close-out Amount in respect of such Early Termination Date shall not be due until one Settlement Cycle following the date on which Dealer delivered the statement provided pursuant to Section 6(d)(i) of the Agreement, and (D) Counterparty shall be deemed the sole Affected Party and the Affected Portion shall be deemed the sole Affected Transaction.

"**Repurchase Event**" means the occurrence of any of the following:

(1) any Convertible Securities are repurchased (other than as a result of a fundamental change, as defined in the Indenture) by Counterparty or any of its subsidiaries;

(2) any Convertible Securities are delivered to Counterparty in exchange for delivery of any property or assets of Counterparty or any of its subsidiaries (howsoever described);

(3) any principal of any of the Convertible Securities is repaid prior to the final maturity date of the Convertible Securities (whether following acceleration of the Convertible Notes or otherwise); or

(4) any Convertible Securities are exchanged by or for the benefit of the holders thereof for any other securities of Counterparty or any of its affiliates (or any other property, or any combination thereof) pursuant to any exchange offer or similar transaction.

For the avoidance of doubt, in the case of each of clauses (1) through (4), conversions of the Convertible Securities pursuant to the terms of the Indenture shall not constitute a Repurchase Event.

(u) *Additional ISDA Schedule Terms*.

(i) "**Specified Entity**" means in relation to each of Dealer and Counterparty for purposes of Sections 5(a)(v), 5(a)(vi), 5(a)(vii) and 5(b)(v) of the Agreement, not applicable.

(ii) "**Specified Transaction**" will have the meaning specified in Section 14 of the Agreement.

(iii) The "Cross-Default" provisions of Section 5(a)(vi) of the Agreement shall not apply to either party.

(iv) **Automatic Early Termination**. The "Automatic Early Termination" provision of Section 6(a) of the Agreement will not apply to Dealer and will not apply to Counterparty.

(v) "**Termination Currency**" means United States Dollars ("**USD**").

(vi) **Payment by Counterparty**. In the event that (i) an Early Termination Date occurs or is designated with respect to the Transaction as a result of an Event of Default (other than an Event of Default arising under Section 5(a)(ii) or 5(a)(iv) of the Agreement) or a Termination Event 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.

(vii) **Consent to Recording**. Each party (i) consents to the monitoring or recording, at any time and from time to time, by the other party of any and all communications between officers or employees of the parties, (ii) waives any further notice of such monitoring or recording, and (iii) agrees to notify (and, if required by law, obtain the consent of) its officers and employees with respect to such monitoring or recording. Any such recording may be submitted in evidence to any court or in any Proceeding for the purpose of establishing any matters pertinent to this Transaction.

(viii) **Severability**. In the event any one or more of the provisions contained in this Confirmation or the Agreement shall be held illegal, invalid or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby.

(ix) **Fully Paid Transactions**. The condition precedent in Section 2(a)(iii)(1) of the Agreement shall not apply to a payment and delivery owing by a party if the other party shall have satisfied in full all its payment or delivery obligations under Section 2(a)(i) of the Agreement and shall at the relevant time have no future payment or delivery obligations, whether absolute or contingent, under Section 2(a)(i) of the Agreement.

(x) **Part 2(b) of the ISDA Schedule – Payee Representation:**

For the purpose of Section 3(f) of this Agreement, Counterparty makes the following representation to Dealer:

Counterparty is a corporation established under the laws of the State of Delaware and is a U.S. person (as that term is defined in Section 7701(a)(30) of the Code).

For the purpose of Section 3(f) of this Agreement, Dealer makes the following representation to Counterparty:

(A) Each payment received or to be received by it in connection with this Agreement is effectively connected with its conduct of a trade or business within the United States; and

(B) It is a "foreign person" (as that term is used in Section 1.6041-4(a)(4) of the United States Treasury Regulations) for United States federal income tax purposes.

(xi) **Part 3(a) of the ISDA Schedule – Tax Forms:**

Party Required to Deliver Document	Form/Document/Certificate	Date by which to be Delivered
Counterparty	A complete and duly executed United States Internal Revenue Service Form W-9 (or successor thereto.)	(i) Upon execution and delivery of this Agreement; (ii) promptly upon reasonable demand by Dealer; and (iii) promptly upon learning that any such Form previously provided by Counterparty has become obsolete or incorrect.
Dealer	A complete and duly executed United States Internal Revenue Service Form W-8ECI (or successor thereto).	(i) Upon execution and delivery of this Agreement; (ii) promptly upon reasonable demand by Counterparty; and (iii) promptly upon learning that any such Form previously provided by Dealer has become obsolete or incorrect.

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 a facsimile of the fully-executed Confirmation to Dealer at (+1) 917-522-0458. Originals shall be provided for your execution upon your request.

Very truly yours,

BARCLAYS CAPITAL INC.
acting solely as Agent in connection with this Transaction

By: /s/ Paul Robinson
Name: Paul Robinson
Title: Managing Director

Accepted and confirmed as of the Trade Date:

HORNBECK OFFSHORE SERVICES, INC.

By: /s/ James O. Harp, Jr.
Name: James O. Harp, Jr.
Title: Executive Vice President and CFO

SCHEDULE A

For purposes of this Transaction, the following terms shall have the following values/meanings:

1. Strike Price: USD 53.8451.
2. Premium: USD 18,988,320.00

J.P.Morgan

Execution version

JPMorgan Chase Bank, National Association
London Branch
P.O. Box 161
60 Victoria Embankment
London EC4Y 0JP
England

August 7, 2012

To: Hornbeck Offshore Services, Inc.
103 Northpark Boulevard, Suite 300
Covington, Louisiana, 70433
Attention: Sam Giberga, General Counsel
Facsimile No.: (985) 727-2006

Re: **Base Call Option Transaction**

The purpose of this letter agreement (this "**Confirmation**") is to confirm the terms and conditions of the Transaction entered into between JPMorgan Chase Bank, National Association, London Branch ("**Dealer**"), and Hornbeck Offshore Services, Inc. ("**Counterparty**") on the Trade Date specified below (the "**Transaction**"). This Confirmation constitutes a "Confirmation" as referred to in the Agreement specified below.

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 have the meanings assigned to them in the Indenture to be dated on or about August 13, 2012 between Counterparty and Wells Fargo Bank, National Association, as trustee (as may be amended, modified or supplemented from time to time, but only if such amendment, modification or supplement is consented to by Dealer in writing, the "**Indenture**") relating to USD 260,000,000 principal amount of 1.500% senior convertible notes due 2019 (the "**Convertible Notes**") issued by Counterparty. In the event of any inconsistency between the Indenture and this Confirmation, this Confirmation shall govern. For the avoidance of doubt, references herein to sections of the Indenture are based on the draft of the Indenture most recently reviewed by the parties at the time of this Confirmation. If any relevant sections of the Indenture are changed, added, or renumbered following execution of this Confirmation but prior to the execution of the Indenture, the parties will amend this Confirmation in good faith to preserve the economic intent of the parties based on the draft of the Indenture so reviewed. The parties further acknowledge that 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 following its execution, any such amendment will be disregarded for purposes of this Confirmation (other than as provided in paragraph 8(t)(ii) below and other than any amendment pursuant to Section 10.01(k) of the Indenture) unless the parties agree otherwise in writing.

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 supplement, form a part of, and be subject to an agreement in the form of the ISDA 2002 Master Agreement (the "**Agreement**") as if Dealer and Counterparty had executed an agreement in such form (but without any Schedule except for (i) the

election of the laws of the State of New York as the governing law, (ii) the election of US Dollars ("**USD**") as the Termination Currency, and (iii) the other provisions set forth under paragraph 8(u) below) on the Trade Date. In the event of any inconsistency between provisions of that Agreement and this Confirmation, this Confirmation will prevail for the purpose of the Transaction to which this Confirmation relates. The parties hereby agree that no Transaction other than the Transaction to which this Confirmation relates shall be governed by the Agreement.

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

General Terms:

Trade Date:	August 7, 2012.
Effective Date:	The closing date for the initial issuance of the Convertible Notes.
Option Style:	Modified American, as described below under "Procedures for Exercise".
Option Type:	Call.
Buyer:	Counterparty.
Seller:	Dealer.
Shares:	The common stock, par value USD 0.01 per share, of Counterparty (Ticker symbol "HOS").
Number of Options:	260,000. For the avoidance of doubt, the Number of Options shall be reduced by any Options exercised by Counterparty. In no event will the Number of Options be less than zero.
Option Entitlement:	As of any date, a number of Shares per Option equal to the Applicable Percentage *multiplied by* the "Conversion Rate" (as defined in the Indenture) as of such date (but without regard to any adjustments to the "Conversion Rate" pursuant to Section 12.02(m) or Section 12.03 of the Indenture).
Strike Price:	As provided in Schedule A to this Confirmation.
Applicable Percentage:	40.0%.
Premium:	As provided in Schedule A to this Confirmation.
Premium Payment Date:	The Effective Date.
Exchange:	New York Stock Exchange.
Related Exchange(s):	All Exchanges.

Procedures for Exercise:

Exercise Dates:	Each Conversion Date.
Conversion Dates:	Each "Conversion Date" (as defined in the Indenture) occurring during the Exercise Period for Convertible Notes in denominations of USD 1,000 principal amount that are surrendered for conversion on such Conversion Date in accordance with the terms of the Indenture, subject to "Notice of Exercise" below (such Convertible Notes, the "**Relevant Convertible Notes**"); *provided* that 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 Convertible Note surrendered 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 12.01(f) of the Indenture and such designation is accepted by such financial institution, except to the extent that (i) such financial institution fails to pay or deliver, as the case may be, any consideration due upon conversion of such Convertible Note, or (ii) such Convertible Note is subsequently resubmitted to Counterparty for conversion in accordance with the terms of the Indenture.
Exercisable Options:	In respect of each Conversion Date, a number of Options equal to the number of Relevant Convertible Notes in denominations of USD 1,000 principal amount surrendered for conversion on such Conversion Date in accordance with the terms of the Indenture, subject to "Notice of Exercise" below, but no greater than the Number of Options.
Free Convertibility Date:	June 1, 2019.
Exercise Period:	The period from and including the Effective Date to and including the Expiration Date.
Expiration Date:	Notwithstanding anything to the contrary in section 3.1(f) of the Equity Definitions, "Expiration Date" shall mean the earlier of (x) the last day on which any Convertible Notes remain outstanding and (y) the Scheduled Trading Day immediately preceding the "Maturity Date" (as defined in the Indenture).
Multiple Exercise:	Applicable, as provided under "Exercisable Options" above.
Automatic Exercise:	Applicable, subject to "Notice of Exercise" below.
Notice of Exercise:	Notwithstanding anything to the contrary in the Equity Definitions or under "Exercisable Options" above, in order to exercise any Exercisable Options, Counterparty must notify Dealer in writing prior to 5:00 p.m., New York City time, on the day that is at least two Scheduled Trading Days' prior to the first day of the applicable Conversion Period for such Options (the "**Notice Deadline**") of (i) the aggregate principal amount of Convertible Notes as to which such Conversion Date has occurred (including, if applicable, whether all or any portion of the Convertible Notes relating to such Options are Convertible Notes as to which additional Shares would be added to the "Conversion Rate" (as defined in the Indenture) pursuant to Section 12.03 of the Indenture (the "**Make-Whole Convertible Notes**")), (ii) the scheduled first day of the applicable Conversion Period and the scheduled Settlement Date, (iii) the Relevant Settlement Method for such Options and (iv) if the Relevant Settlement Method for such Options is not Net Share Settlement, Settlement in Shares or Settlement in Cash (each as defined below), the fixed amount of cash per Relevant Convertible Note that Counterparty has elected to deliver to "Holders" (as defined in the Indenture) of the related Relevant Convertible Notes (the "**Specified Cash Amount**"), and such notice shall also include the information, representations, acknowledgements and agreements required pursuant to "Settlement Method Election Conditions" below; *provided* that, notwithstanding the foregoing, in the case of any Options relating to Convertible Notes surrendered for conversion in respect of which Counterparty has elected to designate a financial institution for exchange in lieu of conversion pursuant to Section 12.01(f) of the Indenture and such designation is accepted by such financial institution, such notice (and the related automatic exercise of such Options) shall be effective if given after the relevant

Notice Deadline but prior to 5:00 p.m. (New York City time) on the 50th Scheduled Trading Day following the Notice Deadline, in which event the Calculation Agent shall have the right to adjust the number of Shares and/or amount of cash deliverable by Dealer with respect to such Options as appropriate to reflect the additional costs (including, but not limited to, hedging mismatches and market losses) and expenses incurred by Dealer in connection with its hedging activities (including the unwinding of any hedge position) as a result of Dealer not having received such notice on or prior to the Notice Deadline; provided, further, that in respect of any Options relating to Relevant Convertible Notes with a Conversion Date occurring on or after the Free Convertibility Date, (A) such notice may be given on or prior to the Expiration Date and need only specify the information required in clause (i) above (provided that any such notice given on the Expiration Date shall be given prior to 12:00 p.m., New York City time, on such date), and (B) if the Relevant Settlement Method for such Options is not Net Share Settlement with a Specified Cash Amount equal to USD 1,000, Dealer shall have received a separate notice (the "Notice of Final Settlement Method") in respect of all such Relevant Convertible Notes before 5:00 p.m., New York City time, on or prior to the Free Convertibility Date specifying the information required in clauses (iii) and (iv) above, as well as the information, representations, acknowledgements and agreements required pursuant to "Settlement Method Election Conditions" below.

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 the Settlement Method Election Conditions have been satisfied and Counterparty shall have notified Dealer of the Relevant Settlement Method in the Notice of Exercise or Notice of Final Settlement Method, as applicable, for such Option.

Relevant Settlement Method: In respect of any Option, subject to the Settlement Method Election Conditions:

(i) if Counterparty has elected to settle its conversion obligations in respect of the related Relevant Convertible Note (A) entirely in Shares pursuant to Section 12.01(d)(i) 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 12.01(d)(iii) 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 12.01(d)(iii) 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 Relevant Convertible Note in a combination of cash and Shares pursuant to Section 12.01(d)(iii) 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 Relevant Convertible Note entirely in cash pursuant to Section 12.01(d)(ii) of the Indenture (such settlement method, "**Settlement in Cash**"), then the Relevant Settlement Method for such Option shall be Cash Settlement.

Settlement Method Election Conditions: For any Relevant Settlement Method other than Net Share Settlement with a Specified Cash Amount equal to USD 1,000, such Relevant Settlement Method shall apply to an Option only if the Notice of Exercise or Notice of Final Settlement Method for such Option, as applicable, contains:

(i) a representation that, on the date of such Notice of Exercise or Notice of Final Settlement Method, as applicable, none of Counterparty and its officers and directors is aware or in possession of any "material non-public information" (within the meaning of Section 10(b) of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), and the rules promulgated thereunder) with respect to Counterparty or the Shares;

(ii) a representation that Counterparty is electing the settlement method for the related Relevant Convertible Note and such Relevant Settlement Method in good faith and not as part of a plan or scheme to evade the prohibitions of Rule 10b-5 under the Exchange Act;

(iii) a representation that Counterparty has not entered into or altered any hedging transaction relating to the Shares corresponding to or offsetting the Transaction;

(iv) a representation that Counterparty is not electing the settlement method for the related Relevant Convertible Note and such Relevant Settlement Method 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; and

(v) an acknowledgment by Counterparty that (A) any transaction by Dealer following Counterparty's election of the settlement method for the related Relevant Convertible Note and such Relevant Settlement Method shall be made at Dealer's sole discretion and for Dealer's own account and (B) Counterparty does not have, and shall not attempt to exercise, any influence over how, when, whether or at what price to effect such transactions, including, without limitation, the price paid or received per Share pursuant to such transactions, or whether such transactions are made on any securities exchange or privately.

Net Share Settlement:	If Net Share Settlement is applicable to any Option exercised or deemed exercised hereunder, in lieu of the obligations set forth in Sections 8.1 and 9.1 of the Equity Definitions, Dealer will deliver to Counterparty, on the relevant Settlement Date for each such Option, an aggregate number of Shares and cash in lieu of fractional shares, if any, (the "**Net Share Settlement Amount**") equal to the product of (x) the Applicable Percentage and (y) the number of Shares that Counterparty would be obligated to deliver to the "Holder(s)" (as defined in the Indenture) of the Relevant Convertible Notes converted on such Conversion Date pursuant to Section 12.01(d) of the Indenture and cash in lieu of fractional shares, if any, pursuant to Section 12.01(g) of the Indenture, as if Counterparty had elected to satisfy its conversion obligation in respect of such Relevant Convertible Notes with a Specified Cash Amount equal to USD 1,000 per Relevant Convertible Note, notwithstanding any different Specified Cash Amount actually elected by Counterparty with respect to the settlement of such Relevant Convertible Notes, and determined on the basis of the applicable Conversion Period set forth opposite the caption "Conversion Period" below; provided that such obligation shall be determined excluding any Shares and/or cash that Counterparty is obligated to deliver to holder(s) of the Relevant Convertible Notes as a result of any adjustments to the "Conversion Rate" pursuant to Section 12.02(m) or Section 12.03 of the Indenture; and provided further that, with respect to any Settlement in Shares or Low Cash Combination Settlement, for any Option exercised or deemed exercised hereunder on a Conversion Date occurring on or after the Free Convertibility Date, 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 the Relevant Convertible Notes relating to such Option.
Combination Settlement:	If Combination Settlement is applicable to any Option exercised or deemed exercised hereunder, in lieu of the obligations set forth in Sections 8.1 and 9.1 of the Equity Definitions, Dealer will deliver to Counterparty, on the relevant Settlement Date for each such Option: (i) cash equal to the *product* of (A) the Applicable Percentage *and* (B) the *excess* of (x) the cash that Counterparty is obligated to deliver to the "Holder(s)" (as defined in the Indenture) of the Relevant Convertible Note converted on such Conversion Date pursuant to Section 12.01(d) of the Indenture (including cash paid in respect of fractional shares but excluding any cash paid in respect of interest) *over* (y) USD 1,000 per Relevant Convertible Note (the "**Combination Settlement Cash Amount**"); and (ii) a number of Shares equal to the *product* of (A) the Applicable Percentage *and* (B) the number of Shares that Counterparty is obligated to deliver to the "Holder(s)" (as defined in the Indenture) of the Relevant Convertible Note converted on such Conversion Date pursuant to Section 12.01(d) of the Indenture.
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 *product* of (A) the Applicable Percentage *and* (B) the *excess* of (x) the cash that Counterparty is obligated to

	deliver to the "Holder(s)" (as defined in the Indenture) of the Relevant Convertible Note converted on such Conversion Date pursuant to Section 12.01(d) of the Indenture (including cash paid in respect of fractional shares but excluding any cash paid in respect of interest) *over* (y) USD 1,000 per Relevant Convertible Note.
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, delivered to the Holder of the related Relevant Convertible Note upon conversion of such Relevant Convertible Note and (B) the number of Shares, if any, delivered to the Holder of the related Relevant Convertible Note, in each case pursuant to the terms of the Indenture, upon conversion of such Relevant Convertible Note *multiplied by* the Applicable Limit Price on the settlement date for the Relevant Convertible Notes relating to such Option, *over* (ii) USD 1,000.
Applicable Limit Price:	On any day, the opening price as displayed under the heading "Op" on Bloomberg page HOS <equity> (or any successor thereto).
Trading 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, "Trading Day" means a Business Day.
Scheduled Trading Day:	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 Shares are listed or admitted for trading. If the Shares are not so listed or admitted for trading, "Scheduled Trading 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 or banks in the State of Texas are authorized or required by law or executive order to close or be closed.
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, the occurrence or existence prior to 1:00 p.m. New York City time on any Scheduled Trading 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."
Conversion Period:	For any Option and regardless of the Settlement Method applicable to such Option: (i) if the related Conversion Date occurs prior to the Free Convertibility Date, the 25 consecutive Trading Days commencing on, and including, the third Trading Day immediately following such Conversion Date; *provided* that if the Notice of Exercise for such

	Option specifies that Settlement in Shares or Low Cash Combination Settlement applies to the related Relevant Convertible Note, the Conversion Period shall be the 50 consecutive Trading Day period commencing on, and including, the third Trading Day immediately following such Conversion Date; (ii) if the related Conversion Date occurs on or following the Free Convertibility Date, the 25 consecutive Trading Days commencing on, and including, the 27th Scheduled Trading Day immediately prior to the "Maturity Date" (as defined in the Indenture); provided that if the Notice of Exercise or Notice of Final Settlement Method, as applicable, for such Option specifies that Settlement in Shares or Low Cash Combination Settlement applies to the related Relevant Convertible Note, the Conversion Period shall be the 50 consecutive Trading Days commencing on, and including, the 53rd Scheduled Trading Day immediately prior to the "Maturity Date" (as defined in the Indenture).
Settlement Date:	For any Option, the third Business Day immediately following the final Trading Day of the applicable Conversion Period for such Option.
Settlement Currency:	USD.
Other Applicable Provisions:	To the extent Dealer is obligated to deliver Shares hereunder, the provisions of Sections 9.4 (except that "Settlement Date" shall be as defined above, unless a Settlement Disruption Event prevents delivery of such Shares on that date), 9.8, 9.9, 9.10, 9.11 and 9.12 of the Equity Definitions shall be applicable as if "Physical Settlement" applied to the Transaction; *provided* that the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by excluding any restrictions, obligations, limitations or requirements under applicable securities laws as a result of the fact that Counterparty is the issuer of the Shares.
Restricted Certificated Shares:	Notwithstanding anything to the contrary in the Equity Definitions, Dealer may, in whole or in part, deliver any Shares required to be delivered hereunder in certificated form to Counterparty in lieu of delivery through the Clearance System. With respect to such certificated Shares, the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by deleting the remainder of the provision after the word "encumbrance" in the fourth line thereof.
Share Adjustments:	
Method of Adjustment:	Calculation Agent Adjustment, which means that, notwithstanding Section 11.2(c) of the Equity Definitions, upon any adjustment to the "Conversion Rate" (as defined in the Indenture) and/or the nature of the Shares under the Convertible Notes pursuant to the Indenture (other than an increase in the "Conversion Rate" pursuant to Section 12.02(m) or Section 12.03 of the Indenture), the Calculation Agent will make a corresponding adjustment to any one or more of the Strike Price, the Option Entitlement and any other term relevant to the exercise, settlement, payment or other terms of the Transaction. Counterparty agrees that it will notify Dealer prior to the effectiveness of any such adjustment and, to the extent such adjustment requires an exercise of discretion by Counterparty under the terms of the Indenture, it shall use good faith efforts to consult

	with the Calculation Agent in order to achieve a commercially reasonable adjustment, determination or calculation (it being understood for the avoidance of doubt that notwithstanding any such consultation, Counterparty shall remain entitled to make such adjustments as permitted in accordance with the terms of the Indenture).
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 Sections 12.02(a), (b), (c), (d) and (e) of the Indenture that would result in an adjustment to the "Conversion Rate" (as defined in the Indenture) of the Convertible Notes; *provided* that in no event shall there be any adjustment hereunder as a result of an adjustment to the "Conversion Rate" pursuant to Section 12.02(m) or Section 12.03 of the Indenture.
Extraordinary Events:	
Merger Events:	Notwithstanding Section 12.1(b) of the Equity Definitions (which shall not apply for the purposes hereof), a "Merger Event" means the occurrence of any event or condition set forth in Section 12.04(a) of the Indenture.
Notice of Merger Consideration:	Upon the occurrence of a Merger Event that causes the Shares to be converted into or exchanged for more than a single type of consideration (determined based in part upon the form of election of the holders of the Shares), Counterparty shall promptly notify the Calculation Agent in writing of the types and amounts of consideration that holders of Shares have affirmatively elected to receive upon consummation of such Merger Event; *provided* that in no event shall the date of such notification be later than the date on which such Merger Event is consummated.
Consequences of Merger Events:	Notwithstanding Section 12.2 of the Equity Definitions (which shall not apply for the purposes hereof), upon the occurrence of a Merger Event, to the extent an adjustment is made under the Indenture in respect of such Merger Event, the Calculation Agent shall make an analogous adjustment in respect of any adjustment under the Indenture to any one or more of the nature of the Shares, the Strike Price, the Number of Options, the Option Entitlement and any other term relevant to the exercise, settlement, payment or other terms of the Transaction; *provided*, *however*, that such adjustment shall be made without regard to any adjustment to the "Conversion Rate" (as defined in the Indenture) for the issuance of additional shares as set forth in Section 12.02(m) or Section 12.03 of the Indenture.
Nationalization, Insolvency or Delisting:	Cancellation and Payment (Calculation Agent Determination) *provided* that, for purposes of Section 12.6(a)(iii) of the Equity Definitions, it will 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), a Delisting shall not have occurred and such exchange or quotation system shall thereafter be deemed to be the Exchange.

Additional Disruption Events:

Change in Law:	Applicable; *provided* that Section 12.9(a)(ii) of the Equity Definitions is hereby amended by replacing the word “Shares” where it appears in clause (X) thereof with the words “Hedge Position”.
Failure to Deliver:	Not Applicable.
Insolvency Filing:	Applicable.
Hedging Disruption:	Applicable for the period commencing on the Trade Date and ending on the Effective Date; Not Applicable after the Effective Date.
Increased Cost of Hedging:	Not Applicable
Hedging Party:	Dealer or an affiliate of Dealer that is involved in the hedging of this Transaction for all applicable Additional Disruption Events. Section 13.2(b) of the Equity Definitions is hereby amended by adding the words “(or an Affiliate of such party)” following the words “by a party” in the third line thereof.
Determining Party:	Dealer for all applicable Extraordinary Events.

Acknowledgments:

Non-Reliance:	Applicable.
Agreements and Acknowledgments Regarding Hedging Activities:	Applicable.
Additional Acknowledgments:	Applicable.

3. Calculation Agent: Dealer, whose judgments, determinations and calculations shall be made in good faith and in a commercially reasonable manner. Following any determination or calculation by the Calculation Agent hereunder, upon a request by Counterparty, the Calculation Agent 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 determination or calculation (including any assumptions used in making such determination or calculation), it being understood that the Calculation Agent shall not be obligated to disclose any proprietary models used by it for such determination or calculation.

4. Account Details:

(a) Account for payments to Counterparty:

Capital One, N.A.
New Orleans, LA
ABA 065-000-090

For credit to:
Hornbeck Offshore Services, Inc.
103 Northpark Blvd., Suite 300
Covington, LA 70433
Account 812519859

Account for delivery of Shares to Counterparty:

To be provided under separate cover by Counterparty.

(b) Account for payments to Dealer:

Bank: JPMorgan Chase Bank, N.A.
ABA#: 021000021
Acct No.: 099997979
Beneficiary: JPMorgan Chase Bank, N.A. New York
Ref: Derivatives

5. Offices: The Office of Counterparty for the Transaction is: Inapplicable, Counterparty is not a Multibranch Party. The Office of Dealer for the Transaction is: London

JPMorgan Chase Bank, National Association
London Branch
P.O. Box 161
60 Victoria Embankment
London EC4Y 0JP
England

6. Notices: For purposes of this Confirmation:

(a) Address for notices or communications to Counterparty:

Hornbeck Offshore Services, Inc.
103 Northpark Boulevard, Suite 300
Covington, Louisiana, 70433
Attention: Sam Giberga, General Counsel
Facsimile No.: (985) 727-2006

(b) Address for notices or communications to Dealer:

EDG Marketing Support
Email: EDG_OTC_HEDGING_MS@jpmorgan.com
Fax: 1-866-886-4506

With a copy to:

Jason M. Wood
Managing Director
Equity-Linked & Derivative Capital Markets
560 Mission St.
San Francisco CA
Telephone No: 415-315-8783
Facsimile No: 415-226-0616
Email: jason.m.wood@jpmorgan.com

7. Representations and Warranties of Counterparty

(A) Counterparty hereby represents and warrants to Dealer that:

(a) It is an “eligible contract participant” (as such term is defined in the Commodity Exchange Act, as amended (the “**CEA**”));

(b) Counterparty is not, on the date hereof, in possession of any material non-public information with respect to Counterparty;

(c) (x) On any day during any Conversion Period, neither Counterparty nor any "affiliate" or "affiliated purchaser" (each as defined in Rule 10b-18 of the Exchange Act ("**Rule 10b-18**")) shall directly or indirectly (including, without limitation, by means of any cash-settled or other derivative instrument) purchase, offer to purchase, place any bid or limit order that would effect a purchase of, or commence any tender offer relating to, any Shares (or an equivalent interest, including a unit of beneficial interest in a trust or limited partnership or a depository share) or any security convertible into or exchangeable or exercisable for Shares, except through Dealer;

(y) Counterparty agrees that it (A) will not, on any day during any Conversion Period, make, or permit to be made, any public announcement (as defined in Rule 165(f) under the Securities Act of 1933, as amended (the "**Securities Act**")) of any Merger Transaction or potential Merger Transaction unless such public announcement is made prior to the opening or after the close of the regular trading session on the Exchange for the Shares; (B) shall promptly (but in any event prior to the next opening of the regular trading session on the Exchange) notify Dealer following any such announcement that such announcement has been made; and (C) shall promptly (but in any event prior to the next opening of the regular trading session on the Exchange) provide Dealer with written notice specifying (i) Counterparty's average daily Rule 10b-18 Purchases (as defined in Rule 10b-18) during the three full calendar months immediately preceding the announcement date that were not effected through Dealer or its affiliates and (ii) the number of Shares purchased pursuant to the proviso in Rule 10b-18(b)(4) under the Exchange Act for the three full calendar months preceding the announcement date. Such written notice shall be deemed to be a certification by Counterparty to Dealer that such information is true and correct. In addition, Counterparty shall promptly notify Dealer of the earlier to occur of the completion of such transaction and the completion of the vote by target shareholders. "**Merger Transaction**" means any merger, acquisition or similar transaction involving a recapitalization as contemplated by Rule 10b-18(a)(13)(iv) under the Exchange Act.

(d) Without limiting the generality of Section 13.1 of the Equity Definitions, Counterparty acknowledges that Dealer is not making any representations or warranties 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, 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 under FASB's Liabilities & Equity Project;

(e) Counterparty has not received notice that it is the subject of a tender offer made under Section 14(d)(1) of the Exchange Act and has not commenced any tender offer that would be subject to Rule 13e-4 under the Exchange Act;

(f) Prior to or on the Trade Date, Counterparty shall deliver to Dealer a resolution of Counterparty's board of directors authorizing the Transaction;

(g) Counterparty is not, and after giving effect to 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;

(h) On the Trade Date (A) the assets of Counterparty at their fair valuation exceed the liabilities of Counterparty, including contingent liabilities, (B) the capital of Counterparty is adequate to conduct the business of Counterparty and (C) Counterparty has the ability to pay its debts and obligations as such debts mature and does not intend to, or does not believe that it will, incur debt beyond its ability to pay as such debts mature;

(i) Counterparty understands that no obligations of Dealer to it hereunder will be entitled to the benefit of deposit insurance or securities investor protection and that such obligations will not be guaranteed by any affiliate of Dealer (except as expressly set forth herein) or any governmental agency;

(j) The Convertible Notes have been duly authorized by Counterparty, and, when issued and delivered as provided in the Purchase Agreement and duly authenticated pursuant to the Indenture (assuming due authentication of the Convertible Notes by the trustee) will be duly executed, authenticated, issued and delivered and will constitute valid and legally binding obligations of Counterparty entitled to the benefits provided by the Indenture; and the Convertible Notes will conform, in all material respects, to the descriptions thereof in the Offering Memorandum;

(k) The Indenture has been duly authorized, executed and delivered by Counterparty and the guarantors named therein, and (assuming the authorization, execution and delivery by the trustee), constitutes a valid and legally binding instrument of Counterparty, enforceable against Counterparty in accordance with its terms, subject as to enforcement, to bankruptcy, insolvency, fraudulent transfer, fraudulent conveyance, moratorium, reorganization and laws of general applicability relating to or affecting creditors' rights and general equity principles (regardless of whether enforceability is considered in a proceeding in equity or at law); and the Indenture conforms, in all material respects, to the description thereof in the Offering Memorandum;

(l) Upon issuance and delivery of the Convertible Notes in accordance with the Purchase Agreement and the Indenture, the Convertible Notes will be convertible at the option of the holder thereof into Shares, cash or a combination of cash and Shares, if applicable, in accordance with the terms of the Convertible Notes; the Shares reserved for issuance upon conversion of the Convertible Notes have been duly authorized and reserved and, when issued upon conversion of the Convertible Notes in accordance with the terms of the Convertible Notes, will be validly issued, fully paid and non-assessable, and the issuance of the Shares will not be subject to any preemptive or similar rights;

(m) Neither Counterparty nor any controlled affiliate (as defined in Rule 501(b) of Regulation D of the Securities Act of 1933, as amended (the "**Securities Act**")) of Counterparty has directly, or through any agent, sold, offered for sale, solicited offers to buy or otherwise negotiated in respect of, any security (as defined in the Securities Act) which is or will be integrated with the sale of the Convertible Notes in a manner that would require the registration under the Securities Act of the offering contemplated by the Offering Memorandum;

(n) None of Counterparty, any controlled affiliate of Counterparty or any person acting on its or their behalf (other than the Initial Purchasers for whom we make no representation) has offered or sold the Convertible Notes by means of any general solicitation or general advertising within the meaning of Rule 502(c) under the Securities Act;

(o) The Convertible Notes satisfy the requirements set forth in Rule 144A(d)(3) under the Securities Act;

(p) The issue and sale of the Convertible Notes, the issuance by Counterparty of the Shares upon conversion of the Convertible Notes and the compliance by Counterparty with all of the provisions of the Convertible Notes, the Indenture, the Purchase Agreement and this Confirmation and the consummation of the transactions herein and therein contemplated (A) will not conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, any material indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Counterparty or any of its subsidiaries is a party or by which Counterparty or any of its subsidiaries is bound or to which any of the property or assets of Counterparty or any of its subsidiaries is subject, except such conflict, breach or violation as would not have a Material Adverse Effect, (B) will not result in any violation of the provisions of the certificate of incorporation or bylaws of Counterparty, and (C) will not result in the violation of any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over Counterparty or any of its subsidiaries or any of its properties, except such violations as would not have a Material Adverse Effect; and except as disclosed in the Offering Memorandum, to Counterparty's knowledge, no consent, approval, authorization, order, registration or qualification of or with any such court or governmental agency or body is required for the issue and sale of the Convertible Notes or the consummation by Counterparty of the transactions contemplated by the Purchase Agreement or the Indenture, except for the filing and effectiveness of a registration statement by Counterparty with the Commission pursuant to the Securities Act, the qualification of the Indenture under the Trust Indenture Act of 1939 ("**Trust Indenture Act**") in relation to the Shares and such consents, approvals, authorizations, registrations or qualifications as may be required under state Securities or Blue Sky laws in connection with the purchase and distribution of the Convertible Notes by the Initial Purchasers in the manner contemplated by the Purchase Agreement and Offering Memorandum and except for such consents the failure to obtain would not have a Material Adverse Effect. "**Material Adverse Effect**" means any change in the capital stock, increase in long-term debt or any decreases in consolidated net current assets or stockholders' equity of Counterparty or any of its subsidiaries or any material adverse change, or any development involving a prospective material adverse change, in or affecting the general affairs, management, current or future consolidated financial position, stockholders' equity or results of operations of Counterparty and its subsidiaries taken as a whole;

(q) Counterparty is subject to Section 13 or 15(d) of the Exchange Act;

(r) Prior to the Trade Date, Counterparty has not taken any action which is designed to or which has constituted or which might have been expected to cause or result in stabilization or manipulation of the price of any security of Counterparty in connection with the offering of the Convertible Notes;

(s) None of Counterparty or any of its subsidiaries is in violation of its certificate of incorporation or certificate of formation, or its bylaws or limited liability company agreement (or other organizational documents), or in default in the performance or observance of any material obligation, covenant or condition contained in any material indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which it is a party or by which it or any of its properties may be bound, other than such defaults that individually or in the aggregate would not have a Material Adverse Effect;

(t) Other than as set forth in the Offering Memorandum, there are no legal or governmental proceedings pending to which Counterparty or any of its subsidiaries is a party or of which any property of Counterparty or any of its subsidiaries is the subject which, if determined adversely to Counterparty or any of its subsidiaries, would individually or in the aggregate have a Material Adverse Effect; and, to the best of Counterparty's knowledge, no such proceedings are threatened or contemplated by governmental authorities or threatened by others.

(u) (x) Counterparty is acting for its own account, and it has made its own independent decisions to enter into the Transaction and as to whether the Transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary, (y) Counterparty is not relying on any communication (written or oral) of Dealer or any of its affiliates as investment advice or as a recommendation to enter into the Transaction (it being understood that information and explanations related to the terms and conditions of the Transaction shall not be considered investment advice or a recommendation to enter into the Transaction) and (z) no communication (written or oral) received from Dealer or any of its affiliates shall be deemed to be an assurance or guarantee as to the expected results of the Transaction; and

(v) The assets used in the Transaction (1) are not assets of any "plan" (as such term is defined in Section 4975 of the United States 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.

(w) The 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 $50 million as of the date hereof.

(B) Each party makes to the other the representations and warranties set forth in Sections 3(a) through (f) of the Agreement with respect to the Agreement as supplemented by this Confirmation; *provided* that Dealer makes the representation and warranty set forth in Section 3(e) and Counterparty makes the representation and warranty set forth in Section 3(f). In addition, each of Dealer and Counterparty acknowledges that the offer and sale of the Transaction to Counterparty is intended to be exempt from registration under the Securities Act, by virtue of Section 4(2) thereof. Accordingly, Counterparty represents and warrants to Dealer that (i) it has the financial ability to bear the economic risk of its investment in the Transaction and is able to bear a total loss of its investment and its investments in and liabilities in respect of the Transaction, which it understands are not readily marketable, are not disproportionate to its net worth, and it is able to bear any loss in connection with the Transaction, including the loss of its entire investment in the Transaction, (ii) it is an "accredited investor" as that term is defined in Regulation D as promulgated under the Securities Act, (iii) it is entering into the Transaction for its own account and without a view to the distribution or resale thereof, (iv) the assignment, transfer or other disposition of the Transaction has not been and will not be registered under the Securities Act and is restricted under this Confirmation, the Securities Act and state securities laws, and (v) its financial condition is such that it has no need for liquidity with respect to its investment in the Transaction and no need to dispose of any portion thereof to satisfy any existing or contemplated undertaking or indebtedness and is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of the Transaction.

8. Other Provisions:

(a) *Opinions*. Counterparty shall deliver to Dealer an opinion of counsel, dated as of the Trade Date, with respect to the matters set forth in Section 3(a) of the Agreement and Section 7(A)(g) of this Confirmation; *provided* that such opinion may contain customary exceptions and qualifications, including, without limitation, exceptions and qualifications relating to indemnification provisions.

(b) *Repurchase Notices*. Counterparty shall, on any day on which Counterparty effects any repurchase of Shares, give Dealer a written notice of such repurchase (a "**Repurchase Notice**") on such day if following such repurchase the Notice Percentage as determined on such day is (i) greater than 4.5% and (ii) greater by 0.5% than the Notice Percentage included in the immediately preceding Repurchase Notice (or, in the case of the first such Repurchase Notice, greater than the Notice Percentage as of the date hereof). The "**Notice Percentage**" as of any day is the fraction, expressed as a percentage, the numerator of which is the product of the Number of Options and the Option Entitlement and the denominator of which is the number of Shares outstanding on such day.

(c) *Regulation M*. Counterparty is not on the date hereof 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 engage in any such distribution (x) until the second Scheduled Trading Day immediately following the Trade Date and (y)(A) on any day during any Conversion Period, the Shares or securities that are convertible into, or exchangeable or exercisable for Shares, are not, and shall not be, subject to a "restricted period," as defined in Regulation M and (B) Counterparty shall not engage in any "distribution," as such term is defined in Regulation M, other than a distribution meeting the requirements of the exceptions set forth in sections 101(b)(10) and 102(b)(7) of Regulation M, until the second Exchange Business Day immediately following the last day in such Conversion Period.

(d) *No Manipulation*. Counterparty is not entering into this 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) *Number of Repurchased Shares*. Counterparty represents that it could have purchased Shares, in an amount equal to the product of the Number of Options and the Option Entitlement, on the Exchange or otherwise, in compliance with applicable law, its organizational documents and any orders, decrees, contractual agreements binding upon Counterparty, on the Trade Date.

(f) *Early Unwind*. In the event the sale of Convertible Notes is not consummated with the initial purchasers for any reason by the close of business in New York on August 13, 2012 (or such later date as agreed upon by the parties) (August 13, 2012 or such later date as agreed upon being the "**Early Unwind Date**"), this 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; *provided* that, Counterparty shall reimburse Dealer for reasonable costs or expenses (including market losses) relating to the unwinding of its, or the Hedging Party's, Hedging Activities in connection with the Transaction (including any loss or cost incurred as a result of its terminating, liquidating, obtaining or reestablishing any hedge or related trading position) unless the sale of Convertible Bonds is not consummated with the initial purchasers as a result of breach of the Purchase Agreement by the initial purchasers (in which case no such reimbursement will be payable). The amount of any such reimbursement shall be determined by Dealer in good faith and in a commercially reasonable manner. Dealer shall notify Counterparty of such amount and Counterparty shall deliver Share Termination Delivery Property or, at the election of Counterparty, pay such amount in immediately available funds

on the Early Unwind Date. Dealer and Counterparty represent and acknowledge to the other that, subject to the proviso included in this paragraph, upon an Early Unwind, all obligations with respect to the Transaction shall be deemed fully and finally discharged. Notwithstanding anything herein or in the Agreement to the contrary, in no event shall Counterparty be required to deliver an aggregate number of Shares in connection with the Early Unwind in excess of 1,931,467 Shares, subject to adjustment from time to time as a result of actions of Counterparty or events within Counterparty's control and in accordance with the provisions of this Confirmation and the Equity Definitions.

(g) *Transfer or Assignment*. Neither party may transfer any of its rights or obligations hereunder and under the Transaction and Agreement without the prior written consent of the non-transferring party (such consent not to be unreasonably withheld); *provided* that, subject to applicable law, Dealer may transfer or assign without any consent of Counterparty its rights and obligations hereunder, in whole or in part, to any of its affiliates of credit quality at least equivalent to that of Dealer as of the Trade Date or to any other of its affiliates *provided* that Counterparty shall receive a full guaranty of such affiliate's obligations from Dealer in form and substance reasonably satisfactory to Counterparty if (i) an Event of Default, Potential Event of Default or Termination Event will not occur as a result of such transfer or assignment and (ii) as a result of such transfer or assignment, Counterparty will not be required to pay the transferee on any payment date an amount under Section 2(d)(i)(4) of the Agreement greater than an amount that Counterparty would have been required to pay to Dealer in the absence of such transfer or assignment. Except for the transfer or assignment contemplated in the proviso to the first sentence of this paragraph 8(g), in the case of a transfer or assignment by Counterparty or Dealer of its rights and obligations hereunder and under the Agreement, in whole or in part (any Options so transferred or assigned, the "**Transfer Options**"), to any party, withholding of consent by the other party (the "**Remaining Party**") shall not be considered unreasonable if such transfer or assignment does not meet the following reasonable conditions that the Remaining Party may impose: (i) with respect to any Transfer Options, Counterparty shall not be released from its notice and indemnification obligations pursuant to paragraph 8(b) ("Repurchase Notices") or any obligations under paragraph 2 regarding Extraordinary Events or paragraph 8(m) ("Registration") of this Confirmation; (ii) any Transfer Options shall only be transferred or assigned to a third party that is a U.S. person (as defined in the Internal Revenue Code of 1986, as amended); (iii) such transfer or assignment shall be effected on terms, including any reasonable undertakings by such transferee (including, but not limited to, undertakings with respect to compliance with applicable securities laws in a manner that, in the reasonable judgment of the Remaining Party, will not expose the Remaining Party 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 transferee and the transferor as are reasonably requested and reasonably satisfactory to the Remaining Party; (iv) the Remaining Party will not, as a result of such transfer or assignment, be required to pay the transferee on any payment date an amount under Section 2(d)(i)(4) of the Agreement greater than an amount that the Remaining Party would have been required to pay to the transferor in the absence of such transfer or assignment; (v) an Event of Default, Potential Event of Default or Termination Event will not occur as a result of such transfer or assignment; (vi) without limiting the generality of clause (ii), the transferor shall have caused the transferee to make such Payee Tax Representations and to provide such tax documentation as may be reasonably requested by the Remaining Party to permit the Remaining Party to determine that results described in clauses (iv) and (v) will not occur upon or after such transfer or assignment; and (vii) the transferor shall be responsible for all reasonable costs and expenses, including reasonable counsel fees, incurred by the Remaining Party in connection with such transfer or assignment.

Notwithstanding the foregoing, at any time at which a transaction proposed to be entered into by Dealer would cause the Articles Ownership Percentage to exceed 4.9%, unless Counterparty provides an acknowledgment to Dealer to the effect that the Shares owned or controlled by Dealer or any of its affiliates will not be deemed as owned or controlled by an "Alien" (as defined in Article Twelve Section 6 of Counterparty's Certificate of Incorporation), Dealer may (or shall, if requested by Counterparty) transfer or assign to a third party such portion of the Transaction that would otherwise cause the Articles Ownership Percentage to exceed 4.9% (it being understood and agreed that Dealer would make such a transfer or assignment to (a) one of its U.S. affiliates, if, in Counterparty's view, such a transfer or assignment would result in the Shares owned or controlled by such U.S. affiliates not being owned or controlled by an "Alien" for purposes of Article Twelve of Counterparty's Certificate of Incorporation) or (b) unless otherwise consented by Counterparty, to a third party who is not an "Alien" for purposes of Article Twelve of Counterparty's Certificate of Incorporation, if the transfer or assignment would otherwise result in such Shares deemed owned or controlled by an "Alien" for purposes of Article Twelve of Counterparty's Certificate of Incorporation); *provided further* that if Dealer is unable to effect a transfer or

assignment to a third party after its commercially reasonable efforts on pricing terms reasonably acceptable to Dealer (or to one of its U.S. affiliates, if, in Counterparty's view, such a transfer or assignment would result in the Shares owned or controlled by such U.S. affiliates not being owned or controlled by an "Alien" for purposes of Article Twelve of Counterparty's Articles of Incorporation) such that the Articles Ownership Percentage does not exceed 4.9%, Dealer may designate any Scheduled Trading Day as an Early Termination Date with respect to a portion (the "**Articles Terminated Portion**") of the Transaction, such that the Articles Ownership Percentage following such partial termination will be equal to 4.9%.

Notwithstanding the foregoing, at any time at which (1) the Option Equity Percentage exceeds 9.0% or (2) Dealer, Dealer Group (as defined below) or any person whose ownership position would be aggregated with that of Dealer or Dealer Group (Dealer, Dealer Group or any such person, a "**Dealer Person**") under any relevant state corporate law or any state or federal bank holding company or banking laws, or other federal, state or local laws, regulations or regulatory orders applicable to ownership of Shares ("**Applicable Laws**"), owns, beneficially owns, constructively owns, controls, holds the power to vote or otherwise meets a relevant definition of ownership in excess of a number of Shares equal to (x) the number of Shares that, in the good faith determination of the relevant Dealer Person, would give rise to materially burdensome reporting or registration obligations or other requirements (including obtaining prior approval by a state or federal regulator) of a Dealer Person under Applicable Laws (including, without limitation, "interested stockholder" or "acquiring person" status under Section 203 of the Delaware General Corporation Law, but excluding any report or filing required pursuant to Section 13 of the Exchange Act and the rules promulgated thereunder) and with respect to which such requirements have not been met or the relevant approval has not been received *minus* (y) 1.0% of the number of Shares outstanding on the date of determination (either such condition described in clause (1) or (2), an "**Excess Ownership Position**") and Dealer is unable, after commercially reasonable efforts, to eliminate such Excess Ownership Position or effect a transfer or assignment to a third party with a rating (or whose guarantor has a rating) for its long term, unsecured and unsubordinated indebtedness at least equal to that of Dealer as of the Trade Date on pricing terms and within a time period reasonably acceptable to it of all or a portion of the Transaction such that an Excess Ownership Position no longer exists, Dealer may designate any Scheduled Trading Day as an Early Termination Date with respect to a portion (the "**Reporting Terminated Portion**") of the Transaction, such that an Excess Ownership Position no longer exists.

In the event that Dealer so designates an Early Termination Date with respect to an Articles Terminated Portion or a Reporting Terminated Portion, a payment shall be made pursuant to Section 6 of the Agreement as if (i) an Early Termination Date had been designated in respect of a Transaction having terms identical to this Transaction and a Number of Options equal to the Articles Terminated Portion or the Reporting Terminated Portion, as the case may be, (ii) Counterparty shall be the sole Affected Party with respect to such partial termination and (iii) such Transaction shall be the only Terminated Transaction (and, for the avoidance of doubt, the provisions of paragraph 8(k) shall apply to any amount that is payable by Dealer to Counterparty pursuant to this sentence).

The "**Articles Ownership 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 its affiliates "own or control" (within the meaning of Article 12 Section 2 of Counterparty's Certificate of Incorporation) on such day, and (B) the denominator of which is the number of Shares outstanding on such day.

The "**Option Equity Percentage**" as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the sum of (i) the number of Shares that Dealer and any of its affiliates subject to aggregation with Dealer, for purposes of the "beneficial ownership" test under Section 13 of the Exchange Act, and all persons who may form a "group" (within the meaning of Rule 13d-5(b)(1) under the Exchange Act) with Dealer ("**Dealer Group**") "beneficially owns" (within the meaning of Section 13 of the Exchange Act) on such day, other than any Shares so owned as a hedge of the Transaction, and (ii) the product of the Number of Options and the Option Entitlement and (B) the denominator of which is the number of Shares outstanding on such day. For purposes of this Section 8(g), the term "Dealer" shall include any of the Dealer's permitted successors or assigns.

(h) *Staggered Settlement*. If upon advice of counsel with respect to applicable legal and regulatory requirements, including any requirements relating to Dealer's, or the Hedging Party's, Hedge Activities hereunder, Dealer reasonably determines that it would not be advisable to deliver, or to acquire Shares to deliver, any or all of the Shares to be delivered by Dealer on the 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 (each of which will be on or prior to 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) if the Settlement terms set forth above were to apply on the Nominal Settlement Date, then the Settlement terms will apply on each Staggered Settlement Date, except that the Shares to be delivered pursuant to such terms will be allocated among such Staggered Settlement Dates as specified by Dealer in the notice referred to in clause (i) above.

(i) *Role of Agent*. Each party agrees and acknowledges that (i) J.P. Morgan Securities LLC, an affiliate of JPMorgan ("**JPMS**"), has acted solely as agent and not as principal with respect to the Transaction and (ii) JPMS has no obligation or liability, by way of guaranty, endorsement or otherwise, in any manner in respect of the Transaction (including, if applicable, in respect of the settlement thereof). Each party agrees it will look solely to the other party (or any guarantor in respect thereof) for performance of such other party's obligations under the Transaction.

(j) *No Collateral or Setoff*. Notwithstanding any provision of the Agreement or any other agreement between the parties, the obligations of Dealer hereunder are not secured by any collateral. In addition obligations under the Transaction shall not be netted, recouped or set off (including pursuant to Section 6 of the Agreement) against any other obligations of the parties, whether arising under the Agreement, this Confirmation, under any other agreement between the parties hereto, by operation of law or otherwise, and no other obligations of the parties shall be netted, recouped or set off (including pursuant to Section 6 of the Agreement) against obligations under the Transaction, whether arising under the Agreement, this Confirmation, under any other agreement between the parties hereto, by operation of law or otherwise, and each party hereby waives any such right of setoff, netting or recoupment; *provided* that both parties agree that subparagraph (ii) of Section 2(c) of the Agreement shall apply to the Transaction.

(k) *Alternative Calculations and Payment on Early Termination and on Certain Extraordinary Events*. If in respect of this Transaction, an amount is payable by Dealer to Counterparty (i) pursuant to Section 12.2 of the Equity Definitions and "Consequences of Merger Events" above, or Sections 12.3, 12.6, 12.7 or 12.9 of the Equity Definitions, (ii) pursuant to Section 6(d)(ii) of the Agreement or (iii) pursuant to "Early Unwind" above (each, a "**Payment Obligation**"), Dealer shall satisfy any such Payment Obligation by the Share Termination Alternative (as defined below) unless Counterparty elects for Dealer to satisfy such Payment Obligation by delivery of cash or in the event of a Nationalization, Insolvency or a Merger Event, in each case, in which the consideration to be paid to holders of Shares consists solely of cash, or 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)(i), (ii), (iii), (iv), (v) or (vi) of the Agreement in each case that resulted from an event or events outside Counterparty's control, in which case the provisions of Sections 12.2, 12.3, 12.6, 12.7 or 12.9 of the Equity Definitions or Section 6(d)(ii) of the Agreement, as the case may be, shall apply in lieu of the provisions set forth in this paragraph 8(k). Counterparty shall give irrevocable telephonic notice to Dealer of any such selection, confirmed in writing within one Currency Business Day, no later than 12:00 p.m. New York local time on the Merger Date, the Announcement Date (in the case of Nationalization or Insolvency), the Early Termination Date or date of cancellation, as applicable; where such notice shall include a representation and warranty from Counterparty that it is not, as of the date of the telephonic notice and the date of such written notice, aware of any "material non-public information" (within the meaning of Section 10(b) of the Exchange Act and the rules promulgated thereunder) concerning itself or the Shares. In calculating any amounts under Section 6(e) of the Agreement, notwithstanding anything to the contrary in the Agreement, (1) separate amounts shall be calculated as set forth in Section 6(e) with respect to (i) this Transaction and (ii) all other Transactions, and (2) such separate amounts shall be payable pursuant to Section 6(d)(ii) of the Agreement.

Share Termination Alternative:	Applicable, if elected as per above, and means that Dealer shall deliver to Counterparty the Share Termination Delivery Property on the date when the Payment Obligation would otherwise be due pursuant to "Consequences of Merger Events" above or Section 12.7 or 12.9 of the Equity Definitions or Section 6(d)(ii) and 6(e) of the Agreement, as applicable (the "**Share Termination Payment Date**"), 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 on the date such Share Termination Delivery Units are to be delivered as Share Termination Delivery Property, 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.
Share Termination Delivery Unit:	In the case of a Termination Event, Event of Default, Delisting, one Share or, in the case of an Insolvency, Nationalization or Merger Event, one Share or a unit consisting of the number or amount of each type of 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 Insolvency, Nationalization or Merger Event, as applicable. If such Insolvency, Nationalization or Merger Event involves a choice of consideration to be received by holders, such holder shall be deemed to have elected to receive the maximum possible amount of cash.
Failure to Deliver:	Applicable
Other applicable provisions:	If this Transaction is to be Share Termination Settled, the provisions of Sections 9.1(c), 9.8, 9.9, 9.11, 9.12 and 10.5 (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 this Transaction means that Share Termination Alternative is applicable to this Transaction.

(l) *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 this 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 this Transaction, as applicable, by, among other things, the mutual waivers and certifications provided herein.

(m) *Registration*. Counterparty hereby agrees that if, in the good faith and 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 this Transaction cannot be sold in the public market by Dealer without registration under 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 enter into an agreement substantially similar in underwriting agreements customary for registered secondary offerings of a substantially similar size, in form and substance reasonably satisfactory to Dealer (*provided however*, that if Dealer, in its 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 Section shall apply at the election of Counterparty); (ii) in order to allow Dealer to sell the Hedge Shares in a private placement, enter into a private placement agreement substantially similar to private placement purchase agreements customary for private placements of equity offerings of a substantially similar size, in form and substance reasonably satisfactory to Dealer (in which case, the Calculation Agent shall make any adjustments to the terms of this 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 closing price on such Exchange Business Days, and in the amounts, reasonably requested by Dealer.

(n) *Tax Disclosure*. Effective from the date of commencement of discussions concerning the Transaction, each party and each of their respective 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) relating to such tax treatment and tax structure.

(o) *Status of Claims in Bankruptcy*. Dealer acknowledges and agrees that this Confirmation is not intended to convey to Dealer rights with respect to the Transaction that are senior to the claims of common stockholders in any U.S. 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.

(p) *Securities Contract*. Each of Dealer and Counterparty agrees and acknowledges that Dealer is one or more of a "financial institution" and "financial participant" within the meaning of sections 101(22) and 101(22A) of Title 11 of the United States Code (the "**Bankruptcy Code**"). The parties further agree and acknowledge (A) that this Confirmation is 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 is a "settlement payment" (as such term is defined in Section 741(8) of the Bankruptcy Code) or a "transfer" within the meaning of section 546 of the Bankruptcy Code and (B) that is the parties are entitled to the protections afforded by, among other sections, section 362(b)(6), 362(b)(27), 362(o), 546(e), 546(j), 548(d)(2), 555 and 561 of the Bankruptcy Code.

(q) *Additional Provisions*. Counterparty covenants and agrees that, as promptly as practicable following the public announcement of any consolidation, merger and binding share exchange to which Counterparty is a party, or any sale of all or substantially all of Counterparty's assets, in each case pursuant to which the Shares will be converted into cash, securities or other property, Counterparty shall notify Dealer in writing of the types and amounts of consideration that holders of Shares have elected to receive upon consummation of such transaction or 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 transaction or event is consummated.

(r) *Method of Delivery.* Notwithstanding any other provision in this Confirmation to the contrary requiring or allowing JPMorgan to purchase, sell, receive or deliver any Shares or other securities, or make or receive any payment in cash, to or from Counterparty, JPMorgan may designate any of its affiliates to purchase, sell, receive or deliver such Shares or other securities, or to make or receive such payment in cash, and otherwise to perform JPMorgan's obligations in respect of the Transaction and any such designee may assume such obligations. JPMorgan shall be discharged of its obligations to Counterparty to the extent of any such performance.

(s) Reserved.

(t) *Additional Termination Events*.

(i) The occurrence of an event of default with respect to Counterparty under the terms of the Convertible Notes as set forth in Section 7.01 of the Indenture that results in an acceleration of the Convertible Notes pursuant to the terms of the Indenture shall be 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.

(ii) The occurrence of an Amendment Event shall be 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. "**Amendment Event**" means that Counterparty amends, modifies, supplements or obtains a waiver in respect of any term of the Indenture or the Convertible Notes governing the principal amount, coupon, maturity, repurchase obligation of Counterparty, redemption right of Counterparty, any term relating to conversion of the Convertible Notes (including changes to the conversion price, conversion settlement dates or conversion conditions) that may adversely affect the rights or obligations of Dealer hereunder, or any term that would require consent of the holders of not less than 100% of the principal amount of the Convertible Notes to amend, in each case without the prior consent of Dealer, such consent not to be unreasonably withheld.

(iii) If any Repurchase Event occurs, (A) Counterparty shall notify Dealer as promptly as practicable of such event, (B) such an event shall be an Additional Termination Event, (C) an Early Termination Date shall be deemed to occur automatically on the date of such notice with respect to a portion of the Transaction relating to a number of Options equal to the number of Convertible Securities in denominations of USD 1,000 principal amount so repurchased, exchanged or repaid in connection with such Repurchase Event (the "Affected Portion"), but payment of the Close-out Amount in respect of such Early Termination Date shall not be due until one Settlement Cycle following the date on which Dealer delivered the statement provided pursuant to Section 6(d)(i) of the Agreement, and (D) Counterparty shall be deemed the sole Affected Party and the Affected Portion shall be deemed the sole Affected Transaction.

"**Repurchase Event**" means the occurrence of any of the following:

(1) any Convertible Securities are repurchased (other than as a result of a fundamental change, as defined in the Indenture) by Counterparty or any of its subsidiaries;

(2) any Convertible Securities are delivered to Counterparty in exchange for delivery of any property or assets of Counterparty or any of its subsidiaries (howsoever described);

(3) any principal of any of the Convertible Securities is repaid prior to the final maturity date of the Convertible Securities (whether following acceleration of the Convertible Notes or otherwise); or

(4) any Convertible Securities are exchanged by or for the benefit of the holders thereof for any other securities of Counterparty or any of its affiliates (or any other property, or any combination thereof) pursuant to any exchange offer or similar transaction.

For the avoidance of doubt, in the case of each of clauses (1) through (4), conversions of the Convertible Securities pursuant to the terms of the Indenture shall not constitute a Repurchase Event.

(u) *Additional ISDA Schedule Terms*.

(i) "**Specified Entity**" means in relation to each of Dealer and Counterparty for purposes of Sections 5(a)(v), 5(a)(vi), 5(a)(vii) and 5(b)(v) of the Agreement, not applicable.

(ii) "**Specified Transaction**" will have the meaning specified in Section 14 of the Agreement.

(iii) The "Cross-Default" provisions of Section 5(a)(vi) of the Agreement shall not apply to either party.

(iv) **Automatic Early Termination**. The "Automatic Early Termination" provision of Section 6(a) of the Agreement will not apply to Dealer and will not apply to Counterparty.

(v) "**Termination Currency**" means United States Dollars ("**USD**").

(vi) **Payment by Counterparty**. In the event that (i) an Early Termination Date occurs or is designated with respect to the Transaction as a result of an Event of Default (other than an Event of Default arising under Section 5(a)(ii) or 5(a)(iv) of the Agreement) or a Termination Event 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.

(vii) **Consent to Recording**. Each party (i) consents to the monitoring or recording, at any time and from time to time, by the other party of any and all communications between officers or employees of the parties, (ii) waives any further notice of such monitoring or recording, and (iii) agrees to notify (and, if required by law, obtain the consent of) its officers and employees with respect to such monitoring or recording. Any such recording may be submitted in evidence to any court or in any Proceeding for the purpose of establishing any matters pertinent to this Transaction.

(viii) **Severability**. In the event any one or more of the provisions contained in this Confirmation or the Agreement shall be held illegal, invalid or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby.

(ix) **Fully Paid Transactions**. The condition precedent in Section 2(a)(iii)(1) of the Agreement shall not apply to a payment and delivery owing by a party if the other party shall have satisfied in full all its payment or delivery obligations under Section 2(a)(i) of the Agreement and shall at the relevant time have no future payment or delivery obligations, whether absolute or contingent, under Section 2(a)(i) of the Agreement.

(x) **Part 2(b) of the ISDA Schedule – Payee Representation:**

For the purpose of Section 3(f) of this Agreement, Counterparty makes the following representation to Dealer:

Counterparty is a corporation established under the laws of the State of Delaware and is a U.S. person (as that term is defined in Section 7701(a)(30) of the Code).

For the purpose of Section 3(f) of this Agreement, Dealer makes the following representation to Counterparty:

Dealer is a national banking association organized or formed under the laws of the United States and is a United States resident for federal income tax purposes.

J.P.Morgan

Please confirm that the foregoing correctly sets forth the terms of the Transaction by signing in the space provided below and returning to Dealer a facsimile of the fully-executed Confirmation to Dealer at 1-866-886-4506 (Attention: EDG Marketing Support). Originals shall be provided for your execution upon your request.

Very truly yours,

J.P. MORGAN SECURITIES LLC,
as agent for JPMorgan Chase Bank, National Association

By: /s/ Jason Wood
Name: Jason Wood
Title: Managing Director

Accepted and confirmed as of the Trade Date:

HORNBECK OFFSHORE SERVICES, INC.

By: /s/ James O. Harp, Jr.
Name: James O. Harp, Jr.
Title: Executive Vice President and CFO

SCHEDULE A

For purposes of this Transaction, the following terms shall have the following values/meanings:

1. Strike Price: USD 53.8451.
2. Premium: USD 25,317,760.00.

Exhibit 4.4

Execution version

Wells Fargo Securities, LLC
as agent of Wells Fargo Bank, NA
375 Park Avenue
New York, NY 10152
Facsimile: (212) 214-5913
Telephone: (212) 214-6101

August 7, 2012

To: Hornbeck Offshore Services, Inc.
103 Northpark Boulevard, Suite 300
Covington, Louisiana, 70433
Attention: Sam Giberga, General Counsel
Facsimile No.: (985) 727-2006

Re: **Base Call Option Transaction**

The purpose of this letter agreement (this "**Confirmation**") is to confirm the terms and conditions of the Transaction entered into between Wells Fargo Bank, National Association ("**Dealer**"), through its agent Wells Fargo Securities, LLC (the "**Agent**"), and Hornbeck Offshore Services, Inc. ("**Counterparty**") on the Trade Date specified below (the "**Transaction**"). This Confirmation constitutes a "Confirmation" as referred to in the Agreement specified below.

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 have the meanings assigned to them in the Indenture to be dated on or about August 13, 2012 between Counterparty and Wells Fargo Bank, National Association, as trustee (as may be amended, modified or supplemented from time to time, but only if such amendment, modification or supplement is consented to by Dealer in writing, the "**Indenture**") relating to USD 260,000,000 principal amount of 1.500% senior convertible notes due 2019 (the "**Convertible Notes**") issued by Counterparty. In the event of any inconsistency between the Indenture and this Confirmation, this Confirmation shall govern. For the avoidance of doubt, references herein to sections of the Indenture are based on the draft of the Indenture most recently reviewed by the parties at the time of this Confirmation. If any relevant sections of the Indenture are changed, added, or renumbered following execution of this Confirmation but prior to the execution of the Indenture, the parties will amend this Confirmation in good faith to preserve the economic intent of the parties based on the draft of the Indenture so reviewed. The parties further acknowledge that 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 following its execution, any such amendment will be disregarded for purposes of this Confirmation (other than as provided in paragraph 8(t)(ii) below and other than any amendment pursuant to Section 10.01(k) of the Indenture) unless the parties agree otherwise in writing.

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 supplement, form a part of, and be subject to an agreement in the form of the ISDA 2002 Master Agreement (the "**Agreement**") as if Dealer and Counterparty had executed an agreement in such form (but without any Schedule except for (i) the election of the laws of the State of New York as the governing law, (ii) the election of US Dollars ("**USD**") as the Termination Currency, and (iii) the other provisions set forth under paragraph 8(u) below) on the Trade Date. In the

event of any inconsistency between provisions of that Agreement and this Confirmation, this Confirmation will prevail for the purpose of the Transaction to which this Confirmation relates. The parties hereby agree that no Transaction other than the Transaction to which this Confirmation relates shall be governed by the Agreement.

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

General Terms:

Trade Date:	August 8, 2012.
Effective Date:	The closing date for the initial issuance of the Convertible Notes.
Option Style:	Modified American, as described below under “Procedures for Exercise”.
Option Type:	Call.
Buyer:	Counterparty.
Seller:	Dealer.
Shares:	The common stock, par value USD 0.01 per share, of Counterparty (Ticker symbol “HOS”).
Number of Options:	260,000. For the avoidance of doubt, the Number of Options shall be reduced by any Options exercised by Counterparty. In no event will the Number of Options be less than zero.
Option Entitlement:	As of any date, a number of Shares per Option equal to the Applicable Percentage *multiplied by* the “Conversion Rate” (as defined in the Indenture) as of such date (but without regard to any adjustments to the “Conversion Rate” pursuant to Section 12.02(m) or Section 12.03 of the Indenture).
Strike Price:	As provided in Schedule A to this Confirmation.
Applicable Percentage:	30.0%.
Premium:	As provided in Schedule A to this Confirmation.
Premium Payment Date:	The Effective Date.
Exchange:	New York Stock Exchange.
Related Exchange(s):	All Exchanges.

Procedures for Exercise:

Exercise Dates:	Each Conversion Date.
Conversion Dates:	Each “Conversion Date” (as defined in the Indenture) occurring during the Exercise Period for Convertible Notes in denominations of USD 1,000 principal amount that are surrendered for conversion on such Conversion Date in accordance with the terms of the Indenture, subject to “Notice of Exercise” below (such Convertible Notes, the “**Relevant Convertible Notes**”); *provided* that 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 Convertible Note surrendered 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 12.01(f) of the Indenture and such designation is accepted by such financial institution, except to the

	extent that (i) such financial institution fails to pay or deliver, as the case may be, any consideration due upon conversion of such Convertible Note, or (ii) such Convertible Note is subsequently resubmitted to Counterparty for conversion in accordance with the terms of the Indenture.
Exercisable Options:	In respect of each Conversion Date, a number of Options equal to the number of Relevant Convertible Notes in denominations of USD 1,000 principal amount surrendered for conversion on such Conversion Date in accordance with the terms of the Indenture, subject to "Notice of Exercise" below, but no greater than the Number of Options.
Free Convertibility Date:	June 1, 2019.
Exercise Period:	The period from and including the Effective Date to and including the Expiration Date.
Expiration Date:	Notwithstanding anything to the contrary in section 3.1(f) of the Equity Definitions, "Expiration Date" shall mean the earlier of (x) the last day on which any Convertible Notes remain outstanding and (y) the Scheduled Trading Day immediately preceding the "Maturity Date" (as defined in the Indenture).
Multiple Exercise:	Applicable, as provided under "Exercisable Options" above.
Automatic Exercise:	Applicable, subject to "Notice of Exercise" below.
Notice of Exercise:	Notwithstanding anything to the contrary in the Equity Definitions or under "Exercisable Options" above, in order to exercise any Exercisable Options, Counterparty must notify Dealer in writing prior to 5:00 p.m., New York City time, on the day that is at least two Scheduled Trading Days' prior to the first day of the applicable Conversion Period for such Options (the "**Notice Deadline**") of (i) the aggregate principal amount of Convertible Notes as to which such Conversion Date has occurred (including, if applicable, whether all or any portion of the Convertible Notes relating to such Options are Convertible Notes as to which additional Shares would be added to the "Conversion Rate" (as defined in the Indenture) pursuant to Section 12.03 of the Indenture (the "**Make-Whole Convertible Notes**")), (ii) the scheduled first day of the applicable Conversion Period and the scheduled Settlement Date, (iii) the Relevant Settlement Method for such Options and (iv) if the Relevant Settlement Method for such Options is not Net Share Settlement, Settlement in Shares or Settlement in Cash (each as defined below), the fixed amount of cash per Relevant Convertible Note that Counterparty has elected to deliver to "Holders" (as defined in the Indenture) of the related Relevant Convertible Notes (the "**Specified Cash Amount**"), and such notice shall also include the information, representations, acknowledgements and agreements required pursuant to "Settlement Method Election Conditions" below; *provided* that, notwithstanding the foregoing, in the case of any Options relating to Convertible Notes surrendered for conversion in respect of which Counterparty has elected to designate a financial institution for exchange in lieu of conversion pursuant to Section 12.01(f) of the Indenture and such designation is accepted by such financial institution, such notice (and the related automatic exercise of such Options) shall be effective if given after the relevant Notice Deadline but prior to 5:00 p.m. (New York City time) on the 50th Scheduled Trading Day following the Notice Deadline, in

which event the Calculation Agent shall have the right to adjust the number of Shares and/or amount of cash deliverable by Dealer with respect to such Options as appropriate to reflect the additional costs (including, but not limited to, hedging mismatches and market losses) and expenses incurred by Dealer in connection with its hedging activities (including the unwinding of any hedge position) as a result of Dealer not having received such notice on or prior to the Notice Deadline; *provided, further,* that in respect of any Options relating to Relevant Convertible Notes with a Conversion Date occurring on or after the Free Convertibility Date, (A) such notice may be given on or prior to the Expiration Date and need only specify the information required in clause (i) above *(provided* that any such notice given on the Expiration Date shall be given prior to 12:00 p.m., New York City time, on such date), and (B) if the Relevant Settlement Method for such Options is not Net Share Settlement with a Specified Cash Amount equal to USD 1,000, Dealer shall have received a separate notice (the **"Notice of Final Settlement Method"**) in respect of all such Relevant Convertible Notes before 5:00 p.m., New York City time, on or prior to the Free Convertibility Date specifying the information required in clauses (iii) and (iv) above, as well as the information, representations, acknowledgements and agreements required pursuant to "Settlement Method Election Conditions" below.

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 the Settlement Method Election Conditions have been satisfied and Counterparty shall have notified Dealer of the Relevant Settlement Method in the Notice of Exercise or Notice of Final Settlement Method, as applicable, for such Option.

Relevant Settlement Method: In respect of any Option, subject to the Settlement Method Election Conditions:

(i) if Counterparty has elected to settle its conversion obligations in respect of the related Relevant Convertible Note (A) entirely in Shares pursuant to Section 12.01(d)(i) 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 12.01(d)(iii) 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 12.01(d)(iii) 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 Relevant Convertible Note in a combination of cash and Shares pursuant to Section 12.01(d)(iii) 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 Relevant Convertible Note entirely in cash pursuant to Section 12.01(d)(ii) of the Indenture (such settlement method, "**Settlement in Cash**"), then the Relevant Settlement Method for such Option shall be Cash Settlement.
Settlement Method Election Conditions:	For any Relevant Settlement Method other than Net Share Settlement with a Specified Cash Amount equal to USD 1,000, such Relevant Settlement Method shall apply to an Option only if the Notice of Exercise or Notice of Final Settlement Method for such Option, as applicable, contains: (i) a representation that, on the date of such Notice of Exercise or Notice of Final Settlement Method, as applicable, none of Counterparty and its officers and directors is aware or in possession of any "material non-public information" (within the meaning of Section 10(b) of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), and the rules promulgated thereunder) with respect to Counterparty or the Shares; (ii) a representation that Counterparty is electing the settlement method for the related Relevant Convertible Note and such Relevant Settlement Method in good faith and not as part of a plan or scheme to evade the prohibitions of Rule 10b-5 under the Exchange Act; (iii) a representation that Counterparty has not entered into or altered any hedging transaction relating to the Shares corresponding to or offsetting the Transaction; (iv) a representation that Counterparty is not electing the settlement method for the related Relevant Convertible Note and such Relevant Settlement Method 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; and (v) an acknowledgment by Counterparty that (A) any transaction by Dealer following Counterparty's election of the settlement method for the related Relevant Convertible Note and such Relevant Settlement Method shall be made at Dealer's sole discretion and for Dealer's own account and (B) Counterparty does not have, and shall not attempt to exercise, any influence over how, when, whether or at what price to effect such transactions, including, without limitation, the price paid or received per Share pursuant to such transactions, or whether such transactions are made on any securities exchange or privately.
Net Share Settlement:	If Net Share Settlement is applicable to any Option exercised or deemed exercised hereunder, in lieu of the obligations set forth in Sections 8.1 and 9.1 of the Equity Definitions, Dealer will deliver to Counterparty, on the relevant Settlement Date for each such Option, an aggregate number of Shares and cash in lieu of fractional shares, if any, (the "**Net Share Settlement Amount**") equal to the product of (x) the Applicable Percentage and (y) the number of Shares that Counterparty would be obligated to deliver to the "Holder(s)" (as defined in the Indenture) of the Relevant Convertible Notes converted on such Conversion Date pursuant to Section 12.01(d) of the Indenture and cash in lieu of fractional shares, if any, pursuant to

	Section 12.01(g) of the Indenture, as if Counterparty had elected to satisfy its conversion obligation in respect of such Relevant Convertible Notes with a Specified Cash Amount equal to USD 1,000 per Relevant Convertible Note, notwithstanding any different Specified Cash Amount actually elected by Counterparty with respect to the settlement of such Relevant Convertible Notes, and determined on the basis of the applicable Conversion Period set forth opposite the caption "Conversion Period" below; *provided* that such obligation shall be determined excluding any Shares and/or cash that Counterparty is obligated to deliver to holder(s) of the Relevant Convertible Notes as a result of any adjustments to the "Conversion Rate" pursuant to Section 12.02(m) or Section 12.03 of the Indenture; and *provided further* that, with respect to any Settlement in Shares or Low Cash Combination Settlement, for any Option exercised or deemed exercised hereunder on a Conversion Date occurring on or after the Free Convertibility Date, 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 the Relevant Convertible Notes relating to such Option.
Combination Settlement:	If Combination Settlement is applicable to any Option exercised or deemed exercised hereunder, in lieu of the obligations set forth in Sections 8.1 and 9.1 of the Equity Definitions, Dealer will deliver to Counterparty, on the relevant Settlement Date for each such Option: (i) cash equal to the *product* of (A) the Applicable Percentage *and* (B) the *excess* of (x) the cash that Counterparty is obligated to deliver to the "Holder(s)" (as defined in the Indenture) of the Relevant Convertible Note converted on such Conversion Date pursuant to Section 12.01(d) of the Indenture (including cash paid in respect of fractional shares but excluding any cash paid in respect of interest) *over* (y) USD 1,000 per Relevant Convertible Note (the "**Combination Settlement Cash Amount**"); and (ii) a number of Shares equal to the *product* of (A) the Applicable Percentage *and* (B) the number of Shares that Counterparty is obligated to deliver to the "Holder(s)" (as defined in the Indenture) of the Relevant Convertible Note converted on such Conversion Date pursuant to Section 12.01(d) of the Indenture.
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 *product* of (A) the Applicable Percentage *and* (B) the *excess* of (x) the cash that Counterparty is obligated to deliver to the "Holder(s)" (as defined in the Indenture) of the Relevant Convertible Note converted on such Conversion Date pursuant to Section 12.01(d) of the Indenture (including cash paid in respect of fractional shares but excluding any cash paid in respect of interest) *over* (y) USD 1,000 per Relevant Convertible Note.
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, delivered to the Holder of the related Relevant Convertible Note upon conversion of such Relevant Convertible Note and (B) the number of Shares, if any, delivered to the Holder of the related Relevant Convertible Note, in each case

	pursuant to the terms of the Indenture, upon conversion of such Relevant Convertible Note *multiplied by* the Applicable Limit Price on the settlement date for the Relevant Convertible Notes relating to such Option, *over* (ii) USD 1,000.
Applicable Limit Price:	On any day, the opening price as displayed under the heading "Op" on Bloomberg page HOS <equity> (or any successor thereto).
Trading 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, "Trading Day" means a Business Day.
Scheduled Trading Day:	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 Shares are listed or admitted for trading. If the Shares are not so listed or admitted for trading, "Scheduled Trading 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 or banks in the State of Texas are authorized or required by law or executive order to close or be closed.
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, the occurrence or existence prior to 1:00 p.m. New York City time on any Scheduled Trading 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."
Conversion Period:	For any Option and regardless of the Settlement Method applicable to such Option: (i) if the related Conversion Date occurs prior to the Free Convertibility Date, the 25 consecutive Trading Days commencing on, and including, the third Trading Day immediately following such Conversion Date; *provided* that if the Notice of Exercise for such Option specifies that Settlement in Shares or Low Cash Combination Settlement applies to the related Relevant Convertible Note, the Conversion Period shall be the 50 consecutive Trading Day period commencing on, and including, the third Trading Day immediately following such Conversion Date; (ii) if the related Conversion Date occurs on or following the Free Convertibility Date, the 25 consecutive Trading Days commencing on, and including, the 27th Scheduled Trading Day immediately prior to the "Maturity Date" (as defined in the Indenture); *provided* that if the Notice of Exercise or Notice of Final Settlement Method, as applicable, for such Option specifies that

	Settlement in Shares or Low Cash Combination Settlement applies to the related Relevant Convertible Note, the Conversion Period shall be the 50 consecutive Trading Days commencing on, and including, the 53rd Scheduled Trading Day immediately prior to the "Maturity Date" (as defined in the Indenture).
Settlement Date:	For any Option, the third Business Day immediately following the final Trading Day of the applicable Conversion Period for such Option.
Settlement Currency:	USD.
Other Applicable Provisions:	To the extent Dealer is obligated to deliver Shares hereunder, the provisions of Sections 9.4 (except that "Settlement Date" shall be as defined above, unless a Settlement Disruption Event prevents delivery of such Shares on that date), 9.8, 9.9, 9.10, 9.11 and 9.12 of the Equity Definitions shall be applicable as if "Physical Settlement" applied to the Transaction; *provided* that the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by excluding any restrictions, obligations, limitations or requirements under applicable securities laws as a result of the fact that Counterparty is the issuer of the Shares.
Restricted Certificated Shares:	Notwithstanding anything to the contrary in the Equity Definitions, Dealer may, in whole or in part, deliver any Shares required to be delivered hereunder in certificated form to Counterparty in lieu of delivery through the Clearance System. With respect to such certificated Shares, the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by deleting the remainder of the provision after the word "encumbrance" in the fourth line thereof.
Share Adjustments:	
Method of Adjustment:	Calculation Agent Adjustment, which means that, notwithstanding Section 11.2(c) of the Equity Definitions, upon any adjustment to the "Conversion Rate" (as defined in the Indenture) and/or the nature of the Shares under the Convertible Notes pursuant to the Indenture (other than an increase in the "Conversion Rate" pursuant to Section 12.02(m) or Section 12.03 of the Indenture), the Calculation Agent will make a corresponding adjustment to any one or more of the Strike Price, the Option Entitlement and any other term relevant to the exercise, settlement, payment or other terms of the Transaction. Counterparty agrees that it will notify Dealer prior to the effectiveness of any such adjustment and, to the extent such adjustment requires an exercise of discretion by Counterparty under the terms of the Indenture, it shall use good faith efforts to consult with the Calculation Agent in order to achieve a commercially reasonable adjustment, determination or calculation (it being understood for the avoidance of doubt that notwithstanding any such consultation, Counterparty shall remain entitled to make such adjustments as permitted in accordance with the terms of the Indenture).
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 Sections 12.02(a), (b), (c), (d) and (e) of the Indenture that would result in an adjustment to the "Conversion Rate" (as defined in the Indenture) of the Convertible Notes;

	provided that in no event shall there be any adjustment hereunder as a result of an adjustment to the "Conversion Rate" pursuant to Section 12.02(m) or Section 12.03 of the Indenture.
Extraordinary Events:	
Merger Events:	Notwithstanding Section 12.1(b) of the Equity Definitions (which shall not apply for the purposes hereof), a "Merger Event" means the occurrence of any event or condition set forth in Section 12.04(a) of the Indenture.
Notice of Merger Consideration:	Upon the occurrence of a Merger Event that causes the Shares to be converted into or exchanged for more than a single type of consideration (determined based in part upon the form of election of the holders of the Shares), Counterparty shall promptly notify the Calculation Agent in writing of the types and amounts of consideration that holders of Shares have affirmatively elected to receive upon consummation of such Merger Event; *provided* that in no event shall the date of such notification be later than the date on which such Merger Event is consummated.
Consequences of Merger Events:	Notwithstanding Section 12.2 of the Equity Definitions (which shall not apply for the purposes hereof), upon the occurrence of a Merger Event, to the extent an adjustment is made under the Indenture in respect of such Merger Event, the Calculation Agent shall make an analogous adjustment in respect of any adjustment under the Indenture to any one or more of the nature of the Shares, the Strike Price, the Number of Options, the Option Entitlement and any other term relevant to the exercise, settlement, payment or other terms of the Transaction; *provided*, *however*, that such adjustment shall be made without regard to any adjustment to the "Conversion Rate" (as defined in the Indenture) for the issuance of additional shares as set forth in Section 12.02(m) or Section 12.03 of the Indenture.
Nationalization, Insolvency or Delisting:	Cancellation and Payment (Calculation Agent Determination) *provided* that, for purposes of Section 12.6(a)(iii) of the Equity Definitions, it will 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), a Delisting shall not have occurred and such exchange or quotation system shall thereafter be deemed to be the Exchange.
Additional Disruption Events:	
Change in Law:	Applicable; *provided* that Section 12.9(a)(ii) of the Equity Definitions is hereby amended by replacing the word "Shares" where it appears in clause (X) thereof with the words "Hedge Position".
Failure to Deliver:	Not Applicable.
Insolvency Filing:	Applicable.
Hedging Disruption:	Applicable for the period commencing on the Trade Date and ending on the Effective Date; Not Applicable after the Effective Date.

Increased Cost of Hedging:	Not Applicable
Hedging Party:	Dealer or an affiliate of Dealer that is involved in the hedging of this Transaction for all applicable Additional Disruption Events. Section 13.2(b) of the Equity Definitions is hereby amended by adding the words “(or an Affiliate of such party)” following the words “by a party” in the third line thereof.
Determining Party:	Dealer for all applicable Extraordinary Events.
Acknowledgments:	
Non-Reliance:	Applicable.
Agreements and Acknowledgments Regarding Hedging Activities:	Applicable.
Additional Acknowledgments:	Applicable.

3. Calculation Agent: Dealer, whose judgments, determinations and calculations shall be made in good faith and in a commercially reasonable manner. Following any determination or calculation by the Calculation Agent hereunder, upon a request by Counterparty, the Calculation Agent 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 determination or calculation (including any assumptions used in making such determination or calculation), it being understood that the Calculation Agent shall not be obligated to disclose any proprietary models used by it for such determination or calculation.

4. Account Details:

(a) Account for payments to Counterparty:

Capital One, N.A.
New Orleans, LA
ABA 065-000-090

For credit to:
Hornbeck Offshore Services, Inc.
103 Northpark Blvd., Suite 300
Covington, LA 70433
Account 812519859

Account for delivery of Shares to Counterparty:

To be provided under separate cover by Counterparty.

(b) Account for payments to Dealer:

Wells Fargo Bank, N.A.
ABA 121-000-248
Internal Acct No. 01020304464228
A/C Name: WFB Equity Derivatives

DTC Number: 2072
Agent ID: 52196
Institution ID: 52196

5. Offices: The Office of Counterparty for the Transaction is: Inapplicable, Counterparty is not a Multibranch Party. The Office of Dealer for the Transaction is: Charlotte.

6. Notices: For purposes of this Confirmation:

(a) Address for notices or communications to Counterparty:

Hornbeck Offshore Services, Inc.
103 Northpark Boulevard, Suite 300
Covington, Louisiana, 70433
Attention: Sam Giberga, General Counsel
Facsimile No.: (985) 727-2006

(b) Address for notices or communications to Dealer:

Wells Fargo Bank, National Association
375 Park Avenue
New York, NY 10152
Attention: Derivatives Structuring Group
Telephone: 212-214-6101
Facsimile: 212-214-5913

Trader's Contact Information:

Mark Kohn or Head Trader
Telephone: 212-214-6089
Facsimile: 212-214-8914

7. Representations and Warranties of Counterparty

(A) Counterparty hereby represents and warrants to Dealer that:

(a) It is an "eligible contract participant" (as such term is defined in the Commodity Exchange Act, as amended (the "**CEA**"));

(b) Counterparty is not, on the date hereof, in possession of any material non-public information with respect to Counterparty;

(c) (x) On any day during any Conversion Period, neither Counterparty nor any "affiliate" or "affiliated purchaser" (each as defined in Rule 10b-18 of the Exchange Act ("**Rule 10b-18**")) shall directly or indirectly (including, without limitation, by means of any cash-settled or other derivative instrument) purchase, offer to purchase, place any bid or limit order that would effect a purchase of, or commence any tender offer relating to, any Shares (or an equivalent interest, including a unit of beneficial interest in a trust or limited partnership or a depository share) or any security convertible into or exchangeable or exercisable for Shares, except through Dealer;

(y) Counterparty agrees that it (A) will not, on any day during any Conversion Period, make, or permit to be made, any public announcement (as defined in Rule 165(f) under the Securities Act of 1933, as amended (the "**Securities Act**")) of any Merger Transaction or potential Merger Transaction unless such public announcement is made prior to the opening or after the close of the regular trading session on the Exchange for the Shares; (B) shall promptly (but in any event prior to the next opening of the regular trading session on the Exchange) notify Dealer following any such announcement that such announcement has been made; and (C) shall promptly (but in any event prior to the next opening of the regular trading session on the Exchange) provide Dealer with written notice specifying (i) Counterparty's average daily Rule 10b-18 Purchases (as defined in Rule 10b-18) during the three full calendar months immediately preceding the announcement date that were not effected through

Dealer or its affiliates and (ii) the number of Shares purchased pursuant to the proviso in Rule 10b-18(b)(4) under the Exchange Act for the three full calendar months preceding the announcement date. Such written notice shall be deemed to be a certification by Counterparty to Dealer that such information is true and correct. In addition, Counterparty shall promptly notify Dealer of the earlier to occur of the completion of such transaction and the completion of the vote by target shareholders. "**Merger Transaction**" means any merger, acquisition or similar transaction involving a recapitalization as contemplated by Rule 10b-18(a)(13)(iv) under the Exchange Act.

(d) Without limiting the generality of Section 13.1 of the Equity Definitions, Counterparty acknowledges that Dealer is not making any representations or warranties 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, 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 under FASB's Liabilities & Equity Project;

(e) Counterparty has not received notice that it is the subject of a tender offer made under Section 14(d)(1) of the Exchange Act and has not commenced any tender offer that would be subject to Rule 13e-4 under the Exchange Act;

(f) Prior to or on the Trade Date, Counterparty shall deliver to Dealer a resolution of Counterparty's board of directors authorizing the Transaction;

(g) Counterparty is not, and after giving effect to 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;

(h) On the Trade Date (A) the assets of Counterparty at their fair valuation exceed the liabilities of Counterparty, including contingent liabilities, (B) the capital of Counterparty is adequate to conduct the business of Counterparty and (C) Counterparty has the ability to pay its debts and obligations as such debts mature and does not intend to, or does not believe that it will, incur debt beyond its ability to pay as such debts mature;

(i) Counterparty understands that no obligations of Dealer to it hereunder will be entitled to the benefit of deposit insurance or securities investor protection and that such obligations will not be guaranteed by any affiliate of Dealer (except as expressly set forth herein) or any governmental agency;

(j) The Convertible Notes have been duly authorized by Counterparty, and, when issued and delivered as provided in the Purchase Agreement and duly authenticated pursuant to the Indenture (assuming due authentication of the Convertible Notes by the trustee) will be duly executed, authenticated, issued and delivered and will constitute valid and legally binding obligations of Counterparty entitled to the benefits provided by the Indenture; and the Convertible Notes will conform, in all material respects, to the descriptions thereof in the Offering Memorandum;

(k) The Indenture has been duly authorized, executed and delivered by Counterparty and the guarantors named therein, and (assuming the authorization, execution and delivery by the trustee), constitutes a valid and legally binding instrument of Counterparty, enforceable against Counterparty in accordance with its terms, subject as to enforcement, to bankruptcy, insolvency, fraudulent transfer, fraudulent conveyance, moratorium, reorganization and laws of general applicability relating to or affecting creditors' rights and general equity principles (regardless of whether enforceability is considered in a proceeding in equity or at law); and the Indenture conforms, in all material respects, to the description thereof in the Offering Memorandum;

(l) Upon issuance and delivery of the Convertible Notes in accordance with the Purchase Agreement and the Indenture, the Convertible Notes will be convertible at the option of the holder thereof into Shares, cash or a combination of cash and Shares, if applicable, in accordance with the terms of the Convertible Notes; the Shares reserved for issuance upon conversion of the Convertible Notes have been duly authorized and reserved and, when issued upon conversion of the Convertible Notes in accordance with the terms of the Convertible Notes, will be validly issued, fully paid and non-assessable, and the issuance of the Shares will not be subject to any preemptive or similar rights;

(m) Neither Counterparty nor any controlled affiliate (as defined in Rule 501(b) of Regulation D of the Securities Act of 1933, as amended (the "**Securities Act**")) of Counterparty has directly, or through any agent, sold, offered for sale, solicited offers to buy or otherwise negotiated in respect of, any security (as defined in the Securities Act) which is or will be integrated with the sale of the Convertible Notes in a manner that would require the registration under the Securities Act of the offering contemplated by the Offering Memorandum;

(n) None of Counterparty, any controlled affiliate of Counterparty or any person acting on its or their behalf (other than the Initial Purchasers for whom we make no representation) has offered or sold the Convertible Notes by means of any general solicitation or general advertising within the meaning of Rule 502(c) under the Securities Act;

(o) The Convertible Notes satisfy the requirements set forth in Rule 144A(d)(3) under the Securities Act;

(p) The issue and sale of the Convertible Notes, the issuance by Counterparty of the Shares upon conversion of the Convertible Notes and the compliance by Counterparty with all of the provisions of the Convertible Notes, the Indenture, the Purchase Agreement and this Confirmation and the consummation of the transactions herein and therein contemplated (A) will not conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, any material indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Counterparty or any of its subsidiaries is a party or by which Counterparty or any of its subsidiaries is bound or to which any of the property or assets of Counterparty or any of its subsidiaries is subject, except such conflict, breach or violation as would not have a Material Adverse Effect, (B) will not result in any violation of the provisions of the certificate of incorporation or bylaws of Counterparty, and (C) will not result in the violation of any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over Counterparty or any of its subsidiaries or any of its properties, except such violations as would not have a Material Adverse Effect; and except as disclosed in the Offering Memorandum, to Counterparty's knowledge, no consent, approval, authorization, order, registration or qualification of or with any such court or governmental agency or body is required for the issue and sale of the Convertible Notes or the consummation by Counterparty of the transactions contemplated by the Purchase Agreement or the Indenture, except for the filing and effectiveness of a registration statement by Counterparty with the Commission pursuant to the Securities Act, the qualification of the Indenture under the Trust Indenture Act of 1939 ("**Trust Indenture Act**") in relation to the Shares and such consents, approvals, authorizations, registrations or qualifications as may be required under state Securities or Blue Sky laws in connection with the purchase and distribution of the Convertible Notes by the Initial Purchasers in the manner contemplated by the Purchase Agreement and Offering Memorandum and except for such consents the failure to obtain would not have a Material Adverse Effect. "**Material Adverse Effect**" means any change in the capital stock, increase in long-term debt or any decreases in consolidated net current assets or stockholders' equity of Counterparty or any of its subsidiaries or any material adverse change, or any development involving a prospective material adverse change, in or affecting the general affairs, management, current or future consolidated financial position, stockholders' equity or results of operations of Counterparty and its subsidiaries taken as a whole;

(q) Counterparty is subject to Section 13 or 15(d) of the Exchange Act;

(r) Prior to the Trade Date, Counterparty has not taken any action which is designed to or which has constituted or which might have been expected to cause or result in stabilization or manipulation of the price of any security of Counterparty in connection with the offering of the Convertible Notes;

(s) None of Counterparty or any of its subsidiaries is in violation of its certificate of incorporation or certificate of formation, or its bylaws or limited liability company agreement (or other organizational documents), or in default in the performance or observance of any material obligation, covenant or condition contained in any material indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which it is a party or by which it or any of its properties may be bound, other than such defaults that individually or in the aggregate would not have a Material Adverse Effect;

(t) Other than as set forth in the Offering Memorandum, there are no legal or governmental proceedings pending to which Counterparty or any of its subsidiaries is a party or of which any property of
Counterparty or any of its subsidiaries is the subject which, if determined adversely to Counterparty or any of its subsidiaries, would individually or in the aggregate have a Material Adverse Effect; and, to the best of Counterparty's knowledge, no such proceedings are threatened or contemplated by governmental authorities or threatened by others.

(u) (x) Counterparty is acting for its own account, and it has made its own independent decisions to enter into the Transaction and as to whether the Transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary, (y) Counterparty is not relying on any communication (written or oral) of Dealer or any of its affiliates as investment advice or as a recommendation to enter into the Transaction (it being understood that information and explanations related to the terms and conditions of the Transaction shall not be considered investment advice or a recommendation to enter into the Transaction) and (z) no communication (written or oral) received from Dealer or any of its affiliates shall be deemed to be an assurance or guarantee as to the expected results of the Transaction; and

(v) The assets used in the Transaction (1) are not assets of any "plan" (as such term is defined in Section 4975 of the United States 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.

(B) Each party makes to the other the representations and warranties set forth in Sections 3(a) through (f) of the Agreement with respect to the Agreement as supplemented by this Confirmation; *provided* that Dealer makes the representation and warranty set forth in Section 3(e) and Counterparty makes the representation and warranty set forth in Section 3(f). In addition, each of Dealer and Counterparty acknowledges that the offer and sale of the Transaction to Counterparty is intended to be exempt from registration under the Securities Act, by virtue of Section 4(2) thereof. Accordingly, Counterparty represents and warrants to Dealer that (i) it has the financial ability to bear the economic risk of its investment in the Transaction and is able to bear a total loss of its investment and its investments in and liabilities in respect of the Transaction, which it understands are not readily marketable, are not disproportionate to its net worth, and it is able to bear any loss in connection with the Transaction, including the loss of its entire investment in the Transaction, (ii) it is an "accredited investor" as that term is defined in Regulation D as promulgated under the Securities Act, (iii) it is entering into the Transaction for its own account and without a view to the distribution or resale thereof, (iv) the assignment, transfer or other disposition of the Transaction has not been and will not be registered under the Securities Act and is restricted under this Confirmation, the Securities Act and state securities laws, and (v) its financial condition is such that it has no need for liquidity with respect to its investment in the Transaction and no need to dispose of any portion thereof to satisfy any existing or contemplated undertaking or indebtedness and is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of the Transaction.

8. Other Provisions:

(a) *Opinions*. Counterparty shall deliver to Dealer an opinion of counsel, dated as of the Trade Date, with respect to the matters set forth in Section 3(a) of the Agreement and Section 7(A)(g) of this Confirmation; *provided* that such opinion may contain customary exceptions and qualifications, including, without limitation, exceptions and qualifications relating to indemnification provisions.

(b) *Repurchase Notices*. Counterparty shall, on any day on which Counterparty effects any repurchase of Shares, give Dealer a written notice of such repurchase (a "**Repurchase Notice**") on such day if following such repurchase the Notice Percentage as determined on such day is (i) greater than 4.5% and (ii) greater by 0.5% than the Notice Percentage included in the immediately preceding Repurchase Notice (or, in the case of the first such Repurchase Notice, greater than the Notice Percentage as of the date hereof). The "**Notice Percentage**" as of any day is the fraction, expressed as a percentage, the numerator of which is the product of the Number of Options and the Option Entitlement and the denominator of which is the number of Shares outstanding on such day.

(c) *Regulation M*. Counterparty is not on the date hereof 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 engage in any such distribution (x) until the second Scheduled Trading Day immediately following the Trade Date and (y)(A) on any day during any Conversion Period, the Shares or securities that are convertible into, or exchangeable or exercisable for Shares, are not, and shall not be, subject to a "restricted period," as defined in Regulation M and (B) Counterparty shall not engage in any "distribution," as such term is defined in Regulation M, other than a distribution meeting the requirements of the exceptions set forth in sections 101(b)(10) and 102(b)(7) of Regulation M, until the second Exchange Business Day immediately following the last day in such Conversion Period.

(d) *No Manipulation*. Counterparty is not entering into this 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) *Number of Repurchased Shares*. Counterparty represents that it could have purchased Shares, in an amount equal to the product of the Number of Options and the Option Entitlement, on the Exchange or otherwise, in compliance with applicable law, its organizational documents and any orders, decrees, contractual agreements binding upon Counterparty, on the Trade Date.

(f) *Early Unwind*. In the event the sale of Convertible Notes is not consummated with the initial purchasers for any reason by the close of business in New York on August 13, 2012 (or such later date as agreed upon by the parties) (August 13, 2012 or such later date as agreed upon being the "**Early Unwind Date**"), this 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; *provided* that, Counterparty shall reimburse Dealer for reasonable costs or expenses (including market losses) relating to the unwinding of its, or the Hedging Party's, Hedging Activities in connection with the Transaction (including any loss or cost incurred as a result of its terminating, liquidating, obtaining or reestablishing any hedge or related trading position) unless the sale of Convertible Bonds is not consummated with the initial purchasers as a result of breach of the Purchase Agreement by the initial purchasers (in which case no such reimbursement will be payable). The amount of any such reimbursement shall be determined by Dealer in good faith and in a commercially reasonable manner. Dealer shall notify Counterparty of such amount and Counterparty shall deliver Share Termination Delivery Property or, at the election of Counterparty, pay such amount in immediately available funds on the Early Unwind Date. Dealer and Counterparty represent and acknowledge to the other that, subject to the proviso included in this paragraph, upon an Early Unwind, all obligations with respect to the Transaction shall be deemed fully and finally discharged. Notwithstanding anything herein or in the Agreement to the contrary, in no event shall Counterparty be required to deliver an aggregate number of Shares in connection with the Early Unwind in excess of 1,448,600 Shares, subject to adjustment from time to time as a result of actions of Counterparty or events within Counterparty's control and in accordance with the provisions of this Confirmation and the Equity Definitions.

(g) *Transfer or Assignment*. Neither party may transfer any of its rights or obligations hereunder and under the Transaction and Agreement without the prior written consent of the non-transferring party (such consent not to be unreasonably withheld); *provided* that, subject to applicable law, Dealer may transfer or assign without any consent of Counterparty its rights and obligations hereunder, in whole or in part, to any of its affiliates of credit quality at least equivalent to that of Dealer as of the Trade Date or to any other of its affiliates *provided* that Counterparty shall receive a full guaranty of such affiliate's obligations from Dealer in form and substance reasonably satisfactory to Counterparty if (i) an Event of Default, Potential Event of Default or Termination Event will not occur as a result of such transfer or assignment and (ii) as a result of such transfer or assignment, Counterparty will not be required to pay the transferee on any payment date an amount under Section 2(d)(i)(4) of the Agreement greater than an amount that Counterparty would have been required to pay to Dealer in the absence of such transfer or assignment. Except for the transfer or assignment contemplated in the proviso to the

first sentence of this paragraph 8(g), in the case of a transfer or assignment by Counterparty or Dealer of its rights and obligations hereunder and under the Agreement, in whole or in part (any Options so transferred or assigned, the "**Transfer Options**"), to any party, withholding of consent by the other party (the "**Remaining Party**") shall not be considered unreasonable if such transfer or assignment does not meet the following reasonable conditions that the Remaining Party may impose: (i) with respect to any Transfer Options, Counterparty shall not be released from its notice and indemnification obligations pursuant to paragraph 8(b) ("Repurchase Notices") or any obligations under paragraph 2 regarding Extraordinary Events or paragraph 8(m) ("Registration") of this Confirmation; (ii) any Transfer Options shall only be transferred or assigned to a third party that is a U.S. person (as defined in the Internal Revenue Code of 1986, as amended); (iii) such transfer or assignment shall be effected on terms, including any reasonable undertakings by such transferee (including, but not limited to, undertakings with respect to compliance with applicable securities laws in a manner that, in the reasonable judgment of the Remaining Party, will not expose the Remaining Party 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 transferee and the transferor as are reasonably requested and reasonably satisfactory to the Remaining Party; (iv) the Remaining Party will not, as a result of such transfer or assignment, be required to pay the transferee on any payment date an amount under Section 2(d)(i)(4) of the Agreement greater than an amount that the Remaining Party would have been required to pay to the transferor in the absence of such transfer or assignment; (v) an Event of Default, Potential Event of Default or Termination Event will not occur as a result of such transfer or assignment; (vi) without limiting the generality of clause (ii), the transferor shall have caused the transferee to make such Payee Tax Representations and to provide such tax documentation as may be reasonably requested by the Remaining Party to permit the Remaining Party to determine that results described in clauses (iv) and (v) will not occur upon or after such transfer or assignment; and (vii) the transferor shall be responsible for all reasonable costs and expenses, including reasonable counsel fees, incurred by the Remaining Party in connection with such transfer or assignment.

Notwithstanding the foregoing, at any time at which a transaction proposed to be entered into by Dealer would cause the Articles Ownership Percentage to exceed 4.9%, unless Counterparty provides an acknowledgment to Dealer to the effect that the Shares owned or controlled by Dealer or any of its affiliates will not be deemed as owned or controlled by an "Alien" (as defined in Article Twelve Section 6 of Counterparty's Certificate of Incorporation), Dealer may (or shall, if requested by Counterparty) transfer or assign to a third party such portion of the Transaction that would otherwise cause the Articles Ownership Percentage to exceed 4.9% (it being understood and agreed that Dealer would make such a transfer or assignment to (a) one of its U.S. affiliates, if, in Counterparty's view, such a transfer or assignment would result in the Shares owned or controlled by such U.S. affiliates not being owned or controlled by an "Alien" for purposes of Article Twelve of Counterparty's Certificate of Incorporation) or (b) unless otherwise consented by Counterparty, to a third party who is not an "Alien" for purposes of Article Twelve of Counterparty's Certificate of Incorporation, if the transfer or assignment would otherwise result in such Shares deemed owned or controlled by an "Alien" for purposes of Article Twelve of Counterparty's Certificate of Incorporation); *provided further* that if Dealer is unable to effect a transfer or assignment to a third party after its commercially reasonable efforts on pricing terms reasonably acceptable to Dealer (or to one of its U.S. affiliates, if, in Counterparty's view, such a transfer or assignment would result in the Shares owned or controlled by such U.S. affiliates not being owned or controlled by an "Alien" for purposes of Article Twelve of Counterparty's Articles of Incorporation) such that the Articles Ownership Percentage does not exceed 4.9%, Dealer may designate any Scheduled Trading Day as an Early Termination Date with respect to a portion (the "**Articles Terminated Portion**") of the Transaction, such that the Articles Ownership Percentage following such partial termination will be equal to 4.9%.

Notwithstanding the foregoing, at any time at which (1) the Option Equity Percentage exceeds 9.0% or (2) Dealer, Dealer Group (as defined below) or any person whose ownership position would be aggregated with that of Dealer or Dealer Group (Dealer, Dealer Group or any such person, a "**Dealer Person**") under any relevant state corporate law or any state or federal bank holding company or banking laws, or other federal, state or local laws, regulations or regulatory orders applicable to ownership of Shares ("**Applicable Laws**"), owns, beneficially owns, constructively owns, controls, holds the power to vote or otherwise meets a relevant definition of ownership in excess of a number of Shares equal to (x) the number of Shares that, in the good faith determination of the relevant Dealer Person, would give rise to materially burdensome reporting or registration obligations or other requirements (including obtaining prior approval by a state or federal regulator) of a Dealer Person under Applicable Laws (including, without limitation, "interested stockholder" or "acquiring person" status under Section 203 of the Delaware General Corporation Law, but excluding any report or filing required pursuant to Section 13 of the

Exchange Act and the rules promulgated thereunder) and with respect to which such requirements have not been met or the relevant approval has not been received *minus* (y) 1.0% of the number of Shares outstanding on the date of determination (either such condition described in clause (1) or (2), an "**Excess Ownership Position**") and Dealer is unable, after commercially reasonable efforts, to eliminate such Excess Ownership Position or effect a transfer or assignment to a third party with a rating (or whose guarantor has a rating) for its long term, unsecured and unsubordinated indebtedness at least equal to that of Dealer as of the Trade Date on pricing terms and within a time period reasonably acceptable to it of all or a portion of the Transaction such that an Excess Ownership Position no longer exists, Dealer may designate any Scheduled Trading Day as an Early Termination Date with respect to a portion (the "**Reporting Terminated Portion**") of the Transaction, such that an Excess Ownership Position no longer exists.

In the event that Dealer so designates an Early Termination Date with respect to an Articles Terminated Portion or a Reporting Terminated Portion, a payment shall be made pursuant to Section 6 of the Agreement as if (i) an Early Termination Date had been designated in respect of a Transaction having terms identical to this Transaction and a Number of Options equal to the Articles Terminated Portion or the Reporting Terminated Portion, as the case may be, (ii) Counterparty shall be the sole Affected Party with respect to such partial termination and (iii) such Transaction shall be the only Terminated Transaction (and, for the avoidance of doubt, the provisions of paragraph 8(k) shall apply to any amount that is payable by Dealer to Counterparty pursuant to this sentence).

The "**Articles Ownership 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 its affiliates "own or control" (within the meaning of Article 12 Section 2 of Counterparty's Certificate of Incorporation) on such day, and (B) the denominator of which is the number of Shares outstanding on such day.

The "**Option Equity Percentage**" as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the sum of (i) the number of Shares that Dealer and any of its affiliates subject to aggregation with Dealer, for purposes of the "beneficial ownership" test under Section 13 of the Exchange Act, and all persons who may form a "group" (within the meaning of Rule 13d-5(b)(1) under the Exchange Act) with Dealer ("**Dealer Group**") "beneficially owns" (within the meaning of Section 13 of the Exchange Act) on such day, other than any Shares so owned as a hedge of the Transaction, and (ii) the product of the Number of Options and the Option Entitlement and (B) the denominator of which is the number of Shares outstanding on such day. For purposes of this Section 8(g), the term "Dealer" shall include any of the Dealer's permitted successors or assigns.

(h) *Staggered Settlement*. If upon advice of counsel with respect to applicable legal and regulatory requirements, including any requirements relating to Dealer's, or the Hedging Party's, Hedge Activities hereunder, Dealer reasonably determines that it would not be advisable to deliver, or to acquire Shares to deliver, any or all of the Shares to be delivered by Dealer on the 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 (each of which will be on or prior to 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) if the Settlement terms set forth above were to apply on the Nominal Settlement Date, then the Settlement terms will apply on each Staggered Settlement Date, except that the Shares to be delivered pursuant to such terms will be allocated among such Staggered Settlement Dates as specified by Dealer in the notice referred to in clause (i) above.

(i) *Terms Relating to the Agent*.

(i) The Agent is registered as a broker-dealer with the U.S. Securities and Exchange Commission and the Financial Industry Regulatory Authority (FINRA), is acting hereunder for and on behalf of Dealer solely in its capacity as agent for Dealer pursuant to instructions from Dealer, and is not and will not be acting as the Counterparty's agent, broker, advisor or fiduciary in any respect under or in connection with the Transaction.

(ii) In addition to acting as Dealer's agent in executing this Transaction, the Agent is authorized from time to time to give written payment and/or delivery instructions to the Counterparty directing it to make its payments and/or deliveries under this Transaction to an account of the Agent for remittance to Dealer (or its designee), and for that purpose any such payment or delivery by the Counterparty to the Agent shall be treated as a payment or delivery to Dealer.

(iii) Except as otherwise provided herein, any and all notices, demands, or communications of any kind transmitted in writing by either Dealer or the Counterparty under or in connection with this Transaction will be transmitted exclusively by such party to the other party through the Agent at the following address:

Wells Fargo Securities, LLC
201 South College Street, 6th Floor
Charlotte, NC 28288-0601
Facsimile No.: (704) 383-8425
Telephone No.: (704) 715-8086
Attention: Equity Derivatives

(iv) The Agent shall have no responsibility or liability to Dealer or the Counterparty for or arising from (a) any failure by either Dealer or the Counterparty to perform any of their respective obligations under or in connection with this Transaction, (b) the collection or enforcement of any such obligations, or (c) the exercise of any of the rights and remedies of either Dealer or the Counterparty under or in connection with this Transaction. Each of Dealer and the Counterparty agrees to proceed solely against the other to collect or enforce any such obligations, and the Agent shall have no liability in respect of this Transaction except for its gross negligence or willful misconduct in performing its duties as the agent of Dealer.

(v) Upon written request, the Agent will furnish to Dealer and the Counterparty the date and time of the execution of this Transaction and a statement as to the source and amount of any remuneration received or to be received by the Agent in connection with this Transaction.

(j) *No Collateral or Setoff*. Notwithstanding any provision of the Agreement or any other agreement between the parties, the obligations of Dealer hereunder are not secured by any collateral. In addition obligations under the Transaction shall not be netted, recouped or set off (including pursuant to Section 6 of the Agreement) against any other obligations of the parties, whether arising under the Agreement, this Confirmation, under any other agreement between the parties hereto, by operation of law or otherwise, and no other obligations of the parties shall be netted, recouped or set off (including pursuant to Section 6 of the Agreement) against obligations under the Transaction, whether arising under the Agreement, this Confirmation, under any other agreement between the parties hereto, by operation of law or otherwise, and each party hereby waives any such right of setoff, netting or recoupment; *provided* that both parties agree that subparagraph (ii) of Section 2(c) of the Agreement shall apply to the Transaction.

(k) *Alternative Calculations and Payment on Early Termination and on Certain Extraordinary Events*. If in respect of this Transaction, an amount is payable by Dealer to Counterparty (i) pursuant to Section 12.2 of the Equity Definitions and "Consequences of Merger Events" above, or Sections 12.3, 12.6, 12.7 or 12.9 of the Equity Definitions, (ii) pursuant to Section 6(d)(ii) of the Agreement or (iii) pursuant to "Early Unwind" above (each, a "**Payment Obligation**"), Dealer shall satisfy any such Payment Obligation by the Share Termination Alternative (as defined below) unless Counterparty elects for Dealer to satisfy such Payment Obligation by delivery of cash or in the event of a Nationalization, Insolvency or a Merger Event, in each case, in which the

consideration to be paid to holders of Shares consists solely of cash, or 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)(i), (ii), (iii), (iv), (v) or (vi) of the Agreement in each case that resulted from an event or events outside Counterparty's control, in which case the provisions of Sections 12.2, 12.3, 12.6, 12.7 or 12.9 of the Equity Definitions or Section 6(d)(ii) of the Agreement, as the case may be, shall apply in lieu of the provisions set forth in this paragraph 8(k). Counterparty shall give irrevocable telephonic notice to Dealer of any such selection, confirmed in writing within one Currency Business Day, no later than 12:00 p.m. New York local time on the Merger Date, the Announcement Date (in the case of Nationalization or Insolvency), the Early Termination Date or date of cancellation, as applicable; where such notice shall include a representation and warranty from Counterparty that it is not, as of the date of the telephonic notice and the date of such written notice, aware of any "material non-public information" (within the meaning of Section 10(b) of the Exchange Act and the rules promulgated thereunder) concerning itself or the Shares. In calculating any amounts under Section 6(e) of the Agreement, notwithstanding anything to the contrary in the Agreement, (1) separate amounts shall be calculated as set forth in Section 6(e) with respect to (i) this Transaction and (ii) all other Transactions, and (2) such separate amounts shall be payable pursuant to Section 6(d)(ii) of the Agreement.

Share Termination Alternative:	Applicable, if elected as per above, and means that Dealer shall deliver to Counterparty the Share Termination Delivery Property on the date when the Payment Obligation would otherwise be due pursuant to "Consequences of Merger Events" above or Section 12.7 or 12.9 of the Equity Definitions or Section 6(d)(ii) and 6(e) of the Agreement, as applicable (the "**Share Termination Payment Date**"), 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 on the date such Share Termination Delivery Units are to be delivered as Share Termination Delivery Property, 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.
Share Termination Delivery Unit:	In the case of a Termination Event, Event of Default, Delisting, one Share or, in the case of an Insolvency, Nationalization or Merger Event, one Share or a unit consisting of the number or amount of each type of 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 Insolvency, Nationalization or Merger Event, as applicable. If such Insolvency, Nationalization or Merger Event involves a choice of consideration to be received by holders, such holder shall be deemed to have elected to receive the maximum possible amount of cash.
Failure to Deliver:	Applicable
Other applicable provisions:	If this Transaction is to be Share Termination Settled, the provisions of Sections 9.1(c), 9.8, 9.9, 9.11, 9.12 and 10.5 (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 this Transaction means that Share Termination Alternative is applicable to this Transaction.

(l) *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 this 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 this Transaction, as applicable, by, among other things, the mutual waivers and certifications provided herein.

(m) *Registration*. Counterparty hereby agrees that if, in the good faith and 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 this Transaction cannot be sold in the public market by Dealer without registration under 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 enter into an agreement substantially similar in underwriting agreements customary for registered secondary offerings of a substantially similar size, in form and substance reasonably satisfactory to Dealer (*provided however*, that if Dealer, in its 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 Section shall apply at the election of Counterparty); (ii) in order to allow Dealer to sell the Hedge Shares in a private placement, enter into a private placement agreement substantially similar to private placement purchase agreements customary for private placements of equity offerings of a substantially similar size, in form and substance reasonably satisfactory to Dealer (in which case, the Calculation Agent shall make any adjustments to the terms of this 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 closing price on such Exchange Business Days, and in the amounts, reasonably requested by Dealer.

(n) *Tax Disclosure*. Effective from the date of commencement of discussions concerning the Transaction, each party and each of their respective 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) relating to such tax treatment and tax structure.

(o) *Status of Claims in Bankruptcy*. Dealer acknowledges and agrees that this Confirmation is not intended to convey to Dealer rights with respect to the Transaction that are senior to the claims of common stockholders in any U.S. 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.

(p) *Securities Contract*. Each of Dealer and Counterparty agrees and acknowledges that Dealer is one or more of a "financial institution" and "financial participant" within the meaning of sections 101(22) and 101(22A) of Title 11 of the United States Code (the "**Bankruptcy Code**"). The parties further agree and acknowledge (A) that this Confirmation is 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 is a "settlement payment" (as such term is defined in Section 741(8) of the Bankruptcy Code) or a "transfer" within the meaning of section 546 of the Bankruptcy Code and (B) that is the parties are entitled to the protections afforded by, among other sections, section 362(b)(6), 362(b)(27), 362(o), 546(e), 546(j), 548(d)(2), 555 and 561 of the Bankruptcy Code.

(q) *Additional Provisions*. Counterparty covenants and agrees that, as promptly as practicable following the public announcement of any consolidation, merger and binding share exchange to which Counterparty is a party, or any sale of all or substantially all of Counterparty's assets, in each case pursuant to which

the Shares will be converted into cash, securities or other property, Counterparty shall notify Dealer in writing of the types and amounts of consideration that holders of Shares have elected to receive upon consummation of such transaction or 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 transaction or event is consummated.

(r) *Method of Delivery.* Whenever delivery of funds or other assets is required hereunder by or to Dealer, such delivery shall be effected through Agent.

(s) *Regulatory Provisions.* The time of dealing for the Transaction will be confirmed by Dealer upon written request by Counterparty.

(t) *Additional Termination Events*.

(i) The occurrence of an event of default with respect to Counterparty under the terms of the Convertible Notes as set forth in Section 7.01 of the Indenture that results in an acceleration of the Convertible Notes pursuant to the terms of the Indenture shall be 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.

(ii) The occurrence of an Amendment Event shall be 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. "**Amendment Event**" means that Counterparty amends, modifies, supplements or obtains a waiver in respect of any term of the Indenture or the Convertible Notes governing the principal amount, coupon, maturity, repurchase obligation of Counterparty, redemption right of Counterparty, any term relating to conversion of the Convertible Notes (including changes to the conversion price, conversion settlement dates or conversion conditions) that may adversely affect the rights or obligations of Dealer hereunder, or any term that would require consent of the holders of not less than 100% of the principal amount of the Convertible Notes to amend, in each case without the prior consent of Dealer, such consent not to be unreasonably withheld.

(iii) If any Repurchase Event occurs, (A) Counterparty shall notify Dealer as promptly as practicable of such event, (B) such an event shall be an Additional Termination Event, (C) an Early Termination Date shall be deemed to occur automatically on the date of such notice with respect to a portion of the Transaction relating to a number of Options equal to the number of Convertible Securities in denominations of USD 1,000 principal amount so repurchased, exchanged or repaid in connection with such Repurchase Event (the "Affected Portion"), but payment of the Close-out Amount in respect of such Early Termination Date shall not be due until one Settlement Cycle following the date on which Dealer delivered the statement provided pursuant to Section 6(d)(i) of the Agreement, and (D) Counterparty shall be deemed the sole Affected Party and the Affected Portion shall be deemed the sole Affected Transaction.

"**Repurchase Event**" means the occurrence of any of the following:

(1) any Convertible Securities are repurchased (other than as a result of a fundamental change, as defined in the Indenture) by Counterparty or any of its subsidiaries;

(2) any Convertible Securities are delivered to Counterparty in exchange for delivery of any property or assets of Counterparty or any of its subsidiaries (howsoever described);

(3) any principal of any of the Convertible Securities is repaid prior to the final maturity date of the Convertible Securities (whether following acceleration of the Convertible Notes or otherwise); or

(4) any Convertible Securities are exchanged by or for the benefit of the holders thereof for any other securities of Counterparty or any of its affiliates (or any other property, or any combination thereof) pursuant to any exchange offer or similar transaction.

For the avoidance of doubt, in the case of each of clauses (1) through (4), conversions of the Convertible Securities pursuant to the terms of the Indenture shall not constitute a Repurchase Event.

(u) *Additional ISDA Schedule Terms*.

(i) "**Specified Entity**" means in relation to each of Dealer and Counterparty for purposes of Sections 5(a)(v), 5(a)(vi), 5(a)(vii) and 5(b)(v) of the Agreement, not applicable.

(ii) "**Specified Transaction**" will have the meaning specified in Section 14 of the Agreement.

(iii) The "Cross-Default" provisions of Section 5(a)(vi) of the Agreement shall not apply to either party.

(iv) **Automatic Early Termination**. The "Automatic Early Termination" provision of Section 6(a) of the Agreement will not apply to Dealer and will not apply to Counterparty.

(v) "**Termination Currency**" means United States Dollars ("**USD**").

(vi) **Payment by Counterparty**. In the event that (i) an Early Termination Date occurs or is designated with respect to the Transaction as a result of an Event of Default (other than an Event of Default arising under Section 5(a)(ii) or 5(a)(iv) of the Agreement) or a Termination Event 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.

(vii) **Consent to Recording**. Each party (i) consents to the monitoring or recording, at any time and from time to time, by the other party of any and all communications between officers or employees of the parties, (ii) waives any further notice of such monitoring or recording, and (iii) agrees to notify (and, if required by law, obtain the consent of) its officers and employees with respect to such monitoring or recording. Any such recording may be submitted in evidence to any court or in any Proceeding for the purpose of establishing any matters pertinent to this Transaction.

(viii) **Severability**. In the event any one or more of the provisions contained in this Confirmation or the Agreement shall be held illegal, invalid or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby.

(ix) **Fully Paid Transactions**. The condition precedent in Section 2(a)(iii)(1) of the Agreement shall not apply to a payment and delivery owing by a party if the other party shall have satisfied in full all its payment or delivery obligations under Section 2(a)(i) of the Agreement and shall at the relevant time have no future payment or delivery obligations, whether absolute or contingent, under Section 2(a)(i) of the Agreement.

(x) **Part 2(b) of the ISDA Schedule—Payee Representation:**

For the purpose of Section 3(f) of this Agreement, Counterparty makes the following representation to Dealer:

Counterparty is a corporation established under the laws of the State of Delaware and is a U.S. person (as that term is defined in Section 7701(a)(30) of the Code).

For the purpose of Section 3(f) of this Agreement, Dealer makes the following representation to Counterparty:

Dealer is a national banking association organized or formed under the laws of the United States and is a United States resident for United States federal income tax purposes.

(xi) **Part 3(a) of the ISDA Schedule—Tax Forms:**

Party Required to Deliver Document	Form/Document/Certificate	Date by which to be Delivered
Counterparty	A complete and duly executed United States Internal Revenue Service Form W-9 (or successor thereto.)	(i) Upon execution and delivery of this Agreement; (ii) promptly upon reasonable demand by Dealer; and (iii) promptly upon learning that any such Form previously provided by Counterparty has become obsolete or incorrect.
Dealer	A complete and duly executed United States Internal Revenue Service Form W-9 (or successor thereto).	(i) Upon execution and delivery of this Agreement; (ii) promptly upon reasonable demand by Counterparty; and (iii) promptly upon learning that any such Form previously provided by Dealer has become obsolete or incorrect.

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing a copy of this Confirmation and returning it to us by facsimile at 212-214-5913 (Attention: Derivatives Structuring Group).

Very truly yours,

WELLS FARGO SECURITIES, LLC,
acting solely in its capacity as Agent
of Wells Fargo Bank, National Association

By: /s/ Cathleen Burke
Name: Cathleen Burke
Title: Managing Director

WELLS FARGO BANK, NATIONAL ASSOCIATION
By: Wells Fargo Securities, LLC,
acting solely in its capacity as its Agent

By: /s/ Cathleen Burke
Name: Cathleen Burke
Title: Managing Director

Accepted and confirmed as of the Trade Date:

HORNBECK OFFSHORE SERVICES, INC.

By: /s/ James O. Harp, Jr.
Name: James O. Harp, Jr.
Title: Executive Vice President and CFO

SCHEDULE A

For purposes of this Transaction, the following terms shall have the following values/meanings:

1. Strike Price: USD 53.8451.
2. Premium: USD 18,988,320.00.

Exhibit 4.5

Execution version

Barclays Bank PLC
5 The North Colonnade
Canary Wharf, London E14 4BB
Facsimile:+44(20)77736461
Telephone: +44 (20) 777 36810

c/o Barclays Capital Inc.
as Agent for Barclays Bank PLC
745 Seventh Ave
New York, NY 10019
Telephone: +1 212 412 4000

August 8, 2012

To: Hornbeck Offshore Services, Inc.
103 Northpark Boulevard, Suite 300
Covington, Louisiana, 70433
Attention: Sam Giberga, General Counsel
Facsimile No.: (985) 727-2006

Re: **Additional Call Option Transaction**

The purpose of this letter agreement (this "**Confirmation**") is to confirm the terms and conditions of the Transaction entered into between Barclays Bank PLC ("**Dealer**"), through its agent Barclays Capital Inc. (the "**Agent**"), and Hornbeck Offshore Services, Inc. ("**Counterparty**") on the Trade Date specified below (the "**Transaction**"). This Confirmation constitutes a "Confirmation" as referred to in the Agreement specified below. Dealer is regulated by the Financial Services Authority. Dealer is not a member of the Securities Investor Protection Corporation ("**SIPC**").

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 have the meanings assigned to them in the Indenture to be dated on or about August 13, 2012 between Counterparty and Wells Fargo Bank, National Association, as trustee (as may be amended, modified or supplemented from time to time, but only if such amendment, modification or supplement is consented to by Dealer in writing, the "**Indenture**") relating to USD 260,000,000 principal amount of 1.500% senior convertible notes due 2019 and the additional USD 40,000,000 principal amount of 1.500% senior convertible notes due 2019 issued pursuant to the option to purchase additional convertible notes exercised on August 8, 2012 (the "**Convertible Notes**") issued by Counterparty. In the event of any inconsistency between the Indenture and this Confirmation, this Confirmation shall govern. For the avoidance of doubt, references herein to sections of the Indenture are based on the draft of the Indenture most recently reviewed by the parties at the time of this Confirmation. If any relevant sections of the Indenture are changed, added, or renumbered following execution of this Confirmation but prior to the execution of the Indenture, the parties will amend this Confirmation in good faith to preserve the economic intent of the parties based on the draft of the Indenture so reviewed. The parties further acknowledge that 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 following its execution, any such amendment will be disregarded for purposes of this Confirmation (other than as provided in paragraph 8(t)(ii) below and other than any amendment pursuant to Section 10.01(k) of the Indenture) unless the parties agree otherwise in writing.

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 supplement, form a part of, and be subject to an agreement in the form of the ISDA 2002 Master Agreement (the "**Agreement**") as if Dealer and Counterparty had executed an agreement in such form (but without any Schedule except for (i) the election of the laws of the State of New York as the governing law, (ii) the election of US Dollars ("**USD**") as the Termination Currency, and (iii) the other provisions set forth under paragraph 8(u) below) on the Trade Date. In the event of any inconsistency between provisions of that Agreement and this Confirmation, this Confirmation will prevail for the purpose of the Transaction to which this Confirmation relates. The parties hereby agree that no Transaction other than the Transaction to which this Confirmation relates shall be governed by the Agreement.

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

General Terms:

Trade Date:	August 8, 2012.
Effective Date:	The closing date for the issuance of the Convertible Notes issued pursuant to the option to purchase additional Convertible Notes exercised on August 8, 2012.
Option Style:	Modified American, as described below under "Procedures for Exercise".
Option Type:	Call.
Buyer:	Counterparty.
Seller:	Dealer.
Shares:	The common stock, par value USD 0.01 per share, of Counterparty (Ticker symbol "HOS").
Number of Options:	40,000. For the avoidance of doubt, the Number of Options shall be reduced by any Options exercised by Counterparty. In no event will the Number of Options be less than zero.
Option Entitlement:	As of any date, a number of Shares per Option equal to the Applicable Percentage *multiplied by* the "Conversion Rate" (as defined in the Indenture) as of such date (but without regard to any adjustments to the "Conversion Rate" pursuant to Section 12.02(m) or Section 12.03 of the Indenture).
Strike Price:	As provided in Schedule A to this Confirmation.
Applicable Percentage:	30.0%.
Premium:	As provided in Schedule A to this Confirmation.
Premium Payment Date:	The Effective Date.
Exchange:	New York Stock Exchange.
Related Exchange(s):	All Exchanges.

Procedures for Exercise:

Exercise Dates:	Each Conversion Date.

Conversion Dates:	Each “Conversion Date” (as defined in the Indenture) occurring during the Exercise Period for Convertible Notes in denominations of USD 1,000 principal amount that are surrendered for conversion on such Conversion Date in accordance with the terms of the Indenture, subject to “Notice of Exercise” below, but are not “Relevant Convertible Notes” under, and as defined in, the confirmation between the parties hereto regarding the Base Call Option Transaction dated August 7, 2012 (the “Base Call Option Transaction Confirmation”) (such Convertible Notes, the “**Relevant Convertible Notes**”); *provided* that 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 Convertible Note surrendered 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 12.01(f) of the Indenture and such designation is accepted by such financial institution, except to the extent that (i) such financial institution fails to pay or deliver, as the case may be, any consideration due upon conversion of such Convertible Note, or (ii) such Convertible Note is subsequently resubmitted to Counterparty for conversion in accordance with the terms of the Indenture. For the purposes of determining whether any Convertible Notes will be Relevant Convertible Notes hereunder or under the Base Call Option Transaction Confirmation, Convertible Notes that are converted pursuant to the Indenture shall be allocated first to the Base Call Option Transaction Confirmation until all Options thereunder are exercised.
Exercisable Options:	In respect of each Conversion Date, a number of Options equal to the number of Relevant Convertible Notes in denominations of USD 1,000 principal amount surrendered for conversion on such Conversion Date in accordance with the terms of the Indenture, subject to “Notice of Exercise” below, but no greater than the Number of Options.
Free Convertibility Date:	June 1, 2019.
Exercise Period:	The period from and including the Effective Date to and including the Expiration Date.
Expiration Date:	Notwithstanding anything to the contrary in section 3.1(f) of the Equity Definitions, “Expiration Date” shall mean the earlier of (x) the last day on which any Convertible Notes remain outstanding and (y) the Scheduled Trading Day immediately preceding the “Maturity Date” (as defined in the Indenture).
Multiple Exercise:	Applicable, as provided under “Exercisable Options” above.
Automatic Exercise:	Applicable, subject to “Notice of Exercise” below.
Notice of Exercise:	Notwithstanding anything to the contrary in the Equity Definitions or under “Exercisable Options” above, in order to exercise any Exercisable Options, Counterparty must notify Dealer in writing prior to 5:00 p.m., New York City time, on the day that is at least two Scheduled Trading Days’ prior to the first day of the applicable Conversion Period for such Options (the “**Notice Deadline**”) of (i) the aggregate principal amount of Convertible Notes as to which such Conversion Date has occurred (including, if applicable, whether all or any portion of the Convertible Notes relating to such Options are Convertible Notes as to which additional Shares would be added to the “Conversion Rate” (as defined in the Indenture)

pursuant to Section 12.03 of the Indenture (the "**Make-Whole Convertible Notes**")), (ii) the scheduled first day of the applicable Conversion Period and the scheduled Settlement Date, (iii) the Relevant Settlement Method for such Options and (iv) if the Relevant Settlement Method for such Options is not Net Share Settlement, Settlement in Shares or Settlement in Cash (each as defined below), the fixed amount of cash per Relevant Convertible Note that Counterparty has elected to deliver to "Holders" (as defined in the Indenture) of the related Relevant Convertible Notes (the "**Specified Cash Amount**"), and such notice shall also include the information, representations, acknowledgements and agreements required pursuant to "Settlement Method Election Conditions" below; *provided* that, notwithstanding the foregoing, in the case of any Options relating to Convertible Notes surrendered for conversion in respect of which Counterparty has elected to designate a financial institution for exchange in lieu of conversion pursuant to Section 12.01(f) of the Indenture and such designation is accepted by such financial institution, such notice (and the related automatic exercise of such Options) shall be effective if given after the relevant Notice Deadline but prior to 5:00 p.m. (New York City time) on the 50th Scheduled Trading Day following the Notice Deadline, in which event the Calculation Agent shall have the right to adjust the number of Shares and/or amount of cash deliverable by Dealer with respect to such Options as appropriate to reflect the additional costs (including, but not limited to, hedging mismatches and market losses) and expenses incurred by Dealer in connection with its hedging activities (including the unwinding of any hedge position) as a result of Dealer not having received such notice on or prior to the Notice Deadline; *provided, further*, that in respect of any Options relating to Relevant Convertible Notes with a Conversion Date occurring on or after the Free Convertibility Date, (A) such notice may be given on or prior to the Expiration Date and need only specify the information required in clause (i) above (*provided* that any such notice given on the Expiration Date shall be given prior to 12:00 p.m., New York City time, on such date), and (B) if the Relevant Settlement Method for such Options is not Net Share Settlement with a Specified Cash Amount equal to USD 1,000, Dealer shall have received a separate notice (the "**Notice of Final Settlement Method**") in respect of all such Relevant Convertible Notes before 5:00 p.m., New York City time, on or prior to the Free Convertibility Date specifying the information required in clauses (iii) and (iv) above, as well as the information, representations, acknowledgements and agreements required pursuant to "Settlement Method Election Conditions" below; *provided further* that any "Notice of Exercise" delivered to Dealer pursuant to the Base Call Option Transaction shall be deemed to be a Notice of Exercise pursuant to this Confirmation and the terms of such Notice of Exercise shall apply, *mutadis mutandis*, to this Confirmation.

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 the Settlement Method Election Conditions have been satisfied and Counterparty shall have notified Dealer of the Relevant Settlement Method in the Notice of Exercise or Notice of Final Settlement Method, as applicable, for such Option.

Relevant Settlement Method:	In respect of any Option, subject to the Settlement Method Election Conditions: (i) if Counterparty has elected to settle its conversion obligations in respect of the related Relevant Convertible Note (A) entirely in Shares pursuant to Section 12.01(d)(i) 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 12.01(d)(iii) 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 12.01(d)(iii) 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 Relevant Convertible Note in a combination of cash and Shares pursuant to Section 12.01(d)(iii) 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 Relevant Convertible Note entirely in cash pursuant to Section 12.01(d)(ii) of the Indenture (such settlement method, "**Settlement in Cash**"), then the Relevant Settlement Method for such Option shall be Cash Settlement.
Settlement Method Election Conditions:	For any Relevant Settlement Method other than Net Share Settlement with a Specified Cash Amount equal to USD 1,000, such Relevant Settlement Method shall apply to an Option only if the Notice of Exercise or Notice of Final Settlement Method for such Option, as applicable, contains: (i) a representation that, on the date of such Notice of Exercise or Notice of Final Settlement Method, as applicable, none of Counterparty and its officers and directors is aware or in possession of any "material non-public information" (within the meaning of Section 10(b) of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), and the rules promulgated thereunder) with respect to Counterparty or the Shares; (ii) a representation that Counterparty is electing the settlement method for the related Relevant Convertible Note and such Relevant Settlement Method in good faith and not as part of a plan or scheme to evade the prohibitions of Rule 10b-5 under the Exchange Act; (iii) a representation that Counterparty has not entered into or altered any hedging transaction relating to the Shares corresponding to or offsetting the Transaction; (iv) a representation that Counterparty is not electing the settlement method for the related Relevant Convertible Note and such Relevant Settlement Method 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; and

(v) an acknowledgment by Counterparty that (A) any transaction by Dealer following Counterparty's election of the settlement method for the related Relevant Convertible Note and such Relevant Settlement Method shall be made at Dealer's sole discretion and for Dealer's own account and (B) Counterparty does not have, and shall not attempt to exercise, any influence over how, when, whether or at what price to effect such transactions, including, without limitation, the price paid or received per Share pursuant to such transactions, or whether such transactions are made on any securities exchange or privately.

Net Share Settlement: If Net Share Settlement is applicable to any Option exercised or deemed exercised hereunder, in lieu of the obligations set forth in Sections 8.1 and 9.1 of the Equity Definitions, Dealer will deliver to Counterparty, on the relevant Settlement Date for each such Option, an aggregate number of Shares and cash in lieu of fractional shares, if any, (the "**Net Share Settlement Amount**") equal to the product of (x) the Applicable Percentage and (y) the number of Shares that Counterparty would be obligated to deliver to the "Holder(s)" (as defined in the Indenture) of the Relevant Convertible Notes converted on such Conversion Date pursuant to Section 12.01(d) of the Indenture and cash in lieu of fractional shares, if any, pursuant to Section 12.01(g) of the Indenture, as if Counterparty had elected to satisfy its conversion obligation in respect of such Relevant Convertible Notes with a Specified Cash Amount equal to USD 1,000 per Relevant Convertible Note, notwithstanding any different Specified Cash Amount actually elected by Counterparty with respect to the settlement of such Relevant Convertible Notes, and determined on the basis of the applicable Conversion Period set forth opposite the caption "Conversion Period" below; *provided* that such obligation shall be determined excluding any Shares and/or cash that Counterparty is obligated to deliver to holder(s) of the Relevant Convertible Notes as a result of any adjustments to the "Conversion Rate" pursuant to Section 12.02(m) or Section 12.03 of the Indenture; and *provided further* that, with respect to any Settlement in Shares or Low Cash Combination Settlement, for any Option exercised or deemed exercised hereunder on a Conversion Date occurring on or after the Free Convertibility Date, 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 the Relevant Convertible Notes relating to such Option.

Combination Settlement: If Combination Settlement is applicable to any Option exercised or deemed exercised hereunder, in lieu of the obligations set forth in Sections 8.1 and 9.1 of the Equity Definitions, Dealer will deliver to Counterparty, on the relevant Settlement Date for each such Option:

(i) cash equal to the *product* of (A) the Applicable Percentage *and* (B) the *excess* of (x) the cash that Counterparty is obligated to deliver to the "Holder(s)" (as defined in the Indenture) of the Relevant Convertible Note converted on such Conversion Date pursuant to Section 12.01(d) of the Indenture (including cash paid in respect of fractional shares but excluding any cash paid in respect of interest) *over* (y) USD 1,000 per Relevant Convertible Note (the "**Combination Settlement Cash Amount**"); and

	(ii) a number of Shares equal to the *product* of (A) the Applicable Percentage *and* (B) the number of Shares that Counterparty is obligated to deliver to the "Holder(s)" (as defined in the Indenture) of the Relevant Convertible Note converted on such Conversion Date pursuant to Section 12.01(d) of the Indenture.
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 *product* of (A) the Applicable Percentage *and* (B) the *excess* of (x) the cash that Counterparty is obligated to deliver to the "Holder(s)" (as defined in the Indenture) of the Relevant Convertible Note converted on such Conversion Date pursuant to Section 12.01(d) of the Indenture (including cash paid in respect of fractional shares but excluding any cash paid in respect of interest) *over* (y) USD 1,000 per Relevant Convertible Note.
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, delivered to the Holder of the related Relevant Convertible Note upon conversion of such Relevant Convertible Note and (B) the number of Shares, if any, delivered to the Holder of the related Relevant Convertible Note, in each case pursuant to the terms of the Indenture, upon conversion of such Relevant Convertible Note *multiplied by* the Applicable Limit Price on the settlement date for the Relevant Convertible Notes relating to such Option, *over* (ii) USD 1,000.
Applicable Limit Price:	On any day, the opening price as displayed under the heading "Op" on Bloomberg page HOS <equity> (or any successor thereto).
Trading 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, "Trading Day" means a Business Day.
Scheduled Trading Day:	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 Shares are listed or admitted for trading. If the Shares are not so listed or admitted for trading, "Scheduled Trading 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 or banks in the State of Texas are authorized or required by law or executive order to close or be closed.

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, the occurrence or existence prior to 1:00 p.m. New York City time on any Scheduled Trading 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."
Conversion Period:	For any Option and regardless of the Settlement Method applicable to such Option: (i) if the related Conversion Date occurs prior to the Free Convertibility Date, the 25 consecutive Trading Days commencing on, and including, the third Trading Day immediately following such Conversion Date; *provided* that if the Notice of Exercise for such Option specifies that Settlement in Shares or Low Cash Combination Settlement applies to the related Relevant Convertible Note, the Conversion Period shall be the 50 consecutive Trading Day period commencing on, and including, the third Trading Day immediately following such Conversion Date; (ii) if the related Conversion Date occurs on or following the Free Convertibility Date, the 25 consecutive Trading Days commencing on, and including, the 27th Scheduled Trading Day immediately prior to the "Maturity Date" (as defined in the Indenture); *provided* that if the Notice of Exercise or Notice of Final Settlement Method, as applicable, for such Option specifies that Settlement in Shares or Low Cash Combination Settlement applies to the related Relevant Convertible Note, the Conversion Period shall be the 50 consecutive Trading Days commencing on, and including, the 53rd Scheduled Trading Day immediately prior to the "Maturity Date" (as defined in the Indenture).
Settlement Date:	For any Option, the third Business Day immediately following the final Trading Day of the applicable Conversion Period for such Option.
Settlement Currency:	USD.
Other Applicable Provisions:	To the extent Dealer is obligated to deliver Shares hereunder, the provisions of Sections 9.4 (except that "Settlement Date" shall be as defined above, unless a Settlement Disruption Event prevents delivery of such Shares on that date), 9.8, 9.9, 9.10, 9.11 and 9.12 of the Equity Definitions shall be applicable as if "Physical Settlement" applied to the Transaction; *provided* that the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by excluding any restrictions, obligations, limitations or requirements under applicable securities laws as a result of the fact that Counterparty is the issuer of the Shares.
Restricted Certificated Shares:	Notwithstanding anything to the contrary in the Equity Definitions, Dealer may, in whole or in part, deliver any Shares required to be delivered hereunder in certificated form to Counterparty in lieu of delivery through the Clearance System. With respect to such certificated Shares, the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by deleting the remainder of the provision after the word "encumbrance" in the fourth line thereof.

Share Adjustments:

Method of Adjustment:	Calculation Agent Adjustment, which means that, notwithstanding Section 11.2(c) of the Equity Definitions, upon any adjustment to the "Conversion Rate" (as defined in the Indenture) and/or the nature of the Shares under the Convertible Notes pursuant to the Indenture (other than an increase in the "Conversion Rate" pursuant to Section 12.02(m) or Section 12.03 of the Indenture), the Calculation Agent will make a corresponding adjustment to any one or more of the Strike Price, the Option Entitlement and any other term relevant to the exercise, settlement, payment or other terms of the Transaction. Counterparty agrees that it will notify Dealer prior to the effectiveness of any such adjustment and, to the extent such adjustment requires an exercise of discretion by Counterparty under the terms of the Indenture, it shall use good faith efforts to consult with the Calculation Agent in order to achieve a commercially reasonable adjustment, determination or calculation (it being understood for the avoidance of doubt that notwithstanding any such consultation, Counterparty shall remain entitled to make such adjustments as permitted in accordance with the terms of the Indenture).
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 Sections 12.02(a), (b), (c), (d) and (e) of the Indenture that would result in an adjustment to the "Conversion Rate" (as defined in the Indenture) of the Convertible Notes; *provided* that in no event shall there be any adjustment hereunder as a result of an adjustment to the "Conversion Rate" pursuant to Section 12.02(m) or Section 12.03 of the Indenture.

Extraordinary Events:

Merger Events:	Notwithstanding Section 12.1(b) of the Equity Definitions (which shall not apply for the purposes hereof), a "Merger Event" means the occurrence of any event or condition set forth in Section 12.04(a) of the Indenture.
Notice of Merger Consideration:	Upon the occurrence of a Merger Event that causes the Shares to be converted into or exchanged for more than a single type of consideration (determined based in part upon the form of election of the holders of the Shares), Counterparty shall promptly notify the Calculation Agent in writing of the types and amounts of consideration that holders of Shares have affirmatively elected to receive upon consummation of such Merger Event; *provided* that in no event shall the date of such notification be later than the date on which such Merger Event is consummated.
Consequences of Merger Events:	Notwithstanding Section 12.2 of the Equity Definitions (which shall not apply for the purposes hereof), upon the occurrence of a Merger Event, to the extent an adjustment is made under the Indenture in respect of such Merger Event, the Calculation Agent shall make an analogous adjustment in respect of any adjustment under the Indenture to any one or more of the nature of the Shares, the Strike Price, the Number of Options, the Option Entitlement and any other term relevant to the exercise, settlement, payment or other terms of the Transaction; *provided*, *however*, that such adjustment shall be made without regard to any adjustment to the "Conversion Rate" (as defined in the Indenture) for the issuance of additional shares as set forth in Section 12.02(m) or Section 12.03 of the Indenture.

Nationalization, Insolvency or Delisting:	Cancellation and Payment (Calculation Agent Determination) *provided* that, for purposes of Section 12.6(a)(iii) of the Equity Definitions, it will 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), a Delisting shall not have occurred and such exchange or quotation system shall thereafter be deemed to be the Exchange.
Additional Disruption Events:	
Change in Law:	Applicable; *provided* that Section 12.9(a)(ii) of the Equity Definitions is hereby amended by replacing the word “Shares” where it appears in clause (X) thereof with the words “Hedge Position”.
Failure to Deliver:	Not Applicable.
Insolvency Filing:	Applicable.
Hedging Disruption:	Applicable for the period commencing on the Trade Date and ending on the Effective Date; Not Applicable after the Effective Date.
Increased Cost of Hedging:	Not Applicable
Hedging Party:	Dealer or an affiliate of Dealer that is involved in the hedging of this Transaction for all applicable Additional Disruption Events. Section 13.2(b) of the Equity Definitions is hereby amended by adding the words “(or an Affiliate of such party)” following the words “by a party” in the third line thereof.
Determining Party:	Dealer for all applicable Extraordinary Events.
Acknowledgments:	
Non-Reliance:	Applicable.
Agreements and Acknowledgments Regarding Hedging Activities:	Applicable.
Additional Acknowledgments:	Applicable.

3. Calculation Agent: Dealer, whose judgments, determinations and calculations shall be made in good faith and in a commercially reasonable manner. Following any determination or calculation by the Calculation Agent hereunder, upon a request by Counterparty, the Calculation Agent 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 determination or calculation (including any assumptions used in making such determination or calculation), it being understood that the Calculation Agent shall not be obligated to disclose any proprietary models used by it for such determination or calculation.

4. Account Details:

(a) Account for payments to Counterparty:

Capital One, N.A.
New Orleans, LA
ABA 065-000-090

For credit to:
Hornbeck Offshore Services, Inc.
103 Northpark Blvd., Suite 300
Covington, LA 70433
Account 812519859

Account for delivery of Shares to Counterparty:

To be provided under separate cover by Counterparty.

(b) Account for payments to Dealer:

Bank: Barclays Bank plc NY
ABA# 026 00 2574
BIC: BARCUS33
Acct: 50038524
Beneficiary: BARCGB33
Ref: Barclays Bank plc London Equity Derivatives

5. Offices: The Office of Counterparty for the Transaction is: Inapplicable, Counterparty is not a Multibranch Party. The Office of Dealer for the Transaction is: Inapplicable, Dealer is not a Multibranch Party.

6. Notices: For purposes of this Confirmation:

(a) Address for notices or communications to Counterparty:

Hornbeck Offshore Services, Inc.
103 Northpark Boulevard, Suite 300
Covington, Louisiana, 70433
Attention: Sam Giberga, General Counsel
Facsimile No.: (985) 727-2006

(b) Address for notices or communications to Dealer:

Barclays Capital Inc.
745 Seventh Ave.
New York, NY 10019
Attention: General Counsel
Telephone: (+1) 212-412-4000
Facsimile: (+1) 212-412-7519

with a copy to:

Barclays Capital Inc.
745 Seventh Ave.
New York, NY 10019
Attn: Paul Robinson
Telephone: (+1) 212-526-0111
Facsimile: (+1) 917-522-0458

and

Barclays Bank PLC, 5 The North Colonnade
Canary Wharf, London E14 4BB
Facsimile: 44(20) 777 36461
Phone: 44(20) 777 36810

7. Representations and Warranties of Counterparty

(A) Counterparty hereby represents and warrants to Dealer that:

(a) It is an "eligible contract participant" (as such term is defined in the Commodity Exchange Act, as amended (the "**CEA**"));

(b) Counterparty is not, on the date hereof, in possession of any material non-public information with respect to Counterparty;

(c) (x) On any day during any Conversion Period, neither Counterparty nor any "affiliate" or "affiliated purchaser" (each as defined in Rule 10b-18 of the Exchange Act ("**Rule 10b-18**")) shall directly or indirectly (including, without limitation, by means of any cash-settled or other derivative instrument) purchase, offer to purchase, place any bid or limit order that would effect a purchase of, or commence any tender offer relating to, any Shares (or an equivalent interest, including a unit of beneficial interest in a trust or limited partnership or a depository share) or any security convertible into or exchangeable or exercisable for Shares, except through Dealer;

(y) Counterparty agrees that it (A) will not, on any day during any Conversion Period, make, or permit to be made, any public announcement (as defined in Rule 165(f) under the Securities Act of 1933, as amended (the "**Securities Act**")) of any Merger Transaction or potential Merger Transaction unless such public announcement is made prior to the opening or after the close of the regular trading session on the Exchange for the Shares; (B) shall promptly (but in any event prior to the next opening of the regular trading session on the Exchange) notify Dealer following any such announcement that such announcement has been made; and (C) shall promptly (but in any event prior to the next opening of the regular trading session on the Exchange) provide Dealer with written notice specifying (i) Counterparty's average daily Rule 10b-18 Purchases (as defined in Rule 10b-18) during the three full calendar months immediately preceding the announcement date that were not effected through Dealer or its affiliates and (ii) the number of Shares purchased pursuant to the proviso in Rule 10b-18(b)(4) under the Exchange Act for the three full calendar months preceding the announcement date. Such written notice shall be deemed to be a certification by Counterparty to Dealer that such information is true and correct. In addition, Counterparty shall promptly notify Dealer of the earlier to occur of the completion of such transaction and the completion of the vote by target shareholders. "**Merger Transaction**" means any merger, acquisition or similar transaction involving a recapitalization as contemplated by Rule 10b-18(a)(13)(iv) under the Exchange Act.

(d) Without limiting the generality of Section 13.1 of the Equity Definitions, Counterparty acknowledges that Dealer is not making any representations or warranties 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, 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 under FASB's Liabilities & Equity Project;

(e) Counterparty has not received notice that it is the subject of a tender offer made under Section 14(d)(1) of the Exchange Act and has not commenced any tender offer that would be subject to Rule 13e-4 under the Exchange Act;

(f) Prior to or on the Trade Date, Counterparty shall deliver to Dealer a resolution of Counterparty's board of directors authorizing the Transaction;

(g) Counterparty is not, and after giving effect to 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;

(h) On the Trade Date (A) the assets of Counterparty at their fair valuation exceed the liabilities of Counterparty, including contingent liabilities, (B) the capital of Counterparty is adequate to conduct the business of Counterparty and (C) Counterparty has the ability to pay its debts and obligations as such debts mature and does not intend to, or does not believe that it will, incur debt beyond its ability to pay as such debts mature;

(i) Counterparty understands that no obligations of Dealer to it hereunder will be entitled to the benefit of deposit insurance or securities investor protection and that such obligations will not be guaranteed by any affiliate of Dealer (except as expressly set forth herein) or any governmental agency;

(j) The Convertible Notes have been duly authorized by Counterparty, and, when issued and delivered as provided in the Purchase Agreement and duly authenticated pursuant to the Indenture (assuming due authentication of the Convertible Notes by the trustee) will be duly executed, authenticated, issued and delivered and will constitute valid and legally binding obligations of Counterparty entitled to the benefits provided by the Indenture; and the Convertible Notes will conform, in all material respects, to the descriptions thereof in the Offering Memorandum;

(k) The Indenture has been duly authorized, executed and delivered by Counterparty and the guarantors named therein, and (assuming the authorization, execution and delivery by the trustee), constitutes a valid and legally binding instrument of Counterparty, enforceable against Counterparty in accordance with its terms, subject as to enforcement, to bankruptcy, insolvency, fraudulent transfer, fraudulent conveyance, moratorium, reorganization and laws of general applicability relating to or affecting creditors' rights and general equity principles (regardless of whether enforceability is considered in a proceeding in equity or at law); and the Indenture conforms, in all material respects, to the description thereof in the Offering Memorandum;

(l) Upon issuance and delivery of the Convertible Notes in accordance with the Purchase Agreement and the Indenture, the Convertible Notes will be convertible at the option of the holder thereof into Shares, cash or a combination of cash and Shares, if applicable, in accordance with the terms of the Convertible Notes; the Shares reserved for issuance upon conversion of the Convertible Notes have been duly authorized and reserved and, when issued upon conversion of the Convertible Notes in accordance with the terms of the Convertible Notes, will be validly issued, fully paid and non-assessable, and the issuance of the Shares will not be subject to any preemptive or similar rights;

(m) Neither Counterparty nor any controlled affiliate (as defined in Rule 501(b) of Regulation D of the Securities Act of 1933, as amended (the "**Securities Act**")) of Counterparty has directly, or through any agent, sold, offered for sale, solicited offers to buy or otherwise negotiated in respect of, any security (as defined in the Securities Act) which is or will be integrated with the sale of the Convertible Notes in a manner that would require the registration under the Securities Act of the offering contemplated by the Offering Memorandum;

(n) None of Counterparty, any controlled affiliate of Counterparty or any person acting on its or their behalf (other than the Initial Purchasers for whom we make no representation) has offered or sold the Convertible Notes by means of any general solicitation or general advertising within the meaning of Rule 502(c) under the Securities Act;

(o) The Convertible Notes satisfy the requirements set forth in Rule 144A(d)(3) under the Securities Act;

(p) The issue and sale of the Convertible Notes, the issuance by Counterparty of the Shares upon conversion of the Convertible Notes and the compliance by Counterparty with all of the provisions of the Convertible Notes, the Indenture, the Purchase Agreement and this Confirmation and the consummation of the transactions herein and therein contemplated (A) will not conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, any material indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Counterparty or any of its subsidiaries is a party or by which

Counterparty or any of its subsidiaries is bound or to which any of the property or assets of Counterparty or any of its subsidiaries is subject, except such conflict, breach or violation as would not have a Material Adverse Effect, (B) will not result in any violation of the provisions of the certificate of incorporation or bylaws of Counterparty, and (C) will not result in the violation of any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over Counterparty or any of its subsidiaries or any of its properties, except such violations as would not have a Material Adverse Effect; and except as disclosed in the Offering Memorandum, to Counterparty's knowledge, no consent, approval, authorization, order, registration or qualification of or with any such court or governmental agency or body is required for the issue and sale of the Convertible Notes or the consummation by Counterparty of the transactions contemplated by the Purchase Agreement or the Indenture, except for the filing and effectiveness of a registration statement by Counterparty with the Commission pursuant to the Securities Act, the qualification of the Indenture under the Trust Indenture Act of 1939 ("**Trust Indenture Act**") in relation to the Shares and such consents, approvals, authorizations, registrations or qualifications as may be required under state Securities or Blue Sky laws in connection with the purchase and distribution of the Convertible Notes by the Initial Purchasers in the manner contemplated by the Purchase Agreement and Offering Memorandum and except for such consents the failure to obtain would not have a Material Adverse Effect. "**Material Adverse Effect**" means any change in the capital stock, increase in long-term debt or any decreases in consolidated net current assets or stockholders' equity of Counterparty or any of its subsidiaries or any material adverse change, or any development involving a prospective material adverse change, in or affecting the general affairs, management, current or future consolidated financial position, stockholders' equity or results of operations of Counterparty and its subsidiaries taken as a whole;

(q) Counterparty is subject to Section 13 or 15(d) of the Exchange Act;

(r) Prior to the Trade Date, Counterparty has not taken any action which is designed to or which has constituted or which might have been expected to cause or result in stabilization or manipulation of the price of any security of Counterparty in connection with the offering of the Convertible Notes;

(s) None of Counterparty or any of its subsidiaries is in violation of its certificate of incorporation or certificate of formation, or its bylaws or limited liability company agreement (or other organizational documents), or in default in the performance or observance of any material obligation, covenant or condition contained in any material indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which it is a party or by which it or any of its properties may be bound, other than such defaults that individually or in the aggregate would not have a Material Adverse Effect;

(t) Other than as set forth in the Offering Memorandum, there are no legal or governmental proceedings pending to which Counterparty or any of its subsidiaries is a party or of which any property of Counterparty or any of its subsidiaries is the subject which, if determined adversely to Counterparty or any of its subsidiaries, would individually or in the aggregate have a Material Adverse Effect; and, to the best of Counterparty's knowledge, no such proceedings are threatened or contemplated by governmental authorities or threatened by others.

(u) (x) Counterparty is acting for its own account, and it has made its own independent decisions to enter into the Transaction and as to whether the Transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary, (y) Counterparty is not relying on any communication (written or oral) of Dealer or any of its affiliates as investment advice or as a recommendation to enter into the Transaction (it being understood that information and explanations related to the terms and conditions of the Transaction shall not be considered investment advice or a recommendation to enter into the Transaction) and (z) no communication (written or oral) received from Dealer or any of its affiliates shall be deemed to be an assurance or guarantee as to the expected results of the Transaction; and

(v) The assets used in the Transaction (1) are not assets of any "plan" (as such term is defined in Section 4975 of the United States 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.

(B) Each party makes to the other the representations and warranties set forth in Sections 3(a) through (f) of the Agreement with respect to the Agreement as supplemented by this Confirmation; *provided* that Dealer makes the representation and warranty set forth in Section 3(e) and Counterparty makes the representation and warranty set forth in Section 3(f). In addition, each of Dealer and Counterparty acknowledges that the offer and sale of the Transaction to Counterparty is intended to be exempt from registration under the Securities Act, by virtue of Section 4(2) thereof. Accordingly, Counterparty represents and warrants to Dealer that (i) it has the financial ability to bear the economic risk of its investment in the Transaction and is able to bear a total loss of its investment and its investments in and liabilities in respect of the Transaction, which it understands are not readily marketable, are not disproportionate to its net worth, and it is able to bear any loss in connection with the Transaction, including the loss of its entire investment in the Transaction, (ii) it is an "accredited investor" as that term is defined in Regulation D as promulgated under the Securities Act, (iii) it is entering into the Transaction for its own account and without a view to the distribution or resale thereof, (iv) the assignment, transfer or other disposition of the Transaction has not been and will not be registered under the Securities Act and is restricted under this Confirmation, the Securities Act and state securities laws, and (v) its financial condition is such that it has no need for liquidity with respect to its investment in the Transaction and no need to dispose of any portion thereof to satisfy any existing or contemplated undertaking or indebtedness and is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of the Transaction.

8. Other Provisions:

(a) *Opinions*. Counterparty shall deliver to Dealer an opinion of counsel, dated as of the Trade Date, with respect to the matters set forth in Section 3(a) of the Agreement and Section 7(A)(g) of this Confirmation; *provided* that such opinion may contain customary exceptions and qualifications, including, without limitation, exceptions and qualifications relating to indemnification provisions.

(b) *Repurchase Notices*. Counterparty shall, on any day on which Counterparty effects any repurchase of Shares, give Dealer a written notice of such repurchase (a "**Repurchase Notice**") on such day if following such repurchase the Notice Percentage as determined on such day is (i) greater than 4.5% and (ii) greater by 0.5% than the Notice Percentage included in the immediately preceding Repurchase Notice (or, in the case of the first such Repurchase Notice, greater than the Notice Percentage as of the date hereof). The "**Notice Percentage**" as of any day is the fraction, expressed as a percentage, the numerator of which is the product of the Number of Options and the Option Entitlement and the denominator of which is the number of Shares outstanding on such day.

(c) *Regulation M*. Counterparty is not on the date hereof 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 engage in any such distribution (x) until the second Scheduled Trading Day immediately following the Trade Date and (y)(A) on any day during any Conversion Period, the Shares or securities that are convertible into, or exchangeable or exercisable for Shares, are not, and shall not be, subject to a "restricted period," as defined in Regulation M and (B) Counterparty shall not engage in any "distribution," as such term is defined in Regulation M, other than a distribution meeting the requirements of the exceptions set forth in sections 101(b)(10) and 102(b)(7) of Regulation M, until the second Exchange Business Day immediately following the last day in such Conversion Period.

(d) *No Manipulation*. Counterparty is not entering into this 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) *Number of Repurchased Shares*. Counterparty represents that it could have purchased Shares, in an amount equal to the product of the Number of Options and the Option Entitlement, on the Exchange or otherwise, in compliance with applicable law, its organizational documents and any orders, decrees, contractual agreements binding upon Counterparty, on the Trade Date.

(f) *Early Unwind*. In the event the sale of the additional Convertible Notes is not consummated with the initial purchasers for any reason by the close of business in New York on August 13, 2012 (or such later date as agreed upon by the parties) (August 13, 2012 or such later date as agreed upon being the "**Early Unwind Date**"), this 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; *provided* that, Counterparty shall reimburse Dealer for reasonable costs or expenses (including market losses) relating to the unwinding of its, or the Hedging Party's, Hedging Activities in connection with the Transaction (including any loss or cost incurred as a result of its terminating, liquidating, obtaining or reestablishing any hedge or related trading position) unless the sale of Convertible Bonds is not consummated with the initial purchasers as a result of breach of the Purchase Agreement by the initial purchasers (in which case no such reimbursement will be payable). The amount of any such reimbursement shall be determined by Dealer in good faith and in a commercially reasonable manner. Dealer shall notify Counterparty of such amount and Counterparty shall deliver Share Termination Delivery Property or, at the election of Counterparty, pay such amount in immediately available funds on the Early Unwind Date. Dealer and Counterparty represent and acknowledge to the other that, subject to the proviso included in this paragraph, upon an Early Unwind, all obligations with respect to the Transaction shall be deemed fully and finally discharged. Notwithstanding anything herein or in the Agreement to the contrary, in no event shall Counterparty be required to deliver an aggregate number of Shares in connection with the Early Unwind in excess of 222,861 Shares, subject to adjustment from time to time as a result of actions of Counterparty or events within Counterparty's control and in accordance with the provisions of this Confirmation and the Equity Definitions.

(g) *Transfer or Assignment*. Neither party may transfer any of its rights or obligations hereunder and under the Transaction and Agreement without the prior written consent of the non-transferring party (such consent not to be unreasonably withheld); *provided* that, subject to applicable law, Dealer may transfer or assign without any consent of Counterparty its rights and obligations hereunder, in whole or in part, to any of its affiliates of credit quality at least equivalent to that of Dealer as of the Trade Date or to any other of its affiliates *provided* that Counterparty shall receive a full guaranty of such affiliate's obligations from Dealer in form and substance reasonably satisfactory to Counterparty if (i) an Event of Default, Potential Event of Default or Termination Event will not occur as a result of such transfer or assignment and (ii) as a result of such transfer or assignment, Counterparty will not be required to pay the transferee on any payment date an amount under Section 2(d)(i)(4) of the Agreement greater than an amount that Counterparty would have been required to pay to Dealer in the absence of such transfer or assignment. Except for the transfer or assignment contemplated in the proviso to the first sentence of this paragraph 8(g), in the case of a transfer or assignment by Counterparty or Dealer of its rights and obligations hereunder and under the Agreement, in whole or in part (any Options so transferred or assigned, the "**Transfer Options**"), to any party, withholding of consent by the other party (the "**Remaining Party**") shall not be considered unreasonable if such transfer or assignment does not meet the following reasonable conditions that the Remaining Party may impose: (i) with respect to any Transfer Options, Counterparty shall not be released from its notice and indemnification obligations pursuant to paragraph 8(b) ("Repurchase Notices") or any obligations under paragraph 2 regarding Extraordinary Events or paragraph 8(m) ("Registration") of this Confirmation; (ii) any Transfer Options shall only be transferred or assigned to a third party that is a U.S. person (as defined in the Internal Revenue Code of 1986, as amended); (iii) such transfer or assignment shall be effected on terms, including any reasonable undertakings by such transferee (including, but not limited to, undertakings with respect to compliance with applicable securities laws in a manner that, in the reasonable judgment of the Remaining Party, will not expose the Remaining Party 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 transferee and the transferor as are reasonably requested and reasonably satisfactory to the Remaining Party; (iv) the Remaining Party will not, as a result of such transfer or assignment, be required to pay the transferee on any payment date an amount under Section 2(d)(i)(4) of the Agreement greater than an amount that the Remaining Party would have been required to pay to the transferor in the absence of such transfer or assignment; (v) an Event of Default, Potential Event of Default or Termination Event will not occur as a result of such transfer or assignment; (vi) without limiting the generality of clause (ii), the transferor shall have caused the transferee to make such Payee Tax Representations and to provide such tax documentation as may be reasonably requested by the Remaining Party to permit the Remaining Party to determine that results described in clauses (iv) and (v) will not occur upon or after such transfer or assignment; and (vii) the transferor shall be responsible for all reasonable costs and expenses, including reasonable counsel fees, incurred by the Remaining Party in connection with such transfer or assignment.

Notwithstanding the foregoing, at any time at which a transaction proposed to be entered into by Dealer would cause the Articles Ownership Percentage to exceed 4.9%, unless Counterparty provides an acknowledgment to Dealer to the effect that the Shares owned or controlled by Dealer or any of its affiliates will not be deemed as owned or controlled by an "Alien" (as defined in Article Twelve Section 6 of Counterparty's Certificate of Incorporation), Dealer may (or shall, if requested by Counterparty) transfer or assign to a third party such portion of the Transaction that would otherwise cause the Articles Ownership Percentage to exceed 4.9% (it being understood and agreed that Dealer would make such a transfer or assignment to (a) one of its U.S. affiliates, if, in Counterparty's view, such a transfer or assignment would result in the Shares owned or controlled by such U.S. affiliates not being owned or controlled by an "Alien" for purposes of Article Twelve of Counterparty's Certificate of Incorporation) or (b) unless otherwise consented by Counterparty, to a third party who is not an "Alien" for purposes of Article Twelve of Counterparty's Certificate of Incorporation, if the transfer or assignment would otherwise result in such Shares deemed owned or controlled by an "Alien" for purposes of Article Twelve of Counterparty's Certificate of Incorporation); *provided further* that if Dealer is unable to effect a transfer or assignment to a third party after its commercially reasonable efforts on pricing terms reasonably acceptable to Dealer (or to one of its U.S. affiliates, if, in Counterparty's view, such a transfer or assignment would result in the Shares owned or controlled by such U.S. affiliates not being owned or controlled by an "Alien" for purposes of Article Twelve of Counterparty's Articles of Incorporation) such that the Articles Ownership Percentage does not exceed 4.9%, Dealer may designate any Scheduled Trading Day as an Early Termination Date with respect to a portion (the "**Articles Terminated Portion**") of the Transaction, such that the Articles Ownership Percentage following such partial termination will be equal to 4.9%.

Notwithstanding the foregoing, at any time at which (1) the Option Equity Percentage exceeds 9.0% or (2) Dealer, Dealer Group (as defined below) or any person whose ownership position would be aggregated with that of Dealer or Dealer Group (Dealer, Dealer Group or any such person, a "**Dealer Person**") under any relevant state corporate law or any state or federal bank holding company or banking laws, or other federal, state or local laws, regulations or regulatory orders applicable to ownership of Shares ("**Applicable Laws**"), owns, beneficially owns, constructively owns, controls, holds the power to vote or otherwise meets a relevant definition of ownership in excess of a number of Shares equal to (x) the number of Shares that, in the good faith determination of the relevant Dealer Person, would give rise to materially burdensome reporting or registration obligations or other requirements (including obtaining prior approval by a state or federal regulator) of a Dealer Person under Applicable Laws (including, without limitation, "interested stockholder" or "acquiring person" status under Section 203 of the Delaware General Corporation Law, but excluding any report or filing required pursuant to Section 13 of the Exchange Act and the rules promulgated thereunder) and with respect to which such requirements have not been met or the relevant approval has not been received *minus* (y) 1.0% of the number of Shares outstanding on the date of determination (either such condition described in clause (1) or (2), an "**Excess Ownership Position**") and Dealer is unable, after commercially reasonable efforts, to eliminate such Excess Ownership Position or effect a transfer or assignment to a third party with a rating (or whose guarantor has a rating) for its long term, unsecured and unsubordinated indebtedness at least equal to that of Dealer as of the Trade Date on pricing terms and within a time period reasonably acceptable to it of all or a portion of the Transaction such that an Excess Ownership Position no longer exists, Dealer may designate any Scheduled Trading Day as an Early Termination Date with respect to a portion (the "**Reporting Terminated Portion**") of the Transaction, such that an Excess Ownership Position no longer exists.

In the event that Dealer so designates an Early Termination Date with respect to an Articles Terminated Portion or a Reporting Terminated Portion, a payment shall be made pursuant to Section 6 of the Agreement as if (i) an Early Termination Date had been designated in respect of a Transaction having terms identical to this Transaction and a Number of Options equal to the Articles Terminated Portion or the Reporting Terminated Portion, as the case may be, (ii) Counterparty shall be the sole Affected Party with respect to such partial termination and (iii) such Transaction shall be the only Terminated Transaction (and, for the avoidance of doubt, the provisions of paragraph 8(k) shall apply to any amount that is payable by Dealer to Counterparty pursuant to this sentence).

The "**Articles Ownership 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 its affiliates "own or control" (within the meaning of Article 12 Section 2 of Counterparty's Certificate of Incorporation) on such day, and (B) the denominator of which is the number of Shares outstanding on such day.

The "**Option Equity Percentage**" as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the sum of (i) the number of Shares that Dealer and any of its affiliates subject to aggregation with Dealer, for purposes of the "beneficial ownership" test under Section 13 of the Exchange Act, and all persons who may form a "group" (within the meaning of Rule 13d-5(b)(1) under the Exchange Act) with Dealer ("**Dealer Group**") "beneficially owns" (within the meaning of Section 13 of the Exchange Act) on such day, other than any Shares so owned as a hedge of the Transaction, and (ii) the product of the Number of Options and the Option Entitlement and (B) the denominator of which is the number of Shares outstanding on such day. For purposes of this Section 8(g), the term "Dealer" shall include any of the Dealer's permitted successors or assigns.

(h) *Staggered Settlement*. If upon advice of counsel with respect to applicable legal and regulatory requirements, including any requirements relating to Dealer's, or the Hedging Party's, Hedge Activities hereunder, Dealer reasonably determines that it would not be advisable to deliver, or to acquire Shares to deliver, any or all of the Shares to be delivered by Dealer on the 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 (each of which will be on or prior to 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) if the Settlement terms set forth above were to apply on the Nominal Settlement Date, then the Settlement terms will apply on each Staggered Settlement Date, except that the Shares to be delivered pursuant to such terms will be allocated among such Staggered Settlement Dates as specified by Dealer in the notice referred to in clause (i) above.

(i) *Role of Agent*. Each of Dealer and Counterparty acknowledges to and agrees with the other party hereto and to and with the Agent that (i) the Agent is acting as agent for Dealer under the Transaction pursuant to instructions from such party, (ii) the Agent is not a principal or party to the Transaction, and may transfer its rights and obligations with respect to the Transaction, (iii) the Agent shall have no responsibility, obligation or liability, by way of issuance, guaranty, endorsement or otherwise in any manner with respect to the performance of either party under the Transaction, (iv) Dealer and the Agent have not given, and Counterparty is not relying (for purposes of making any investment decision or otherwise) upon, any statements, opinions or representations (whether written or oral) of Dealer or the Agent, other than the representations expressly set forth in this Confirmation or the Agreement, and (v) each party agrees to proceed solely against the other party, and not the Agent, to collect or recover any money or securities owed to it in connection with the Transaction. Each party hereto acknowledges and agrees that the Agent is an intended third party beneficiary hereunder. Counterparty acknowledges that the Agent is an affiliate of Dealer. Dealer will be acting for its own account in respect of this Confirmation and the Transaction contemplated hereunder. Dealer appoints Agent as Dealer's Process Agent for purposes of Section 13(c) of the Agreement.

(j) *No Collateral or Setoff*. Notwithstanding any provision of the Agreement or any other agreement between the parties, the obligations of Dealer hereunder are not secured by any collateral. In addition obligations under the Transaction shall not be netted, recouped or set off (including pursuant to Section 6 of the Agreement) against any other obligations of the parties, whether arising under the Agreement, this Confirmation, under any other agreement between the parties hereto, by operation of law or otherwise, and no other obligations of the parties shall be netted, recouped or set off (including pursuant to Section 6 of the Agreement) against obligations under the Transaction, whether arising under the Agreement, this Confirmation, under any other agreement between the parties hereto, by operation of law or otherwise, and each party hereby waives any such right of setoff, netting or recoupment; *provided* that both parties agree that subparagraph (ii) of Section 2(c) of the Agreement shall apply to the Transaction.

(k) *Alternative Calculations and Payment on Early Termination and on Certain Extraordinary Events*. If in respect of this Transaction, an amount is payable by Dealer to Counterparty (i) pursuant to Section 12.2 of the Equity Definitions and "Consequences of Merger Events" above, or Sections 12.3, 12.6, 12.7 or 12.9 of the Equity Definitions, (ii) pursuant to Section 6(d)(ii) of the Agreement or (iii) pursuant to "Early Unwind" above (each, a "**Payment Obligation**"), Dealer shall satisfy any such Payment Obligation by the Share Termination Alternative (as defined below) unless Counterparty elects for Dealer to satisfy such Payment Obligation by delivery of cash or in the event of a Nationalization, Insolvency or a Merger Event, in each case, in which the consideration to be paid to holders of Shares consists solely of cash, or 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)(i), (ii), (iii), (iv), (v) or (vi) of the Agreement in each case that resulted from an event or events outside Counterparty's control, in which case the provisions of Sections 12.2, 12.3, 12.6, 12.7 or 12.9 of the Equity Definitions or Section 6(d)(ii) of the Agreement, as the case may be, shall apply in lieu of the provisions set forth in this paragraph 8(k). Counterparty shall give irrevocable telephonic notice to Dealer of any such selection, confirmed in writing within one Currency Business Day, no later than 12:00 p.m. New York local time on the Merger Date, the Announcement Date (in the case of Nationalization or Insolvency), the Early Termination Date or date of cancellation, as applicable; where such notice shall include a representation and warranty from Counterparty that it is not, as of the date of the telephonic notice and the date of such written notice, aware of any "material non-public information" (within the meaning of Section 10(b) of the Exchange Act and the rules promulgated thereunder) concerning itself or the Shares. In calculating any amounts under Section 6(e) of the Agreement, notwithstanding anything to the contrary in the Agreement, (1) separate amounts shall be calculated as set forth in Section 6(e) with respect to (i) this Transaction and (ii) all other Transactions, and (2) such separate amounts shall be payable pursuant to Section 6(d)(ii) of the Agreement.

Share Termination Alternative:	Applicable, if elected as per above, and means that Dealer shall deliver to Counterparty the Share Termination Delivery Property on the date when the Payment Obligation would otherwise be due pursuant to "Consequences of Merger Events" above or Section 12.7 or 12.9 of the Equity Definitions or Section 6(d)(ii) and 6(e) of the Agreement, as applicable (the "**Share Termination Payment Date**"), 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 on the date such Share Termination Delivery Units are to be delivered as Share Termination Delivery Property, 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.

Share Termination Delivery Unit:	In the case of a Termination Event, Event of Default, Delisting, one Share or, in the case of an Insolvency, Nationalization or Merger Event, one Share or a unit consisting of the number or amount of each type of 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 Insolvency, Nationalization or Merger Event, as applicable. If such Insolvency, Nationalization or Merger Event involves a choice of consideration to be received by holders, such holder shall be deemed to have elected to receive the maximum possible amount of cash.
Failure to Deliver:	Applicable
Other applicable provisions:	If this Transaction is to be Share Termination Settled, the provisions of Sections 9.1(c), 9.8, 9.9, 9.11, 9.12 and 10.5 (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 this Transaction means that Share Termination Alternative is applicable to this Transaction.

(l) *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 this 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 this Transaction, as applicable, by, among other things, the mutual waivers and certifications provided herein.

(m) *Registration*. Counterparty hereby agrees that if, in the good faith and 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 this Transaction cannot be sold in the public market by Dealer without registration under 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 enter into an agreement substantially similar in underwriting agreements customary for registered secondary offerings of a substantially similar size, in form and substance reasonably satisfactory to Dealer (*provided however*, that if Dealer, in its 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 Section shall apply at the election of Counterparty); (ii) in order to allow Dealer to sell the Hedge Shares in a private placement, enter into a private placement agreement substantially similar to private placement purchase agreements customary for private placements of equity offerings of a substantially similar size, in form and substance reasonably satisfactory to Dealer (in which case, the Calculation Agent shall make any adjustments to the terms of this 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 closing price on such Exchange Business Days, and in the amounts, reasonably requested by Dealer.

(n) *Tax Disclosure*. Effective from the date of commencement of discussions concerning the Transaction, each party and each of their respective 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) relating to such tax treatment and tax structure.

(o) *Status of Claims in Bankruptcy*. Dealer acknowledges and agrees that this Confirmation is not intended to convey to Dealer rights with respect to the Transaction that are senior to the claims of common stockholders in any U.S. 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.

(p) *Securities Contract*. Each of Dealer and Counterparty agrees and acknowledges that Dealer is one or more of a "financial institution" and "financial participant" within the meaning of sections 101(22) and 101(22A) of Title 11 of the United States Code (the "**Bankruptcy Code**"). The parties further agree and acknowledge (A) that this Confirmation is 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 is a "settlement payment" (as such term is defined in Section 741(8) of the Bankruptcy Code) or a "transfer" within the meaning of section 546 of the Bankruptcy Code and (B) that is the parties are entitled to the protections afforded by, among other sections, section 362(b)(6), 362(b)(27), 362(o), 546(e), 546(j), 548(d)(2), 555 and 561 of the Bankruptcy Code.

(q) *Additional Provisions*. Counterparty covenants and agrees that, as promptly as practicable following the public announcement of any consolidation, merger and binding share exchange to which Counterparty is a party, or any sale of all or substantially all of Counterparty's assets, in each case pursuant to which the Shares will be converted into cash, securities or other property, Counterparty shall notify Dealer in writing of the types and amounts of consideration that holders of Shares have elected to receive upon consummation of such transaction or 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 transaction or event is consummated.

(r) *Method of Delivery.* Whenever delivery of funds or other assets is required hereunder by or to Dealer, such delivery shall be effected through Agent.

(s) *Regulatory Provisions.* The time of dealing for the Transaction will be confirmed by Dealer upon written request by Counterparty. The Agent will furnish to Counterparty upon written request a statement as to the source and amount of any remuneration received or to be received by the Agent in connection with the Transaction.

(t) *Additional Termination Events*.

(i) The occurrence of an event of default with respect to Counterparty under the terms of the Convertible Notes as set forth in Section 7.01 of the Indenture that results in an acceleration of the Convertible Notes pursuant to the terms of the Indenture shall be 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.

(ii) The occurrence of an Amendment Event shall be 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. "**Amendment Event**" means that Counterparty amends, modifies, supplements or obtains a waiver in respect of any term of the Indenture or the Convertible Notes governing the principal amount, coupon, maturity, repurchase obligation of Counterparty, redemption right of Counterparty, any term relating to conversion of the Convertible Notes (including changes to the conversion price, conversion settlement dates or conversion conditions) that may adversely affect the rights or obligations of Dealer hereunder, or any term that would require consent of the holders of not less than 100% of the principal amount of the Convertible Notes to amend, in each case without the prior consent of Dealer, such consent not to be unreasonably withheld.

(iii) If any Repurchase Event occurs, (A) Counterparty shall notify Dealer as promptly as practicable of such event, (B) such an event shall be an Additional Termination Event, (C) an Early Termination Date shall be deemed to occur automatically on the date of such notice with

respect to a portion of the Transaction relating to a number of Options equal to (1) the number of Convertible Securities in denominations of USD 1,000 principal amount so repurchased, exchanged or repaid in connection with such Repurchase Event (the "Affected Portion") less (2) the number of Options constituting an Affected Portion with respect to such Repurchase Event under Section 8(t)(iii) of the Base Call Option Transaction Confirmation, but payment of the Close-out Amount in respect of such Early Termination Date shall not be due until one Settlement Cycle following the date on which Dealer delivered the statement provided pursuant to Section 6(d)(i) of the Agreement, and (D) Counterparty shall be deemed the sole Affected Party and the Affected Portion shall be deemed the sole Affected Transaction.

"**Repurchase Event**" means the occurrence of any of the following:

(1) any Convertible Securities are repurchased (other than as a result of a fundamental change, as defined in the Indenture) by Counterparty or any of its subsidiaries;

(2) any Convertible Securities are delivered to Counterparty in exchange for delivery of any property or assets of Counterparty or any of its subsidiaries (howsoever described);

(3) any principal of any of the Convertible Securities is repaid prior to the final maturity date of the Convertible Securities (whether following acceleration of the Convertible Notes or otherwise); or

(4) any Convertible Securities are exchanged by or for the benefit of the holders thereof for any other securities of Counterparty or any of its affiliates (or any other property, or any combination thereof) pursuant to any exchange offer or similar transaction.

For the avoidance of doubt, in the case of each of clauses (1) through (4), conversions of the Convertible Securities pursuant to the terms of the Indenture shall not constitute a Repurchase Event.

(u) *Additional ISDA Schedule Terms*.

(i) "**Specified Entity**" means in relation to each of Dealer and Counterparty for purposes of Sections 5(a)(v), 5(a)(vi), 5(a)(vii) and 5(b)(v) of the Agreement, not applicable.

(ii) "**Specified Transaction**" will have the meaning specified in Section 14 of the Agreement.

(iii) The "Cross-Default" provisions of Section 5(a)(vi) of the Agreement shall not apply to either party.

(iv) **Automatic Early Termination**. The "Automatic Early Termination" provision of Section 6(a) of the Agreement will not apply to Dealer and will not apply to Counterparty.

(v) "**Termination Currency**" means United States Dollars ("**USD**").

(vi) **Payment by Counterparty**. In the event that (i) an Early Termination Date occurs or is designated with respect to the Transaction as a result of an Event of Default (other than an Event of Default arising under Section 5(a)(ii) or 5(a)(iv) of the Agreement) or a Termination Event 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.

(vii) **Consent to Recording**. Each party (i) consents to the monitoring or recording, at any time and from time to time, by the other party of any and all communications between officers or employees of the parties, (ii) waives any further notice of such monitoring or recording, and (iii) agrees to notify (and, if required by law, obtain the consent of) its officers and employees with respect to such monitoring or recording. Any such recording may be submitted in evidence to any court or in any Proceeding for the purpose of establishing any matters pertinent to this Transaction.

(viii) **Severability**. In the event any one or more of the provisions contained in this Confirmation or the Agreement shall be held illegal, invalid or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby.

(ix) **Fully Paid Transactions**. The condition precedent in Section 2(a)(iii)(1) of the Agreement shall not apply to a payment and delivery owing by a party if the other party shall have satisfied in full all its payment or delivery obligations under Section 2(a)(i) of the Agreement and shall at the relevant time have no future payment or delivery obligations, whether absolute or contingent, under Section 2(a)(i) of the Agreement.

(x) **Part 2(b) of the ISDA Schedule – Payee Representation:**

For the purpose of Section 3(f) of this Agreement, Counterparty makes the following representation to Dealer:

Counterparty is a corporation established under the laws of the State of Delaware and is a U.S. person (as that term is defined in Section 7701(a)(30) of the Code).

For the purpose of Section 3(f) of this Agreement, Dealer makes the following representation to Counterparty:

(A) Each payment received or to be received by it in connection with this Agreement is effectively connected with its conduct of a trade or business within the United States; and

(B) It is a "foreign person" (as that term is used in Section 1.6041-4(a)(4) of the United States Treasury Regulations) for United States federal income tax purposes.

(xi) **Part 3(a) of the ISDA Schedule – Tax Forms:**

Party Required to Deliver Document	Form/Document/Certificate	Date by which to be Delivered
Counterparty	A complete and duly executed United States Internal Revenue Service Form W-9 (or successor thereto.)	(i) Upon execution and delivery of this Agreement; (ii) promptly upon reasonable demand by Dealer; and (iii) promptly upon learning that any such Form previously provided by Counterparty has become obsolete or incorrect.
Dealer	A complete and duly executed United States Internal Revenue Service Form W-8ECI (or successor thereto).	(i) Upon execution and delivery of this Agreement; (ii) promptly upon reasonable demand by Counterparty; and (iii) promptly upon learning that any such Form previously provided by Dealer has become obsolete or incorrect.

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 a facsimile of the fully-executed Confirmation to Dealer at (+1) 917-522-0458. Originals shall be provided for your execution upon your request.

Very truly yours,

BARCLAYS CAPITAL INC.
acting solely as Agent in connection with this Transaction

By: /s/ David A. Brown
Name: David A. Brown
Title: Managing Director

Accepted and confirmed as of the Trade Date:

HORNBECK OFFSHORE SERVICES, INC.

By: /s/ James O. Harp, Jr.
Name: James O. Harp, Jr.
Title: Executive Vice President and CFO

SCHEDULE A

For purposes of this Transaction, the following terms shall have the following values/meanings:

1. Strike Price: USD 53.8451.
2. Premium: USD 2,921,280.00.

J.P.Morgan

Execution version

JPMorgan Chase Bank, National Association
London Branch
P.O. Box 161
60 Victoria Embankment
London EC4Y 0JP
England

August 8, 2012

To: Hornbeck Offshore Services, Inc.
103 Northpark Boulevard, Suite 300
Covington, Louisiana, 70433
Attention: Sam Giberga, General Counsel
Facsimile No.: (985) 727-2006

Re: **Additional Call Option Transaction**

The purpose of this letter agreement (this "**Confirmation**") is to confirm the terms and conditions of the Transaction entered into between JPMorgan Chase Bank, National Association, London Branch ("**Dealer**"), and Hornbeck Offshore Services, Inc. ("**Counterparty**") on the Trade Date specified below (the "**Transaction**"). This Confirmation constitutes a "Confirmation" as referred to in the Agreement specified below.

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 have the meanings assigned to them in the Indenture to be dated on or about August 13, 2012 between Counterparty and Wells Fargo Bank, National Association, as trustee (as may be amended, modified or supplemented from time to time, but only if such amendment, modification or supplement is consented to by Dealer in writing, the "**Indenture**") relating to USD 260,000,000 principal amount of 1.500% senior convertible notes due 2019 and the additional USD 40,000,000 principal amount of 1.500% senior convertible notes due 2019 issued pursuant to the option to purchase additional convertible notes exercised on August 8, 2012 (the "**Convertible Notes**") issued by Counterparty. In the event of any inconsistency between the Indenture and this Confirmation, this Confirmation shall govern. For the avoidance of doubt, references herein to sections of the Indenture are based on the draft of the Indenture most recently reviewed by the parties at the time of this Confirmation. If any relevant sections of the Indenture are changed, added, or renumbered following execution of this Confirmation but prior to the execution of the Indenture, the parties will amend this Confirmation in good faith to preserve the economic intent of the parties based on the draft of the Indenture so reviewed. The parties further acknowledge that 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 following its execution, any such amendment will be disregarded for purposes of this Confirmation (other than as provided in paragraph 8(t)(ii) below and other than any amendment pursuant to Section 10.01(k) of the Indenture) unless the parties agree otherwise in writing.

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 supplement, form a part of, and be subject to an agreement in the form of the ISDA 2002 Master Agreement (the "**Agreement**") as if

Dealer and Counterparty had executed an agreement in such form (but without any Schedule except for (i) the election of the laws of the State of New York as the governing law, (ii) the election of US Dollars ("**USD**") as the Termination Currency, and (iii) the other provisions set forth under paragraph 8(u) below) on the Trade Date. In the event of any inconsistency between provisions of that Agreement and this Confirmation, this Confirmation will prevail for the purpose of the Transaction to which this Confirmation relates. The parties hereby agree that no Transaction other than the Transaction to which this Confirmation relates shall be governed by the Agreement.

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

General Terms:

Trade Date:	August 8, 2012.
Effective Date:	The closing date for the issuance of the Convertible Notes issued pursuant to the option to purchase additional Convertible Notes exercised on August 8, 2012.
Option Style:	Modified American, as described below under "Procedures for Exercise".
Option Type:	Call.
Buyer:	Counterparty.
Seller:	Dealer.
Shares:	The common stock, par value USD 0.01 per share, of Counterparty (Ticker symbol "HOS").
Number of Options:	40,000. For the avoidance of doubt, the Number of Options shall be reduced by any Options exercised by Counterparty. In no event will the Number of Options be less than zero.
Option Entitlement:	As of any date, a number of Shares per Option equal to the Applicable Percentage *multiplied by* the "Conversion Rate" (as defined in the Indenture) as of such date (but without regard to any adjustments to the "Conversion Rate" pursuant to Section 12.02(m) or Section 12.03 of the Indenture).
Strike Price:	As provided in Schedule A to this Confirmation.
Applicable Percentage:	40.0%.
Premium:	As provided in Schedule A to this Confirmation.
Premium Payment Date:	The Effective Date.
Exchange:	New York Stock Exchange.
Related Exchange(s):	All Exchanges.

Procedures for Exercise:

Exercise Dates:	Each Conversion Date.
Conversion Dates:	Each "Conversion Date" (as defined in the Indenture) occurring during the Exercise Period for Convertible Notes in denominations of USD 1,000 principal amount that are surrendered for conversion on such Conversion Date in accordance with the terms of the Indenture, subject to "Notice of Exercise" below, but are not "Relevant Convertible Notes" under, and as defined in, the confirmation between the parties hereto regarding the Base Call Option Transaction dated August 7, 2012 (the "Base Call Option

	Transaction Confirmation") (such Convertible Notes, the "**Relevant Convertible Notes**"); provided that 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 Convertible Note surrendered 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 12.01(f) of the Indenture and such designation is accepted by such financial institution, except to the extent that (i) such financial institution fails to pay or deliver, as the case may be, any consideration due upon conversion of such Convertible Note, or (ii) such Convertible Note is subsequently resubmitted to Counterparty for conversion in accordance with the terms of the Indenture. For the purposes of determining whether any Convertible Notes will be Relevant Convertible Notes hereunder or under the Base Call Option Transaction Confirmation, Convertible Notes that are converted pursuant to the Indenture shall be allocated first to the Base Call Option Transaction Confirmation until all Options thereunder are exercised.
Exercisable Options:	In respect of each Conversion Date, a number of Options equal to the number of Relevant Convertible Notes in denominations of USD 1,000 principal amount surrendered for conversion on such Conversion Date in accordance with the terms of the Indenture, subject to "Notice of Exercise" below, but no greater than the Number of Options.
Free Convertibility Date:	June 1, 2019.
Exercise Period:	The period from and including the Effective Date to and including the Expiration Date.
Expiration Date:	Notwithstanding anything to the contrary in section 3.1(f) of the Equity Definitions, "Expiration Date" shall mean the earlier of (x) the last day on which any Convertible Notes remain outstanding and (y) the Scheduled Trading Day immediately preceding the "Maturity Date" (as defined in the Indenture).
Multiple Exercise:	Applicable, as provided under "Exercisable Options" above.
Automatic Exercise:	Applicable, subject to "Notice of Exercise" below.
Notice of Exercise:	Notwithstanding anything to the contrary in the Equity Definitions or under "Exercisable Options" above, in order to exercise any Exercisable Options, Counterparty must notify Dealer in writing prior to 5:00 p.m., New York City time, on the day that is at least two Scheduled Trading Days' prior to the first day of the applicable Conversion Period for such Options (the "**Notice Deadline**") of (i) the aggregate principal amount of Convertible Notes as to which such Conversion Date has occurred (including, if applicable, whether all or any portion of the Convertible Notes relating to such Options are Convertible Notes as to which additional Shares would be added to the "Conversion Rate" (as defined in the Indenture) pursuant to Section 12.03 of the Indenture (the "**Make-Whole Convertible Notes**")), (ii) the scheduled first day of the applicable Conversion Period and the scheduled Settlement Date, (iii) the Relevant Settlement Method for such Options and (iv) if the Relevant Settlement Method for such Options is not Net Share Settlement, Settlement in Shares or Settlement in Cash (each as defined below), the fixed amount of cash per Relevant Convertible

Note that Counterparty has elected to deliver to "Holders" (as defined in the Indenture) of the related Relevant Convertible Notes (the "**Specified Cash Amount**"), and such notice shall also include the information, representations, acknowledgements and agreements required pursuant to "Settlement Method Election Conditions" below; *provided* that, notwithstanding the foregoing, in the case of any Options relating to Convertible Notes surrendered for conversion in respect of which Counterparty has elected to designate a financial institution for exchange in lieu of conversion pursuant to Section 12.01(f) of the Indenture and such designation is accepted by such financial institution, such notice (and the related automatic exercise of such Options) shall be effective if given after the relevant Notice Deadline but prior to 5:00 p.m. (New York City time) on the 50th Scheduled Trading Day following the Notice Deadline, in which event the Calculation Agent shall have the right to adjust the number of Shares and/or amount of cash deliverable by Dealer with respect to such Options as appropriate to reflect the additional costs (including, but not limited to, hedging mismatches and market losses) and expenses incurred by Dealer in connection with its hedging activities (including the unwinding of any hedge position) as a result of Dealer not having received such notice on or prior to the Notice Deadline; *provided, further*, that in respect of any Options relating to Relevant Convertible Notes with a Conversion Date occurring on or after the Free Convertibility Date, (A) such notice may be given on or prior to the Expiration Date and need only specify the information required in clause (i) above (provided that any such notice given on the Expiration Date shall be given prior to 12:00 p.m., New York City time, on such date), and (B) if the Relevant Settlement Method for such Options is not Net Share Settlement with a Specified Cash Amount equal to USD 1,000, Dealer shall have received a separate notice (the "**Notice of Final Settlement Method**") in respect of all such Relevant Convertible Notes before 5:00 p.m., New York City time, on or prior to the Free Convertibility Date specifying the information required in clauses (iii) and (iv) above, as well as the information, representations, acknowledgements and agreements required pursuant to "Settlement Method Election Conditions" below; *provided further* that any "Notice of Exercise" delivered to Dealer pursuant to the Base Call Option Transaction shall be deemed to be a Notice of Exercise pursuant to this Confirmation and the terms of such Notice of Exercise shall apply, *mutadis mutandis*, to this Confirmation.

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 the Settlement Method Election Conditions have been satisfied and Counterparty shall have notified Dealer of the Relevant Settlement Method in the Notice of Exercise or Notice of Final Settlement Method, as applicable, for such Option.

Relevant Settlement Method:	In respect of any Option, subject to the Settlement Method Election Conditions: (i) if Counterparty has elected to settle its conversion obligations in respect of the related Relevant Convertible Note (A) entirely in Shares pursuant to Section 12.01(d)(i) 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 12.01(d)(iii) 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 12.01(d)(iii) 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 Relevant Convertible Note in a combination of cash and Shares pursuant to Section 12.01(d)(iii) 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 Relevant Convertible Note entirely in cash pursuant to Section 12.01(d)(ii) of the Indenture (such settlement method, **"Settlement in Cash**"), then the Relevant Settlement Method for such Option shall be Cash Settlement.
Settlement Method Election Conditions:	For any Relevant Settlement Method other than Net Share Settlement with a Specified Cash Amount equal to USD 1,000, such Relevant Settlement Method shall apply to an Option only if the Notice of Exercise or Notice of Final Settlement Method for such Option, as applicable, contains: (i) a representation that, on the date of such Notice of Exercise or Notice of Final Settlement Method, as applicable, none of Counterparty and its officers and directors is aware or in possession of any "material non-public information" (within the meaning of Section 10(b) of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), and the rules promulgated thereunder) with respect to Counterparty or the Shares; (ii) a representation that Counterparty is electing the settlement method for the related Relevant Convertible Note and such Relevant Settlement Method in good faith and not as part of a plan or scheme to evade the prohibitions of Rule 10b-5 under the Exchange Act; (iii) a representation that Counterparty has not entered into or altered any hedging transaction relating to the Shares corresponding to or offsetting the Transaction; (iv) a representation that Counterparty is not electing the settlement method for the related Relevant Convertible Note and such Relevant Settlement Method 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; and (v) an acknowledgment by Counterparty that (A) any transaction by Dealer following Counterparty's election of the settlement method for the related Relevant Convertible Note and

such Relevant Settlement Method shall be made at Dealer's sole discretion and for Dealer's own account and (B) Counterparty does not have, and shall not attempt to exercise, any influence over how, when, whether or at what price to effect such transactions, including, without limitation, the price paid or received per Share pursuant to such transactions, or whether such transactions are made on any securities exchange or privately.

Net Share Settlement: If Net Share Settlement is applicable to any Option exercised or deemed exercised hereunder, in lieu of the obligations set forth in Sections 8.1 and 9.1 of the Equity Definitions, Dealer will deliver to Counterparty, on the relevant Settlement Date for each such Option, an aggregate number of Shares and cash in lieu of fractional shares, if any, (the "**Net Share Settlement Amount**") equal to the product of (x) the Applicable Percentage and (y) the number of Shares that Counterparty would be obligated to deliver to the "Holder(s)" (as defined in the Indenture) of the Relevant Convertible Notes converted on such Conversion Date pursuant to Section 12.01(d) of the Indenture and cash in lieu of fractional shares, if any, pursuant to Section 12.01(g) of the Indenture, as if Counterparty had elected to satisfy its conversion obligation in respect of such Relevant Convertible Notes with a Specified Cash Amount equal to USD 1,000 per Relevant Convertible Note, notwithstanding any different Specified Cash Amount actually elected by Counterparty with respect to the settlement of such Relevant Convertible Notes, and determined on the basis of the applicable Conversion Period set forth opposite the caption "Conversion Period" below; *provided* that such obligation shall be determined excluding any Shares and/or cash that Counterparty is obligated to deliver to holder(s) of the Relevant Convertible Notes as a result of any adjustments to the "Conversion Rate" pursuant to Section 12.02(m) or Section 12.03 of the Indenture; and *provided further* that, with respect to any Settlement in Shares or Low Cash Combination Settlement, for any Option exercised or deemed exercised hereunder on a Conversion Date occurring on or after the Free Convertibility Date, 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 the Relevant Convertible Notes relating to such Option.

Combination Settlement: If Combination Settlement is applicable to any Option exercised or deemed exercised hereunder, in lieu of the obligations set forth in Sections 8.1 and 9.1 of the Equity Definitions, Dealer will deliver to Counterparty, on the relevant Settlement Date for each such Option:

(i) cash equal to the *product* of (A) the Applicable Percentage *and* (B) the *excess* of (x) the cash that Counterparty is obligated to deliver to the "Holder(s)" (as defined in the Indenture) of the Relevant Convertible Note converted on such Conversion Date pursuant to Section 12.01(d) of the Indenture (including cash paid in respect of fractional shares but excluding any cash paid in respect of interest) *over* (y) USD 1,000 per Relevant Convertible Note (the "**Combination Settlement Cash Amount**"); and

(ii) a number of Shares equal to the *product* of (A) the Applicable Percentage *and* (B) the number of Shares that Counterparty is obligated to deliver to the "Holder(s)" (as defined in the Indenture) of the Relevant Convertible Note converted on such Conversion Date pursuant to Section 12.01(d) of the Indenture.

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 *product* of (A) the Applicable Percentage and (B) the *excess* of (x) the cash that Counterparty is obligated to deliver to the "Holder(s)" (as defined in the Indenture) of the Relevant Convertible Note converted on such Conversion Date pursuant to Section 12.01(d) of the Indenture (including cash paid in respect of fractional shares but excluding any cash paid in respect of interest) over (y) USD 1,000 per Relevant Convertible Note.
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, delivered to the Holder of the related Relevant Convertible Note upon conversion of such Relevant Convertible Note and (B) the number of Shares, if any, delivered to the Holder of the related Relevant Convertible Note, in each case pursuant to the terms of the Indenture, upon conversion of such Relevant Convertible Note *multiplied by* the Applicable Limit Price on the settlement date for the Relevant Convertible Notes relating to such Option, *over* (ii) USD 1,000.
Applicable Limit Price:	On any day, the opening price as displayed under the heading "Op" on Bloomberg page HOS <equity> (or any successor thereto).
Trading 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, "Trading Day" means a Business Day.
Scheduled Trading Day:	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 Shares are listed or admitted for trading. If the Shares are not so listed or admitted for trading, "Scheduled Trading 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 or banks in the State of Texas are authorized or required by law or executive order to close or be closed.
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, the occurrence or existence prior to 1:00 p.m. New York City time on any Scheduled Trading 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."

Conversion Period:	For any Option and regardless of the Settlement Method applicable to such Option: (i) if the related Conversion Date occurs prior to the Free Convertibility Date, the 25 consecutive Trading Days commencing on, and including, the third Trading Day immediately following such Conversion Date; *provided* that if the Notice of Exercise for such Option specifies that Settlement in Shares or Low Cash Combination Settlement applies to the related Relevant Convertible Note, the Conversion Period shall be the 50 consecutive Trading Day period commencing on, and including, the third Trading Day immediately following such Conversion Date; (ii) if the related Conversion Date occurs on or following the Free Convertibility Date, the 25 consecutive Trading Days commencing on, and including, the 27th Scheduled Trading Day immediately prior to the "Maturity Date" (as defined in the Indenture); provided that if the Notice of Exercise or Notice of Final Settlement Method, as applicable, for such Option specifies that Settlement in Shares or Low Cash Combination Settlement applies to the related Relevant Convertible Note, the Conversion Period shall be the 50 consecutive Trading Days commencing on, and including, the 53rd Scheduled Trading Day immediately prior to the "Maturity Date" (as defined in the Indenture).
Settlement Date:	For any Option, the third Business Day immediately following the final Trading Day of the applicable Conversion Period for such Option.
Settlement Currency:	USD.
Other Applicable Provisions:	To the extent Dealer is obligated to deliver Shares hereunder, the provisions of Sections 9.4 (except that "Settlement Date" shall be as defined above, unless a Settlement Disruption Event prevents delivery of such Shares on that date), 9.8, 9.9, 9.10, 9.11 and 9.12 of the Equity Definitions shall be applicable as if "Physical Settlement" applied to the Transaction; *provided* that the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by excluding any restrictions, obligations, limitations or requirements under applicable securities laws as a result of the fact that Counterparty is the issuer of the Shares.
Restricted Certificated Shares:	Notwithstanding anything to the contrary in the Equity Definitions, Dealer may, in whole or in part, deliver any Shares required to be delivered hereunder in certificated form to Counterparty in lieu of delivery through the Clearance System. With respect to such certificated Shares, the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by deleting the remainder of the provision after the word "encumbrance" in the fourth line thereof.

Share Adjustments:

Method of Adjustment:	Calculation Agent Adjustment, which means that, notwithstanding Section 11.2(c) of the Equity Definitions, upon any adjustment to the "Conversion Rate" (as defined in the Indenture) and/or the nature of the Shares under the Convertible Notes pursuant to the Indenture (other than an increase in the "Conversion Rate" pursuant to

	Section 12.02(m) or Section 12.03 of the Indenture), the Calculation Agent will make a corresponding adjustment to any one or more of the Strike Price, the Option Entitlement and any other term relevant to the exercise, settlement, payment or other terms of the Transaction. Counterparty agrees that it will notify Dealer prior to the effectiveness of any such adjustment and, to the extent such adjustment requires an exercise of discretion by Counterparty under the terms of the Indenture, it shall use good faith efforts to consult with the Calculation Agent in order to achieve a commercially reasonable adjustment, determination or calculation (it being understood for the avoidance of doubt that notwithstanding any such consultation, Counterparty shall remain entitled to make such adjustments as permitted in accordance with the terms of the Indenture).
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 Sections 12.02(a), (b), (c), (d) and (e) of the Indenture that would result in an adjustment to the "Conversion Rate" (as defined in the Indenture) of the Convertible Notes; *provided* that in no event shall there be any adjustment hereunder as a result of an adjustment to the "Conversion Rate" pursuant to Section 12.02(m) or Section 12.03 of the Indenture.
Extraordinary Events:	
Merger Events:	Notwithstanding Section 12.1(b) of the Equity Definitions (which shall not apply for the purposes hereof), a "Merger Event" means the occurrence of any event or condition set forth in Section 12.04(a) of the Indenture.
Notice of Merger Consideration:	Upon the occurrence of a Merger Event that causes the Shares to be converted into or exchanged for more than a single type of consideration (determined based in part upon the form of election of the holders of the Shares), Counterparty shall promptly notify the Calculation Agent in writing of the types and amounts of consideration that holders of Shares have affirmatively elected to receive upon consummation of such Merger Event; *provided* that in no event shall the date of such notification be later than the date on which such Merger Event is consummated.
Consequences of Merger Events:	Notwithstanding Section 12.2 of the Equity Definitions (which shall not apply for the purposes hereof), upon the occurrence of a Merger Event, to the extent an adjustment is made under the Indenture in respect of such Merger Event, the Calculation Agent shall make an analogous adjustment in respect of any adjustment under the Indenture to any one or more of the nature of the Shares, the Strike Price, the Number of Options, the Option Entitlement and any other term relevant to the exercise, settlement, payment or other terms of the Transaction; *provided*, *however*, that such adjustment shall be made without regard to any adjustment to the "Conversion Rate" (as defined in the Indenture) for the issuance of additional shares as set forth in Section 12.02(m) or Section 12.03 of the Indenture.
Nationalization, Insolvency or Delisting:	Cancellation and Payment (Calculation Agent Determination) *provided* that, for purposes of Section 12.6(a)(iii) of the Equity Definitions, it will 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), a Delisting shall not have occurred and such exchange or quotation system shall thereafter be deemed to be the Exchange.
Additional Disruption Events:	
Change in Law:	Applicable; *provided* that Section 12.9(a)(ii) of the Equity Definitions is hereby amended by replacing the word “Shares” where it appears in clause (X) thereof with the words “Hedge Position”.
Failure to Deliver:	Not Applicable.
Insolvency Filing:	Applicable.
Hedging Disruption:	Applicable for the period commencing on the Trade Date and ending on the Effective Date; Not Applicable after the Effective Date.
Increased Cost of Hedging:	Not Applicable
Hedging Party:	Dealer or an affiliate of Dealer that is involved in the hedging of this Transaction for all applicable Additional Disruption Events. Section 13.2(b) of the Equity Definitions is hereby amended by adding the words “(or an Affiliate of such party)” following the words “by a party” in the third line thereof.
Determining Party:	Dealer for all applicable Extraordinary Events.
Acknowledgments:	
Non-Reliance:	Applicable.
Agreements and Acknowledgments Regarding Hedging Activities:	Applicable.
Additional Acknowledgments:	Applicable.

3. Calculation Agent: Dealer, whose judgments, determinations and calculations shall be made in good faith and in a commercially reasonable manner. Following any determination or calculation by the Calculation Agent hereunder, upon a request by Counterparty, the Calculation Agent 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 determination or calculation (including any assumptions used in making such determination or calculation), it being understood that the Calculation Agent shall not be obligated to disclose any proprietary models used by it for such determination or calculation.

4. Account Details:

(a) Account for payments to Counterparty:

Capital One, N.A.
New Orleans, LA
ABA 065-000-090

For credit to:

Hornbeck Offshore Services, Inc.
103 Northpark Blvd., Suite 300
Covington, LA 70433
Account 812519859

Account for delivery of Shares to Counterparty:

To be provided under separate cover by Counterparty.

(b) Account for payments to Dealer:

Bank: JPMorgan Chase Bank, N.A.
ABA#: 021000021
Acct No.: 099997979
Beneficiary: JPMorgan Chase Bank, N.A. New York
Ref: Derivatives

5. Offices: The Office of Counterparty for the Transaction is: Inapplicable, Counterparty is not a Multibranch Party. The Office of Dealer for the Transaction is: London

JPMorgan Chase Bank, National Association
London Branch
P.O. Box 161
60 Victoria Embankment
London EC4Y 0JP
England

6. Notices: For purposes of this Confirmation:

(a) Address for notices or communications to Counterparty:

Hornbeck Offshore Services, Inc.
103 Northpark Boulevard, Suite 300
Covington, Louisiana, 70433
Attention: Sam Giberga, General Counsel
Facsimile No.: (985) 727-2006

(b) Address for notices or communications to Dealer:

EDG Marketing Support
Email: EDG_OTC_HEDGING_MS@jpmorgan.com
Fax: 1-866-886-4506

With a copy to:

Jason M. Wood
Managing Director
Equity-Linked & Derivative Capital Markets
560 Mission St.
San Francisco CA
Telephone No: 415-315-8783
Facsimile No: 415-226-0616
Email: jason.m.wood@jpmorgan.com

7. Representations and Warranties of Counterparty

(A) Counterparty hereby represents and warrants to Dealer that:

(a) It is an "eligible contract participant" (as such term is defined in the Commodity Exchange Act, as amended (the "**CEA**"));

(b) Counterparty is not, on the date hereof, in possession of any material non-public information with respect to Counterparty;

(c) (x) On any day during any Conversion Period, neither Counterparty nor any "affiliate" or "affiliated purchaser" (each as defined in Rule 10b-18 of the Exchange Act ("**Rule 10b-18**")) shall directly or indirectly (including, without limitation, by means of any cash-settled or other derivative instrument) purchase, offer to purchase, place any bid or limit order that would effect a purchase of, or commence any tender offer relating to, any Shares (or an equivalent interest, including a unit of beneficial interest in a trust or limited partnership or a depository share) or any security convertible into or exchangeable or exercisable for Shares, except through Dealer;

(y) Counterparty agrees that it (A) will not, on any day during any Conversion Period, make, or permit to be made, any public announcement (as defined in Rule 165(f) under the Securities Act of 1933, as amended (the "**Securities Act**")) of any Merger Transaction or potential Merger Transaction unless such public announcement is made prior to the opening or after the close of the regular trading session on the Exchange for the Shares; (B) shall promptly (but in any event prior to the next opening of the regular trading session on the Exchange) notify Dealer following any such announcement that such announcement has been made; and (C) shall promptly (but in any event prior to the next opening of the regular trading session on the Exchange) provide Dealer with written notice specifying (i) Counterparty's average daily Rule 10b-18 Purchases (as defined in Rule 10b-18) during the three full calendar months immediately preceding the announcement date that were not effected through Dealer or its affiliates and (ii) the number of Shares purchased pursuant to the proviso in Rule 10b-18(b)(4) under the Exchange Act for the three full calendar months preceding the announcement date. Such written notice shall be deemed to be a certification by Counterparty to Dealer that such information is true and correct. In addition, Counterparty shall promptly notify Dealer of the earlier to occur of the completion of such transaction and the completion of the vote by target shareholders. "**Merger Transaction**" means any merger, acquisition or similar transaction involving a recapitalization as contemplated by Rule 10b-18(a)(13)(iv) under the Exchange Act.

(d) Without limiting the generality of Section 13.1 of the Equity Definitions, Counterparty acknowledges that Dealer is not making any representations or warranties 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, 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 under FASB's Liabilities & Equity Project;

(e) Counterparty has not received notice that it is the subject of a tender offer made under Section 14(d)(1) of the Exchange Act and has not commenced any tender offer that would be subject to Rule 13e-4 under the Exchange Act;

(f) Prior to or on the Trade Date, Counterparty shall deliver to Dealer a resolution of Counterparty's board of directors authorizing the Transaction;

(g) Counterparty is not, and after giving effect to 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;

(h) On the Trade Date (A) the assets of Counterparty at their fair valuation exceed the liabilities of Counterparty, including contingent liabilities, (B) the capital of Counterparty is adequate to conduct the business of Counterparty and (C) Counterparty has the ability to pay its debts and obligations as such debts mature and does not intend to, or does not believe that it will, incur debt beyond its ability to pay as such debts mature;

(i) Counterparty understands that no obligations of Dealer to it hereunder will be entitled to the benefit of deposit insurance or securities investor protection and that such obligations will not be guaranteed by any affiliate of Dealer (except as expressly set forth herein) or any governmental agency;

(j) The Convertible Notes have been duly authorized by Counterparty, and, when issued and delivered as provided in the Purchase Agreement and duly authenticated pursuant to the Indenture (assuming due authentication of the Convertible Notes by the trustee) will be duly executed, authenticated, issued and delivered and will constitute valid and legally binding obligations of Counterparty entitled to the benefits provided by the Indenture; and the Convertible Notes will conform, in all material respects, to the descriptions thereof in the Offering Memorandum;

(k) The Indenture has been duly authorized, executed and delivered by Counterparty and the guarantors named therein, and (assuming the authorization, execution and delivery by the trustee), constitutes a valid and legally binding instrument of Counterparty, enforceable against Counterparty in accordance with its terms, subject as to enforcement, to bankruptcy, insolvency, fraudulent transfer, fraudulent conveyance, moratorium, reorganization and laws of general applicability relating to or affecting creditors' rights and general equity principles (regardless of whether enforceability is considered in a proceeding in equity or at law); and the Indenture conforms, in all material respects, to the description thereof in the Offering Memorandum;

(l) Upon issuance and delivery of the Convertible Notes in accordance with the Purchase Agreement and the Indenture, the Convertible Notes will be convertible at the option of the holder thereof into Shares, cash or a combination of cash and Shares, if applicable, in accordance with the terms of the Convertible Notes; the Shares reserved for issuance upon conversion of the Convertible Notes have been duly authorized and reserved and, when issued upon conversion of the Convertible Notes in accordance with the terms of the Convertible Notes, will be validly issued, fully paid and non-assessable, and the issuance of the Shares will not be subject to any preemptive or similar rights;

(m) Neither Counterparty nor any controlled affiliate (as defined in Rule 501(b) of Regulation D of the Securities Act of 1933, as amended (the "**Securities Act**")) of Counterparty has directly, or through any agent, sold, offered for sale, solicited offers to buy or otherwise negotiated in respect of, any security (as defined in the Securities Act) which is or will be integrated with the sale of the Convertible Notes in a manner that would require the registration under the Securities Act of the offering contemplated by the Offering Memorandum;

(n) None of Counterparty, any controlled affiliate of Counterparty or any person acting on its or their behalf (other than the Initial Purchasers for whom we make no representation) has offered or sold the Convertible Notes by means of any general solicitation or general advertising within the meaning of Rule 502(c) under the Securities Act;

(o) The Convertible Notes satisfy the requirements set forth in Rule 144A(d)(3) under the Securities Act;

(p) The issue and sale of the Convertible Notes, the issuance by Counterparty of the Shares upon conversion of the Convertible Notes and the compliance by Counterparty with all of the provisions of the Convertible Notes, the Indenture, the Purchase Agreement and this Confirmation and the consummation of the transactions herein and therein contemplated (A) will not conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, any material indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Counterparty or any of its subsidiaries is a party or by which Counterparty or any of its subsidiaries is bound or to which any of the property or assets of Counterparty or any of its subsidiaries is subject, except such conflict, breach or violation as would not have a Material Adverse Effect, (B) will not result in any violation of the provisions of the certificate of incorporation or bylaws of Counterparty, and (C) will not result in the violation of any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over Counterparty or any of its subsidiaries or any of its properties, except such violations as would not have a Material Adverse Effect; and except as disclosed in the Offering Memorandum, to Counterparty's knowledge, no consent, approval, authorization, order, registration or qualification of or with any such court or governmental agency or body is required for the issue and sale of the Convertible Notes or the consummation by Counterparty of the transactions contemplated by the Purchase Agreement or the Indenture,

except for the filing and effectiveness of a registration statement by Counterparty with the Commission pursuant to the Securities Act, the qualification of the Indenture under the Trust Indenture Act of 1939 ("**Trust Indenture Act**") in relation to the Shares and such consents, approvals, authorizations, registrations or qualifications as may be required under state Securities or Blue Sky laws in connection with the purchase and distribution of the Convertible Notes by the Initial Purchasers in the manner contemplated by the Purchase Agreement and Offering Memorandum and except for such consents the failure to obtain would not have a Material Adverse Effect. "**Material Adverse Effect**" means any change in the capital stock, increase in long-term debt or any decreases in consolidated net current assets or stockholders' equity of Counterparty or any of its subsidiaries or any material adverse change, or any development involving a prospective material adverse change, in or affecting the general affairs, management, current or future consolidated financial position, stockholders' equity or results of operations of Counterparty and its subsidiaries taken as a whole;

(q) Counterparty is subject to Section 13 or 15(d) of the Exchange Act;

(r) Prior to the Trade Date, Counterparty has not taken any action which is designed to or which has constituted or which might have been expected to cause or result in stabilization or manipulation of the price of any security of Counterparty in connection with the offering of the Convertible Notes;

(s) None of Counterparty or any of its subsidiaries is in violation of its certificate of incorporation or certificate of formation, or its bylaws or limited liability company agreement (or other organizational documents), or in default in the performance or observance of any material obligation, covenant or condition contained in any material indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which it is a party or by which it or any of its properties may be bound, other than such defaults that individually or in the aggregate would not have a Material Adverse Effect;

(t) Other than as set forth in the Offering Memorandum, there are no legal or governmental proceedings pending to which Counterparty or any of its subsidiaries is a party or of which any property of Counterparty or any of its subsidiaries is the subject which, if determined adversely to Counterparty or any of its subsidiaries, would individually or in the aggregate have a Material Adverse Effect; and, to the best of Counterparty's knowledge, no such proceedings are threatened or contemplated by governmental authorities or threatened by others.

(u) (x) Counterparty is acting for its own account, and it has made its own independent decisions to enter into the Transaction and as to whether the Transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary, (y) Counterparty is not relying on any communication (written or oral) of Dealer or any of its affiliates as investment advice or as a recommendation to enter into the Transaction (it being understood that information and explanations related to the terms and conditions of the Transaction shall not be considered investment advice or a recommendation to enter into the Transaction) and (z) no communication (written or oral) received from Dealer or any of its affiliates shall be deemed to be an assurance or guarantee as to the expected results of the Transaction; and

(v) The assets used in the Transaction (1) are not assets of any "plan" (as such term is defined in Section 4975 of the United States 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.

(w) The 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 $50 million as of the date hereof.

(B) Each party makes to the other the representations and warranties set forth in Sections 3(a) through (f) of the Agreement with respect to the Agreement as supplemented by this Confirmation; *provided* that Dealer makes the representation and warranty set forth in Section 3(e) and Counterparty makes the representation and

warranty set forth in Section 3(f). In addition, each of Dealer and Counterparty acknowledges that the offer and sale of the Transaction to Counterparty is intended to be exempt from registration under the Securities Act, by virtue of Section 4(2) thereof. Accordingly, Counterparty represents and warrants to Dealer that (i) it has the financial ability to bear the economic risk of its investment in the Transaction and is able to bear a total loss of its investment and its investments in and liabilities in respect of the Transaction, which it understands are not readily marketable, are not disproportionate to its net worth, and it is able to bear any loss in connection with the Transaction, including the loss of its entire investment in the Transaction, (ii) it is an "accredited investor" as that term is defined in Regulation D as promulgated under the Securities Act, (iii) it is entering into the Transaction for its own account and without a view to the distribution or resale thereof, (iv) the assignment, transfer or other disposition of the Transaction has not been and will not be registered under the Securities Act and is restricted under this Confirmation, the Securities Act and state securities laws, and (v) its financial condition is such that it has no need for liquidity with respect to its investment in the Transaction and no need to dispose of any portion thereof to satisfy any existing or contemplated undertaking or indebtedness and is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of the Transaction.

8. Other Provisions:

(a) *Opinions*. Counterparty shall deliver to Dealer an opinion of counsel, dated as of the Trade Date, with respect to the matters set forth in Section 3(a) of the Agreement and Section 7(A)(g) of this Confirmation; *provided* that such opinion may contain customary exceptions and qualifications, including, without limitation, exceptions and qualifications relating to indemnification provisions.

(b) *Repurchase Notices*. Counterparty shall, on any day on which Counterparty effects any repurchase of Shares, give Dealer a written notice of such repurchase (a "**Repurchase Notice**") on such day if following such repurchase the Notice Percentage as determined on such day is (i) greater than 4.5% and (ii) greater by 0.5% than the Notice Percentage included in the immediately preceding Repurchase Notice (or, in the case of the first such Repurchase Notice, greater than the Notice Percentage as of the date hereof). The "**Notice Percentage**" as of any day is the fraction, expressed as a percentage, the numerator of which is the product of the Number of Options and the Option Entitlement and the denominator of which is the number of Shares outstanding on such day.

(c) *Regulation M*. Counterparty is not on the date hereof 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 engage in any such distribution (x) until the second Scheduled Trading Day immediately following the Trade Date and (y)(A) on any day during any Conversion Period, the Shares or securities that are convertible into, or exchangeable or exercisable for Shares, are not, and shall not be, subject to a "restricted period," as defined in Regulation M and (B) Counterparty shall not engage in any "distribution," as such term is defined in Regulation M, other than a distribution meeting the requirements of the exceptions set forth in sections 101(b)(10) and 102(b)(7) of Regulation M, until the second Exchange Business Day immediately following the last day in such Conversion Period.

(d) *No Manipulation*. Counterparty is not entering into this 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) *Number of Repurchased Shares*. Counterparty represents that it could have purchased Shares, in an amount equal to the product of the Number of Options and the Option Entitlement, on the Exchange or otherwise, in compliance with applicable law, its organizational documents and any orders, decrees, contractual agreements binding upon Counterparty, on the Trade Date.

(f) *Early Unwind*. In the event the sale of the additional Convertible Notes is not consummated with the initial purchasers for any reason by the close of business in New York on August 13, 2012 (or such later date as agreed upon by the parties) (August 13, 2012 or such later date as agreed upon being the "**Early Unwind Date**"), this 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; *provided* that, Counterparty shall reimburse Dealer for reasonable costs or expenses (including market losses) relating to the unwinding of its, or the Hedging Party's, Hedging Activities in connection with the Transaction (including any loss or cost incurred as a result of its terminating, liquidating, obtaining or reestablishing any hedge or related trading position) unless the sale of Convertible Bonds is not consummated with the initial purchasers as a result of breach of the Purchase Agreement by the initial purchasers (in which case no such reimbursement will be payable). The amount of any such reimbursement shall be determined by Dealer in good faith and in a commercially reasonable manner. Dealer shall notify Counterparty of such amount and Counterparty shall deliver Share Termination Delivery Property or, at the election of Counterparty, pay such amount in immediately available funds on the Early Unwind Date. Dealer and Counterparty represent and acknowledge to the other that, subject to the proviso included in this paragraph, upon an Early Unwind, all obligations with respect to the Transaction shall be deemed fully and finally discharged. Notwithstanding anything herein or in the Agreement to the contrary, in no event shall Counterparty be required to deliver an aggregate number of Shares in connection with the Early Unwind in excess of 297,149 Shares, subject to adjustment from time to time as a result of actions of Counterparty or events within Counterparty's control and in accordance with the provisions of this Confirmation and the Equity Definitions.

(g) *Transfer or Assignment*. Neither party may transfer any of its rights or obligations hereunder and under the Transaction and Agreement without the prior written consent of the non-transferring party (such consent not to be unreasonably withheld); *provided* that, subject to applicable law, Dealer may transfer or assign without any consent of Counterparty its rights and obligations hereunder, in whole or in part, to any of its affiliates of credit quality at least equivalent to that of Dealer as of the Trade Date or to any other of its affiliates *provided* that Counterparty shall receive a full guaranty of such affiliate's obligations from Dealer in form and substance reasonably satisfactory to Counterparty if (i) an Event of Default, Potential Event of Default or Termination Event will not occur as a result of such transfer or assignment and (ii) as a result of such transfer or assignment, Counterparty will not be required to pay the transferee on any payment date an amount under Section 2(d)(i)(4) of the Agreement greater than an amount that Counterparty would have been required to pay to Dealer in the absence of such transfer or assignment. Except for the transfer or assignment contemplated in the proviso to the first sentence of this paragraph 8(g), in the case of a transfer or assignment by Counterparty or Dealer of its rights and obligations hereunder and under the Agreement, in whole or in part (any Options so transferred or assigned, the "**Transfer Options**"), to any party, withholding of consent by the other party (the "**Remaining Party**") shall not be considered unreasonable if such transfer or assignment does not meet the following reasonable conditions that the Remaining Party may impose: (i) with respect to any Transfer Options, Counterparty shall not be released from its notice and indemnification obligations pursuant to paragraph 8(b) ("Repurchase Notices") or any obligations under paragraph 2 regarding Extraordinary Events or paragraph 8(m) ("Registration") of this Confirmation; (ii) any Transfer Options shall only be transferred or assigned to a third party that is a U.S. person (as defined in the Internal Revenue Code of 1986, as amended); (iii) such transfer or assignment shall be effected on terms, including any reasonable undertakings by such transferee (including, but not limited to, undertakings with respect to compliance with applicable securities laws in a manner that, in the reasonable judgment of the Remaining Party, will not expose the Remaining Party 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 transferee and the transferor as are reasonably requested and reasonably satisfactory to the Remaining Party; (iv) the Remaining Party will not, as a result of such transfer or assignment, be required to pay the transferee on any payment date an amount under Section 2(d)(i)(4) of the Agreement greater than an amount that the Remaining Party would have been required to pay to the transferor in the absence of such transfer or assignment; (v) an Event of Default, Potential Event of Default or Termination Event will not occur as a result of such transfer or assignment; (vi) without limiting the generality of clause (ii), the transferor shall have caused the transferee to make such Payee Tax Representations and to provide such tax documentation as may be reasonably requested by the Remaining Party to permit the Remaining Party to determine that results described in clauses (iv) and (v) will not occur upon or after such transfer or assignment; and (vii) the transferor shall be responsible for all reasonable costs and expenses, including reasonable counsel fees, incurred by the Remaining Party in connection with such transfer or assignment.

Notwithstanding the foregoing, at any time at which a transaction proposed to be entered into by Dealer would cause the Articles Ownership Percentage to exceed 4.9%, unless Counterparty provides an acknowledgment to Dealer to the effect that the Shares owned or controlled by Dealer or any of its affiliates will not be deemed as owned or controlled by an "Alien" (as defined in Article Twelve Section 6 of Counterparty's Certificate of Incorporation), Dealer may (or shall, if requested by Counterparty) transfer or assign to a third party such portion of the Transaction that would otherwise cause the Articles Ownership Percentage to exceed 4.9% (it being understood and agreed that Dealer would make such a transfer or assignment to (a) one of its U.S. affiliates, if, in Counterparty's view, such a transfer or assignment would result in the Shares owned or controlled by such U.S. affiliates not being owned or controlled by an "Alien" for purposes of Article Twelve of Counterparty's Certificate of Incorporation) or (b) unless otherwise consented by Counterparty, to a third party who is not an "Alien" for purposes of Article Twelve of Counterparty's Certificate of Incorporation, if the transfer or assignment would otherwise result in such Shares deemed owned or controlled by an "Alien" for purposes of Article Twelve of Counterparty's Certificate of Incorporation); *provided further* that if Dealer is unable to effect a transfer or assignment to a third party after its commercially reasonable efforts on pricing terms reasonably acceptable to Dealer (or to one of its U.S. affiliates, if, in Counterparty's view, such a transfer or assignment would result in the Shares owned or controlled by such U.S. affiliates not being owned or controlled by an "Alien" for purposes of Article Twelve of Counterparty's Articles of Incorporation) such that the Articles Ownership Percentage does not exceed 4.9%, Dealer may designate any Scheduled Trading Day as an Early Termination Date with respect to a portion (the "**Articles Terminated Portion**") of the Transaction, such that the Articles Ownership Percentage following such partial termination will be equal to 4.9%.

Notwithstanding the foregoing, at any time at which (1) the Option Equity Percentage exceeds 9.0% or (2) Dealer, Dealer Group (as defined below) or any person whose ownership position would be aggregated with that of Dealer or Dealer Group (Dealer, Dealer Group or any such person, a "**Dealer Person**") under any relevant state corporate law or any state or federal bank holding company or banking laws, or other federal, state or local laws, regulations or regulatory orders applicable to ownership of Shares ("**Applicable Laws**"), owns, beneficially owns, constructively owns, controls, holds the power to vote or otherwise meets a relevant definition of ownership in excess of a number of Shares equal to (x) the number of Shares that, in the good faith determination of the relevant Dealer Person, would give rise to materially burdensome reporting or registration obligations or other requirements (including obtaining prior approval by a state or federal regulator) of a Dealer Person under Applicable Laws (including, without limitation, "interested stockholder" or "acquiring person" status under Section 203 of the Delaware General Corporation Law, but excluding any report or filing required pursuant to Section 13 of the Exchange Act and the rules promulgated thereunder) and with respect to which such requirements have not been met or the relevant approval has not been received *minus* (y) 1.0% of the number of Shares outstanding on the date of determination (either such condition described in clause (1) or (2), an "**Excess Ownership Position**") and Dealer is unable, after commercially reasonable efforts, to eliminate such Excess Ownership Position or effect a transfer or assignment to a third party with a rating (or whose guarantor has a rating) for its long term, unsecured and unsubordinated indebtedness at least equal to that of Dealer as of the Trade Date on pricing terms and within a time period reasonably acceptable to it of all or a portion of the Transaction such that an Excess Ownership Position no longer exists, Dealer may designate any Scheduled Trading Day as an Early Termination Date with respect to a portion (the "**Reporting Terminated Portion**") of the Transaction, such that an Excess Ownership Position no longer exists.

In the event that Dealer so designates an Early Termination Date with respect to an Articles Terminated Portion or a Reporting Terminated Portion, a payment shall be made pursuant to Section 6 of the Agreement as if (i) an Early Termination Date had been designated in respect of a Transaction having terms identical to this Transaction and a Number of Options equal to the Articles Terminated Portion or the Reporting Terminated Portion, as the case may be, (ii) Counterparty shall be the sole Affected Party with respect to such partial termination and (iii) such Transaction shall be the only Terminated Transaction (and, for the avoidance of doubt, the provisions of paragraph 8(k) shall apply to any amount that is payable by Dealer to Counterparty pursuant to this sentence).

The "**Articles Ownership 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 its affiliates "own or control" (within the meaning of Article 12 Section 2 of Counterparty's Certificate of Incorporation) on such day, and (B) the denominator of which is the number of Shares outstanding on such day.

The "**Option Equity Percentage**" as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the sum of (i) the number of Shares that Dealer and any of its affiliates subject to aggregation with Dealer, for purposes of the "beneficial ownership" test under Section 13 of the Exchange Act, and all persons who may form a "group" (within the meaning of Rule 13d-5(b)(1) under the Exchange Act) with Dealer ("**Dealer Group**") "beneficially owns" (within the meaning of Section 13 of the Exchange Act) on such day, other than any Shares so owned as a hedge of the Transaction, and (ii) the product of the Number of Options and the Option Entitlement and (B) the denominator of which is the number of Shares outstanding on such day. For purposes of this Section 8(g), the term "Dealer" shall include any of the Dealer's permitted successors or assigns.

(h) *Staggered Settlement*. If upon advice of counsel with respect to applicable legal and regulatory requirements, including any requirements relating to Dealer's, or the Hedging Party's, Hedge Activities hereunder, Dealer reasonably determines that it would not be advisable to deliver, or to acquire Shares to deliver, any or all of the Shares to be delivered by Dealer on the 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 (each of which will be on or prior to 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) if the Settlement terms set forth above were to apply on the Nominal Settlement Date, then the Settlement terms will apply on each Staggered Settlement Date, except that the Shares to be delivered pursuant to such terms will be allocated among such Staggered Settlement Dates as specified by Dealer in the notice referred to in clause (i) above.

(i) *Role of Agent*. Each party agrees and acknowledges that (i) J.P. Morgan Securities LLC, an affiliate of JPMorgan ("**JPMS**"), has acted solely as agent and not as principal with respect to the Transaction and (ii) JPMS has no obligation or liability, by way of guaranty, endorsement or otherwise, in any manner in respect of the Transaction (including, if applicable, in respect of the settlement thereof). Each party agrees it will look solely to the other party (or any guarantor in respect thereof) for performance of such other party's obligations under the Transaction.

(j) *No Collateral or Setoff*. Notwithstanding any provision of the Agreement or any other agreement between the parties, the obligations of Dealer hereunder are not secured by any collateral. In addition obligations under the Transaction shall not be netted, recouped or set off (including pursuant to Section 6 of the Agreement) against any other obligations of the parties, whether arising under the Agreement, this Confirmation, under any other agreement between the parties hereto, by operation of law or otherwise, and no other obligations of the parties shall be netted, recouped or set off (including pursuant to Section 6 of the Agreement) against obligations under the Transaction, whether arising under the Agreement, this Confirmation, under any other agreement between the parties hereto, by operation of law or otherwise, and each party hereby waives any such right of setoff, netting or recoupment; *provided* that both parties agree that subparagraph (ii) of Section 2(c) of the Agreement shall apply to the Transaction.

(k) *Alternative Calculations and Payment on Early Termination and on Certain Extraordinary Events*. If in respect of this Transaction, an amount is payable by Dealer to Counterparty (i) pursuant to Section 12.2 of the Equity Definitions and "Consequences of Merger Events" above, or Sections 12.3, 12.6, 12.7 or 12.9 of the Equity Definitions, (ii) pursuant to Section 6(d)(ii) of the Agreement or (iii) pursuant to "Early Unwind" above (each, a "**Payment Obligation**"), Dealer shall satisfy any such Payment Obligation by the Share Termination Alternative (as defined below) unless Counterparty elects for Dealer to satisfy such Payment Obligation by delivery of cash or in the event of a Nationalization, Insolvency or a Merger Event, in each case, in which the consideration to be paid to holders of Shares consists solely of cash, or 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)(i), (ii), (iii), (iv), (v) or (vi) of the Agreement in each case that resulted from an event or events outside Counterparty's control, in which case the provisions of Sections 12.2, 12.3, 12.6, 12.7 or 12.9 of the Equity Definitions or Section 6(d)(ii) of the Agreement, as the case may be, shall apply in lieu of the provisions set forth in this paragraph 8(k). Counterparty shall give irrevocable telephonic notice to Dealer of any such selection, confirmed in writing within one Currency Business Day, no later than 12:00 p.m. New York local time on the Merger Date, the Announcement Date (in the case of Nationalization or Insolvency), the Early Termination Date or date of cancellation, as applicable; where such notice shall include a representation and warranty from Counterparty that it is not, as of the date of the telephonic notice and the date of such written notice, aware of any "material non-public information" (within the meaning of Section 10(b) of the Exchange Act and the rules promulgated thereunder) concerning itself or the Shares. In calculating any amounts under Section 6(e) of the Agreement, notwithstanding anything to the contrary in the Agreement, (1) separate amounts shall be calculated as set forth in Section 6(e) with respect to (i) this Transaction and (ii) all other Transactions, and (2) such separate amounts shall be payable pursuant to Section 6(d)(ii) of the Agreement.

Share Termination Alternative:	Applicable, if elected as per above, and means that Dealer shall deliver to Counterparty the Share Termination Delivery Property on the date when the Payment Obligation would otherwise be due pursuant to "Consequences of Merger Events" above or Section 12.7 or 12.9 of the Equity Definitions or Section 6(d)(ii) and 6(e) of the Agreement, as applicable (the "Share Termination Payment Date"), 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 on the date such Share Termination Delivery Units are to be delivered as Share Termination Delivery Property, 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.
Share Termination Delivery Unit:	In the case of a Termination Event, Event of Default, Delisting, one Share or, in the case of an Insolvency, Nationalization or Merger Event, one Share or a unit consisting of the number or amount of each type of 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 Insolvency, Nationalization or Merger Event, as applicable. If such Insolvency, Nationalization or Merger Event involves a choice of consideration to be received by holders, such holder shall be deemed to have elected to receive the maximum possible amount of cash.
Failure to Deliver:	Applicable
Other applicable provisions:	If this Transaction is to be Share Termination Settled, the provisions of Sections 9.1(c), 9.8, 9.9, 9.11, 9.12 and 10.5 (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 this Transaction means that Share Termination Alternative is applicable to this Transaction.

(l) *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 this 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 this Transaction, as applicable, by, among other things, the mutual waivers and certifications provided herein.

(m) *Registration*. Counterparty hereby agrees that if, in the good faith and 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 this Transaction cannot be sold in the public market by Dealer without registration under 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 enter into an agreement substantially similar in underwriting agreements customary for registered secondary offerings of a substantially similar size, in form and substance reasonably satisfactory to Dealer (*provided however*, that if Dealer, in its 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 Section shall apply at the election of Counterparty); (ii) in order to allow Dealer to sell the Hedge Shares in a private placement, enter into a private placement agreement substantially similar to private placement purchase agreements customary for private placements of equity offerings of a substantially similar size, in form and substance reasonably satisfactory to Dealer (in which case, the Calculation Agent shall make any adjustments to the terms of this 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 closing price on such Exchange Business Days, and in the amounts, reasonably requested by Dealer.

(n) *Tax Disclosure*. Effective from the date of commencement of discussions concerning the Transaction, each party and each of their respective 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) relating to such tax treatment and tax structure.

(o) *Status of Claims in Bankruptcy*. Dealer acknowledges and agrees that this Confirmation is not intended to convey to Dealer rights with respect to the Transaction that are senior to the claims of common stockholders in any U.S. 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.

(p) *Securities Contract*. Each of Dealer and Counterparty agrees and acknowledges that Dealer is one or more of a "financial institution" and "financial participant" within the meaning of sections 101(22) and 101(22A) of Title 11 of the United States Code (the "**Bankruptcy Code**"). The parties further agree and acknowledge (A) that this Confirmation is 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 is a "settlement payment" (as such term is defined in Section 741(8) of the Bankruptcy Code) or a "transfer" within the meaning of section 546 of the Bankruptcy Code and (B) that is the parties are entitled to the protections afforded by, among other sections, section 362(b)(6), 362(b)(27), 362(o), 546(e), 546(j), 548(d)(2), 555 and 561 of the Bankruptcy Code.

(q) *Additional Provisions*. Counterparty covenants and agrees that, as promptly as practicable following the public announcement of any consolidation, merger and binding share exchange to which Counterparty is a party, or any sale of all or substantially all of Counterparty's assets, in each case pursuant to which the Shares will be converted into cash, securities or other property, Counterparty shall notify Dealer in writing of the types and amounts of consideration that holders of Shares have elected to receive upon consummation of such transaction or 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 transaction or event is consummated.

(r) *Method of Delivery.* 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 to 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.

(s) Reserved.

(t) *Additional Termination Events*.

(i) The occurrence of an event of default with respect to Counterparty under the terms of the Convertible Notes as set forth in Section 7.01 of the Indenture that results in an acceleration of the Convertible Notes pursuant to the terms of the Indenture shall be 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.

(ii) The occurrence of an Amendment Event shall be 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. "**Amendment Event**" means that Counterparty amends, modifies, supplements or obtains a waiver in respect of any term of the Indenture or the Convertible Notes governing the principal amount, coupon, maturity, repurchase obligation of Counterparty, redemption right of Counterparty, any term relating to conversion of the Convertible Notes (including changes to the conversion price, conversion settlement dates or conversion conditions) that may adversely affect the rights or obligations of Dealer hereunder, or any term that would require consent of the holders of not less than 100% of the principal amount of the Convertible Notes to amend, in each case without the prior consent of Dealer, such consent not to be unreasonably withheld.

(iii) If any Repurchase Event occurs, (A) Counterparty shall notify Dealer as promptly as practicable of such event, (B) such an event shall be an Additional Termination Event, (C) an Early Termination Date shall be deemed to occur automatically on the date of such notice with respect to a portion of the Transaction relating to a number of Options equal to (1) the number of Convertible Securities in denominations of USD 1,000 principal amount so repurchased, exchanged or repaid in connection with such Repurchase Event (the "Affected Portion") less (2) the number of Options constituting an Affected Portion with respect to such Repurchase Event under Section 8(t)(iii) of the Base Call Option Transaction Confirmation, but payment of the Close-out Amount in respect of such Early Termination Date shall not be due until one Settlement Cycle following the date on which Dealer delivered the statement provided pursuant to Section 6(d)(i) of the Agreement, and (D) Counterparty shall be deemed the sole Affected Party and the Affected Portion shall be deemed the sole Affected Transaction.

"**Repurchase Event**" means the occurrence of any of the following:

(1) any Convertible Securities are repurchased (other than as a result of a fundamental change, as defined in the Indenture) by Counterparty or any of its subsidiaries;

(2) any Convertible Securities are delivered to Counterparty in exchange for delivery of any property or assets of Counterparty or any of its subsidiaries (howsoever described);

(3) any principal of any of the Convertible Securities is repaid prior to the final maturity date of the Convertible Securities (whether following acceleration of the Convertible Notes or otherwise); or

(4) any Convertible Securities are exchanged by or for the benefit of the holders thereof for any other securities of Counterparty or any of its affiliates (or any other property, or any combination thereof) pursuant to any exchange offer or similar transaction.

For the avoidance of doubt, in the case of each of clauses (1) through (4), conversions of the Convertible Securities pursuant to the terms of the Indenture shall not constitute a Repurchase Event.

(u) *Additional ISDA Schedule Terms*.

(i) "**Specified Entity**" means in relation to each of Dealer and Counterparty for purposes of Sections 5(a)(v), 5(a)(vi), 5(a)(vii) and 5(b)(v) of the Agreement, not applicable.

(ii) "**Specified Transaction**" will have the meaning specified in Section 14 of the Agreement.

(iii) The "Cross-Default" provisions of Section 5(a)(vi) of the Agreement shall not apply to either party.

(iv) **Automatic Early Termination**. The "Automatic Early Termination" provision of Section 6(a) of the Agreement will not apply to Dealer and will not apply to Counterparty.

(v) "**Termination Currency**" means United States Dollars ("**USD**").

(vi) **Payment by Counterparty**. In the event that (i) an Early Termination Date occurs or is designated with respect to the Transaction as a result of an Event of Default (other than an Event of Default arising under Section 5(a)(ii) or 5(a)(iv) of the Agreement) or a Termination Event 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.

(vii) **Consent to Recording**. Each party (i) consents to the monitoring or recording, at any time and from time to time, by the other party of any and all communications between officers or employees of the parties, (ii) waives any further notice of such monitoring or recording, and (iii) agrees to notify (and, if required by law, obtain the consent of) its officers and employees with respect to such monitoring or recording. Any such recording may be submitted in evidence to any court or in any Proceeding for the purpose of establishing any matters pertinent to this Transaction.

(viii) **Severability**. In the event any one or more of the provisions contained in this Confirmation or the Agreement shall be held illegal, invalid or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby.

(ix) **Fully Paid Transactions**. The condition precedent in Section 2(a)(iii)(1) of the Agreement shall not apply to a payment and delivery owing by a party if the other party shall have satisfied in full all its payment or delivery obligations under Section 2(a)(i) of the Agreement and shall at the relevant time have no future payment or delivery obligations, whether absolute or contingent, under Section 2(a)(i) of the Agreement.

(x) **Part 2(b) of the ISDA Schedule – Payee Representation:**

For the purpose of Section 3(f) of this Agreement, Counterparty makes the following representation to Dealer:

Counterparty is a corporation established under the laws of the State of Delaware and is a U.S. person (as that term is defined in Section 7701(a)(30) of the Code).

For the purpose of Section 3(f) of this Agreement, Dealer makes the following representation to Counterparty:

Dealer is a national banking association organized or formed under the laws of the United States and is a United States resident for federal income tax purposes.

Please confirm that the foregoing correctly sets forth the terms of the Transaction by signing in the space provided below and returning to Dealer a facsimile of the fully-executed Confirmation to Dealer at 1-866-886-4506 (Attention: EDG Marketing Support). Originals shall be provided for your execution upon your request.

Very truly yours,

J.P. MORGAN SECURITIES LLC,
as agent for JPMorgan Chase Bank, National Association

By: /s/ Jason Wood
Name: Jason Wood
Title: Managing Director

Accepted and confirmed as of the Trade Date:

HORNBECK OFFSHORE SERVICES, INC.

By: /s/ James O. Harp, Jr.
Name: James O. Harp, Jr.
Title: Executive Vice President and CFO

SCHEDULE A

For purposes of this Transaction, the following terms shall have the following values/meanings:

1. Strike Price: USD 53.8451.
2. Premium: USD 3,895,040.00.

Exhibit 4.7

Execution version

Wells Fargo Securities, LLC
as agent of Wells Fargo Bank, NA
375 Park Avenue
New York, NY 10152
Facsimile: (212) 214-5913
Telephone: (212) 214-6101

August 8, 2012

To: Hornbeck Offshore Services, Inc.
103 Northpark Boulevard, Suite 300
Covington, Louisiana, 70433
Attention: Sam Giberga, General Counsel
Facsimile No.: (985) 727-2006

Re: **Additional Call Option Transaction**

The purpose of this letter agreement (this "**Confirmation**") is to confirm the terms and conditions of the Transaction entered into between Wells Fargo Bank, National Association ("**Dealer**"), through its agent Wells Fargo Securities, LLC (the "**Agent**"), and Hornbeck Offshore Services, Inc. ("**Counterparty**") on the Trade Date specified below (the "**Transaction**"). This Confirmation constitutes a "Confirmation" as referred to in the Agreement specified below.

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 have the meanings assigned to them in the Indenture to be dated on or about August 13, 2012 between Counterparty and Wells Fargo Bank, National Association, as trustee (as may be amended, modified or supplemented from time to time, but only if such amendment, modification or supplement is consented to by Dealer in writing, the "**Indenture**") relating to USD 260,000,000 principal amount of 1.500% senior convertible notes due 2019 and the additional USD 40,000,000 principal amount of 1.500% senior convertible notes due 2019 issued pursuant to the option to purchase additional convertible notes exercised on August 8, 2012 (the "**Convertible Notes**") issued by Counterparty. In the event of any inconsistency between the Indenture and this Confirmation, this Confirmation shall govern. For the avoidance of doubt, references herein to sections of the Indenture are based on the draft of the Indenture most recently reviewed by the parties at the time of this Confirmation. If any relevant sections of the Indenture are changed, added, or renumbered following execution of this Confirmation but prior to the execution of the Indenture, the parties will amend this Confirmation in good faith to preserve the economic intent of the parties based on the draft of the Indenture so reviewed. The parties further acknowledge that 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 following its execution, any such amendment will be disregarded for purposes of this Confirmation (other than as provided in paragraph 8(t)(ii) below and other than any amendment pursuant to Section 10.01(k) of the Indenture) unless the parties agree otherwise in writing.

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 supplement, form a part of, and be subject to an agreement in the form of the ISDA 2002 Master Agreement (the "**Agreement**") as if Dealer and Counterparty had executed an agreement in such form (but without any Schedule except for (i) the election of the laws of the State of New York as the governing law, (ii) the election of US Dollars ("**USD**") as the

Termination Currency, and (iii) the other provisions set forth under paragraph 8(u) below) on the Trade Date. In the event of any inconsistency between provisions of that Agreement and this Confirmation, this Confirmation will prevail for the purpose of the Transaction to which this Confirmation relates. The parties hereby agree that no Transaction other than the Transaction to which this Confirmation relates shall be governed by the Agreement.

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

General Terms:

Trade Date:	August 8, 2012.
Effective Date:	The closing date for the issuance of the Convertible Notes issued pursuant to the option to purchase additional Convertible Notes exercised on August 8, 2012.
Option Style:	Modified American, as described below under “Procedures for Exercise”.
Option Type:	Call.
Buyer:	Counterparty.
Seller:	Dealer.
Shares:	The common stock, par value USD 0.01 per share, of Counterparty (Ticker symbol “HOS”).
Number of Options:	40,000. For the avoidance of doubt, the Number of Options shall be reduced by any Options exercised by Counterparty. In no event will the Number of Options be less than zero.
Option Entitlement:	As of any date, a number of Shares per Option equal to the Applicable Percentage *multiplied by* the “Conversion Rate” (as defined in the Indenture) as of such date (but without regard to any adjustments to the “Conversion Rate” pursuant to Section 12.02(m) or Section 12.03 of the Indenture).
Strike Price:	As provided in Schedule A to this Confirmation.
Applicable Percentage:	30.0%.
Premium:	As provided in Schedule A to this Confirmation.
Premium Payment Date:	The Effective Date.
Exchange:	New York Stock Exchange.
Related Exchange(s):	All Exchanges.

Procedures for Exercise:

Exercise Dates:	Each Conversion Date.
Conversion Dates:	Each “Conversion Date” (as defined in the Indenture) occurring during the Exercise Period for Convertible Notes in denominations of USD 1,000 principal amount that are surrendered for conversion on such Conversion Date in accordance with the terms of the Indenture, subject to “Notice of Exercise” below, but are not “Relevant Convertible Notes” under, and as defined in, the confirmation between the parties hereto regarding the Base Call Option Transaction dated August 7, 2012 (the “Base Call Option Transaction Confirmation”) (such Convertible Notes, the “**Relevant Convertible Notes**”); *provided* that 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 Convertible Note surrendered 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 12.01(f) of the Indenture and such designation is accepted by such financial institution, except to the extent that (i) such financial institution fails to pay or deliver, as the case may be, any consideration due upon conversion of such Convertible Note, or (ii) such Convertible Note is subsequently resubmitted to Counterparty for conversion in accordance with the terms of the Indenture. For the purposes of determining whether any Convertible Notes will be Relevant Convertible Notes hereunder or under the Base Call Option Transaction Confirmation, Convertible Notes that are converted pursuant to the Indenture shall be allocated first to the Base Call Option Transaction Confirmation until all Options thereunder are exercised.
Exercisable Options:	In respect of each Conversion Date, a number of Options equal to the number of Relevant Convertible Notes in denominations of USD 1,000 principal amount surrendered for conversion on such Conversion Date in accordance with the terms of the Indenture, subject to "Notice of Exercise" below, but no greater than the Number of Options.
Free Convertibility Date:	June 1, 2019.
Exercise Period:	The period from and including the Effective Date to and including the Expiration Date.
Expiration Date:	Notwithstanding anything to the contrary in section 3.1(f) of the Equity Definitions, "Expiration Date" shall mean the earlier of (x) the last day on which any Convertible Notes remain outstanding and (y) the Scheduled Trading Day immediately preceding the "Maturity Date" (as defined in the Indenture).
Multiple Exercise:	Applicable, as provided under "Exercisable Options" above.
Automatic Exercise:	Applicable, subject to "Notice of Exercise" below.
Notice of Exercise:	Notwithstanding anything to the contrary in the Equity Definitions or under "Exercisable Options" above, in order to exercise any Exercisable Options, Counterparty must notify Dealer in writing prior to 5:00 p.m., New York City time, on the day that is at least two Scheduled Trading Days' prior to the first day of the applicable Conversion Period for such Options (the "**Notice Deadline**") of (i) the aggregate principal amount of Convertible Notes as to which such Conversion Date has occurred (including, if applicable, whether all or any portion of the Convertible Notes relating to such Options are Convertible Notes as to which additional Shares would be added to the "Conversion Rate" (as defined in the Indenture) pursuant to Section 12.03 of the Indenture (the "**Make-Whole Convertible Notes**")), (ii) the scheduled first day of the applicable Conversion Period and the scheduled Settlement Date, (iii) the Relevant Settlement Method for such Options and (iv) if the Relevant Settlement Method for such Options is not Net Share Settlement, Settlement in Shares or Settlement in Cash (each as defined below), the fixed amount of cash per Relevant Convertible Note that Counterparty has elected to deliver to "Holders" (as defined in the Indenture) of the related Relevant Convertible Notes

(the "**Specified Cash Amount**"), and such notice shall also include the information, representations, acknowledgements and agreements required pursuant to "Settlement Method Election Conditions" below; *provided* that, notwithstanding the foregoing, in the case of any Options relating to Convertible Notes surrendered for conversion in respect of which Counterparty has elected to designate a financial institution for exchange in lieu of conversion pursuant to Section 12.01(f) of the Indenture and such designation is accepted by such financial institution, such notice (and the related automatic exercise of such Options) shall be effective if given after the relevant Notice Deadline but prior to 5:00 p.m. (New York City time) on the 50th Scheduled Trading Day following the Notice Deadline, in which event the Calculation Agent shall have the right to adjust the number of Shares and/or amount of cash deliverable by Dealer with respect to such Options as appropriate to reflect the additional costs (including, but not limited to, hedging mismatches and market losses) and expenses incurred by Dealer in connection with its hedging activities (including the unwinding of any hedge position) as a result of Dealer not having received such notice on or prior to the Notice Deadline; *provided, further*, that in respect of any Options relating to Relevant Convertible Notes with a Conversion Date occurring on or after the Free Convertibility Date, (A) such notice may be given on or prior to the Expiration Date and need only specify the information required in clause (i) above (*provided* that any such notice given on the Expiration Date shall be given prior to 12:00 p.m., New York City time, on such date), and (B) if the Relevant Settlement Method for such Options is not Net Share Settlement with a Specified Cash Amount equal to USD 1,000, Dealer shall have received a separate notice (the "**Notice of Final Settlement Method**") in respect of all such Relevant Convertible Notes before 5:00 p.m., New York City time, on or prior to the Free Convertibility Date specifying the information required in clauses (iii) and (iv) above, as well as the information, representations, acknowledgements and agreements required pursuant to "Settlement Method Election Conditions" below; *provided further* that any "Notice of Exercise" delivered to Dealer pursuant to the Base Call Option Transaction shall be deemed to be a Notice of Exercise pursuant to this Confirmation and the terms of such Notice of Exercise shall apply, *mutadis mutandis*, to this Confirmation.

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 the Settlement Method Election Conditions have been satisfied and Counterparty shall have notified Dealer of the Relevant Settlement Method in the Notice of Exercise or Notice of Final Settlement Method, as applicable, for such Option.
Relevant Settlement Method:	In respect of any Option, subject to the Settlement Method Election Conditions: (i) if Counterparty has elected to settle its conversion obligations in respect of the related Relevant Convertible Note (A) entirely in Shares pursuant to Section 12.01(d)(i) 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 12.01(d)(iii) 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 12.01(d)(iii) 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 Relevant Convertible Note in a combination of cash and Shares pursuant to Section 12.01(d)(iii) 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 Relevant Convertible Note entirely in cash pursuant to Section 12.01(d)(ii) of the Indenture (such settlement method, "**Settlement in Cash**"), then the Relevant Settlement Method for such Option shall be Cash Settlement.

Settlement Method Election Conditions: For any Relevant Settlement Method other than Net Share Settlement with a Specified Cash Amount equal to USD 1,000, such Relevant Settlement Method shall apply to an Option only if the Notice of Exercise or Notice of Final Settlement Method for such Option, as applicable, contains:

(i) a representation that, on the date of such Notice of Exercise or Notice of Final Settlement Method, as applicable, none of Counterparty and its officers and directors is aware or in possession of any "material non-public information" (within the meaning of Section 10(b) of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), and the rules promulgated thereunder) with respect to Counterparty or the Shares;

(ii) a representation that Counterparty is electing the settlement method for the related Relevant Convertible Note and such Relevant Settlement Method in good faith and not as part of a plan or scheme to evade the prohibitions of Rule 10b-5 under the Exchange Act;

(iii) a representation that Counterparty has not entered into or altered any hedging transaction relating to the Shares corresponding to or offsetting the Transaction;

(iv) a representation that Counterparty is not electing the settlement method for the related Relevant Convertible Note and such Relevant Settlement Method 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; and

(v) an acknowledgment by Counterparty that (A) any transaction by Dealer following Counterparty's election of the settlement method for the related Relevant Convertible Note and such Relevant Settlement Method shall be made at Dealer's sole discretion and for Dealer's own account and (B) Counterparty does

not have, and shall not attempt to exercise, any influence over how, when, whether or at what price to effect such transactions, including, without limitation, the price paid or received per Share pursuant to such transactions, or whether such transactions are made on any securities exchange or privately.

Net Share Settlement:

If Net Share Settlement is applicable to any Option exercised or deemed exercised hereunder, in lieu of the obligations set forth in Sections 8.1 and 9.1 of the Equity Definitions, Dealer will deliver to Counterparty, on the relevant Settlement Date for each such Option, an aggregate number of Shares and cash in lieu of fractional shares, if any, (the "**Net Share Settlement Amount**") equal to the product of (x) the Applicable Percentage and (y) the number of Shares that Counterparty would be obligated to deliver to the "Holder(s)" (as defined in the Indenture) of the Relevant Convertible Notes converted on such Conversion Date pursuant to Section 12.01(d) of the Indenture and cash in lieu of fractional shares, if any, pursuant to Section 12.01(g) of the Indenture, as if Counterparty had elected to satisfy its conversion obligation in respect of such Relevant Convertible Notes with a Specified Cash Amount equal to USD 1,000 per Relevant Convertible Note, notwithstanding any different Specified Cash Amount actually elected by Counterparty with respect to the settlement of such Relevant Convertible Notes, and determined on the basis of the applicable Conversion Period set forth opposite the caption "Conversion Period" below; *provided* that such obligation shall be determined excluding any Shares and/or cash that Counterparty is obligated to deliver to holder(s) of the Relevant Convertible Notes as a result of any adjustments to the "Conversion Rate" pursuant to Section 12.02(m) or Section 12.03 of the Indenture; and *provided further* that, with respect to any Settlement in Shares or Low Cash Combination Settlement, for any Option exercised or deemed exercised hereunder on a Conversion Date occurring on or after the Free Convertibility Date, 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 the Relevant Convertible Notes relating to such Option.

Combination Settlement:

If Combination Settlement is applicable to any Option exercised or deemed exercised hereunder, in lieu of the obligations set forth in Sections 8.1 and 9.1 of the Equity Definitions, Dealer will deliver to Counterparty, on the relevant Settlement Date for each such Option:

(i) cash equal to the *product* of (A) the Applicable Percentage *and* (B) the *excess* of (x) the cash that Counterparty is obligated to deliver to the "Holder(s)" (as defined in the Indenture) of the Relevant Convertible Note converted on such Conversion Date pursuant to Section 12.01(d) of the Indenture (including cash paid in respect of fractional shares but excluding any cash paid in respect of interest) *over* (y) USD 1,000 per Relevant Convertible Note (the "**Combination Settlement Cash Amount**"); and

(ii) a number of Shares equal to the *product* of (A) the Applicable Percentage *and* (B) the number of Shares that Counterparty is obligated to deliver to the "Holder(s)" (as defined in the Indenture) of the Relevant Convertible Note converted on such Conversion Date pursuant to Section 12.01(d) of the Indenture.

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 *product* of (A) the Applicable Percentage *and* (B) the *excess* of (x) the cash that Counterparty is obligated to deliver to the "Holder(s)" (as defined in the Indenture) of the Relevant Convertible Note converted on such Conversion Date pursuant to Section 12.01(d) of the Indenture (including cash paid in respect of fractional shares but excluding any cash paid in respect of interest) *over* (y) USD 1,000 per Relevant Convertible Note.
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, delivered to the Holder of the related Relevant Convertible Note upon conversion of such Relevant Convertible Note and (B) the number of Shares, if any, delivered to the Holder of the related Relevant Convertible Note, in each case pursuant to the terms of the Indenture, upon conversion of such Relevant Convertible Note *multiplied by* the Applicable Limit Price on the settlement date for the Relevant Convertible Notes relating to such Option, *over* (ii) USD 1,000.
Applicable Limit Price:	On any day, the opening price as displayed under the heading "Op" on Bloomberg page HOS <equity> (or any successor thereto).
Trading 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, "Trading Day" means a Business Day.
Scheduled Trading Day:	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 Shares are listed or admitted for trading. If the Shares are not so listed or admitted for trading, "Scheduled Trading 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 or banks in the State of Texas are authorized or required by law or executive order to close or be closed.
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, the occurrence or existence prior to 1:00 p.m. New York City time on any Scheduled Trading 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."

Conversion Period:	For any Option and regardless of the Settlement Method applicable to such Option: (i) if the related Conversion Date occurs prior to the Free Convertibility Date, the 25 consecutive Trading Days commencing on, and including, the third Trading Day immediately following such Conversion Date; *provided* that if the Notice of Exercise for such Option specifies that Settlement in Shares or Low Cash Combination Settlement applies to the related Relevant Convertible Note, the Conversion Period shall be the 50 consecutive Trading Day period commencing on, and including, the third Trading Day immediately following such Conversion Date; (ii) if the related Conversion Date occurs on or following the Free Convertibility Date, the 25 consecutive Trading Days commencing on, and including, the 27th Scheduled Trading Day immediately prior to the "Maturity Date" (as defined in the Indenture); *provided* that if the Notice of Exercise or Notice of Final Settlement Method, as applicable, for such Option specifies that Settlement in Shares or Low Cash Combination Settlement applies to the related Relevant Convertible Note, the Conversion Period shall be the 50 consecutive Trading Days commencing on, and including, the 53rd Scheduled Trading Day immediately prior to the "Maturity Date" (as defined in the Indenture).
Settlement Date:	For any Option, the third Business Day immediately following the final Trading Day of the applicable Conversion Period for such Option.
Settlement Currency:	USD.
Other Applicable Provisions:	To the extent Dealer is obligated to deliver Shares hereunder, the provisions of Sections 9.4 (except that "Settlement Date" shall be as defined above, unless a Settlement Disruption Event prevents delivery of such Shares on that date), 9.8, 9.9, 9.10, 9.11 and 9.12 of the Equity Definitions shall be applicable as if "Physical Settlement" applied to the Transaction; *provided* that the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by excluding any restrictions, obligations, limitations or requirements under applicable securities laws as a result of the fact that Counterparty is the issuer of the Shares.
Restricted Certificated Shares:	Notwithstanding anything to the contrary in the Equity Definitions, Dealer may, in whole or in part, deliver any Shares required to be delivered hereunder in certificated form to Counterparty in lieu of delivery through the Clearance System. With respect to such certificated Shares, the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by deleting the remainder of the provision after the word "encumbrance" in the fourth line thereof.
Share Adjustments:	
Method of Adjustment:	Calculation Agent Adjustment, which means that, notwithstanding Section 11.2(c) of the Equity Definitions, upon any adjustment to the "Conversion Rate" (as defined in the Indenture) and/or the nature of the Shares under the Convertible Notes pursuant to the Indenture (other than an increase in the "Conversion Rate" pursuant to Section 12.02(m) or Section 12.03 of the Indenture), the Calculation

	Agent will make a corresponding adjustment to any one or more of the Strike Price, the Option Entitlement and any other term relevant to the exercise, settlement, payment or other terms of the Transaction. Counterparty agrees that it will notify Dealer prior to the effectiveness of any such adjustment and, to the extent such adjustment requires an exercise of discretion by Counterparty under the terms of the Indenture, it shall use good faith efforts to consult with the Calculation Agent in order to achieve a commercially reasonable adjustment, determination or calculation (it being understood for the avoidance of doubt that notwithstanding any such consultation, Counterparty shall remain entitled to make such adjustments as permitted in accordance with the terms of the Indenture).
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 Sections 12.02(a), (b), (c), (d) and (e) of the Indenture that would result in an adjustment to the "Conversion Rate" (as defined in the Indenture) of the Convertible Notes; *provided* that in no event shall there be any adjustment hereunder as a result of an adjustment to the "Conversion Rate" pursuant to Section 12.02(m) or Section 12.03 of the Indenture.
Extraordinary Events:	
Merger Events:	Notwithstanding Section 12.1(b) of the Equity Definitions (which shall not apply for the purposes hereof), a "Merger Event" means the occurrence of any event or condition set forth in Section 12.04(a) of the Indenture.
Notice of Merger Consideration:	Upon the occurrence of a Merger Event that causes the Shares to be converted into or exchanged for more than a single type of consideration (determined based in part upon the form of election of the holders of the Shares), Counterparty shall promptly notify the Calculation Agent in writing of the types and amounts of consideration that holders of Shares have affirmatively elected to receive upon consummation of such Merger Event; *provided* that in no event shall the date of such notification be later than the date on which such Merger Event is consummated.
Consequences of Merger Events:	Notwithstanding Section 12.2 of the Equity Definitions (which shall not apply for the purposes hereof), upon the occurrence of a Merger Event, to the extent an adjustment is made under the Indenture in respect of such Merger Event, the Calculation Agent shall make an analogous adjustment in respect of any adjustment under the Indenture to any one or more of the nature of the Shares, the Strike Price, the Number of Options, the Option Entitlement and any other term relevant to the exercise, settlement, payment or other terms of the Transaction; *provided*, *however*, that such adjustment shall be made without regard to any adjustment to the "Conversion Rate" (as defined in the Indenture) for the issuance of additional shares as set forth in Section 12.02(m) or Section 12.03 of the Indenture.
Nationalization, Insolvency or Delisting:	Cancellation and Payment (Calculation Agent Determination) *provided* that, for purposes of Section 12.6(a)(iii) of the Equity Definitions, it will 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), a Delisting shall not have occurred and such exchange or quotation system shall thereafter be deemed to be the Exchange.
Additional Disruption Events:	
Change in Law:	Applicable; *provided* that Section 12.9(a)(ii) of the Equity Definitions is hereby amended by replacing the word "Shares" where it appears in clause (X) thereof with the words "Hedge Position".
Failure to Deliver:	Not Applicable.
Insolvency Filing:	Applicable.
Hedging Disruption:	Applicable for the period commencing on the Trade Date and ending on the Effective Date; Not Applicable after the Effective Date.
Increased Cost of Hedging:	Not Applicable
Hedging Party:	Dealer or an affiliate of Dealer that is involved in the hedging of this Transaction for all applicable Additional Disruption Events. Section 13.2(b) of the Equity Definitions is hereby amended by adding the words "(or an Affiliate of such party)" following the words "by a party" in the third line thereof.
Determining Party:	Dealer for all applicable Extraordinary Events.
Acknowledgments:	
Non-Reliance:	Applicable.
Agreements and Acknowledgments Regarding Hedging Activities:	Applicable.
Additional Acknowledgments:	Applicable.

3. Calculation Agent: Dealer, whose judgments, determinations and calculations shall be made in good faith and in a commercially reasonable manner. Following any determination or calculation by the Calculation Agent hereunder, upon a request by Counterparty, the Calculation Agent 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 determination or calculation (including any assumptions used in making such determination or calculation), it being understood that the Calculation Agent shall not be obligated to disclose any proprietary models used by it for such determination or calculation.

4. Account Details:

(a) Account for payments to Counterparty:

Capital One, N.A.
New Orleans, LA
ABA 065-000-090

For credit to:
Hornbeck Offshore Services, Inc.
103 Northpark Blvd., Suite 300
Covington, LA 70433
Account 812519859

Account for delivery of Shares to Counterparty:

To be provided under separate cover by Counterparty.

(b) Account for payments to Dealer:

Wells Fargo Bank, N.A.
ABA 121-000-248
Internal Acct No. 01020304464228
A/C Name: WFB Equity Derivatives

DTC Number: 2072
Agent ID: 52196
Institution ID: 52196

5. Offices: The Office of Counterparty for the Transaction is: Inapplicable, Counterparty is not a Multibranch Party. The Office of Dealer for the Transaction is: Charlotte.

6. Notices: For purposes of this Confirmation:

(a) Address for notices or communications to Counterparty:

Hornbeck Offshore Services, Inc.
103 Northpark Boulevard, Suite 300
Covington, Louisiana, 70433
Attention: Sam Giberga, General Counsel
Facsimile No.: (985) 727-2006

(b) Address for notices or communications to Dealer:

Wells Fargo Bank, National Association
375 Park Avenue
New York, NY 10152
Attention: Derivatives Structuring Group
Telephone: 212-214-6101
Facsimile: 212-214-5913

Trader's Contact Information:

Mark Kohn or Head Trader
Telephone: 212-214-6089
Facsimile: 212-214-8914

7. Representations and Warranties of Counterparty

(A) Counterparty hereby represents and warrants to Dealer that:

(a) It is an "eligible contract participant" (as such term is defined in the Commodity Exchange Act, as amended (the "**CEA**"));

(b) Counterparty is not, on the date hereof, in possession of any material non-public information with respect to Counterparty;

(c) (x) On any day during any Conversion Period, neither Counterparty nor any "affiliate" or "affiliated purchaser" (each as defined in Rule 10b-18 of the Exchange Act ("**Rule 10b-18**")) shall directly or indirectly (including, without limitation, by means of any cash-settled or other derivative instrument) purchase, offer to purchase, place any bid or limit order that would effect a purchase of, or commence any tender offer relating to, any Shares (or an equivalent interest, including a unit of beneficial interest in a trust or limited partnership or a depository share) or any security convertible into or exchangeable or exercisable for Shares, except through Dealer;

(y) Counterparty agrees that it (A) will not, on any day during any Conversion Period, make, or permit to be made, any public announcement (as defined in Rule 165(f) under the Securities Act of 1933, as amended (the "**Securities Act**")) of any Merger Transaction or potential Merger Transaction unless such public announcement is made prior to the opening or after the close of the regular trading session on the Exchange for the Shares; (B) shall promptly (but in any event prior to the next opening of the regular trading session on the Exchange) notify Dealer following any such announcement that such announcement has been made; and (C) shall promptly (but in any event prior to the next opening of the regular trading session on the Exchange) provide Dealer with written notice specifying (i) Counterparty's average daily Rule 10b-18 Purchases (as defined in Rule 10b-18) during the three full calendar months immediately preceding the announcement date that were not effected through Dealer or its affiliates and (ii) the number of Shares purchased pursuant to the proviso in Rule 10b-18(b)(4) under the Exchange Act for the three full calendar months preceding the announcement date. Such written notice shall be deemed to be a certification by Counterparty to Dealer that such information is true and correct. In addition, Counterparty shall promptly notify Dealer of the earlier to occur of the completion of such transaction and the completion of the vote by target shareholders. "**Merger Transaction**" means any merger, acquisition or similar transaction involving a recapitalization as contemplated by Rule 10b-18(a)(13)(iv) under the Exchange Act.

(d) Without limiting the generality of Section 13.1 of the Equity Definitions, Counterparty acknowledges that Dealer is not making any representations or warranties 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, 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 under FASB's Liabilities & Equity Project;

(e) Counterparty has not received notice that it is the subject of a tender offer made under Section 14(d)(1) of the Exchange Act and has not commenced any tender offer that would be subject to Rule 13e-4 under the Exchange Act;

(f) Prior to or on the Trade Date, Counterparty shall deliver to Dealer a resolution of Counterparty's board of directors authorizing the Transaction;

(g) Counterparty is not, and after giving effect to 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;

(h) On the Trade Date (A) the assets of Counterparty at their fair valuation exceed the liabilities of Counterparty, including contingent liabilities, (B) the capital of Counterparty is adequate to conduct the business of Counterparty and (C) Counterparty has the ability to pay its debts and obligations as such debts mature and does not intend to, or does not believe that it will, incur debt beyond its ability to pay as such debts mature;

(i) Counterparty understands that no obligations of Dealer to it hereunder will be entitled to the benefit of deposit insurance or securities investor protection and that such obligations will not be guaranteed by any affiliate of Dealer (except as expressly set forth herein) or any governmental agency;

(j) The Convertible Notes have been duly authorized by Counterparty, and, when issued and delivered as provided in the Purchase Agreement and duly authenticated pursuant to the Indenture (assuming due authentication of the Convertible Notes by the trustee) will be duly executed, authenticated, issued and delivered and will constitute valid and legally binding obligations of Counterparty entitled to the benefits provided by the Indenture; and the Convertible Notes will conform, in all material respects, to the descriptions thereof in the Offering Memorandum;

(k) The Indenture has been duly authorized, executed and delivered by Counterparty and the guarantors named therein, and (assuming the authorization, execution and delivery by the trustee), constitutes a valid and legally binding instrument of Counterparty, enforceable against Counterparty in accordance with its terms, subject as to enforcement, to bankruptcy, insolvency, fraudulent transfer, fraudulent conveyance, moratorium, reorganization and laws of general applicability relating to or affecting creditors' rights and general equity principles (regardless of whether enforceability is considered in a proceeding in equity or at law); and the Indenture conforms, in all material respects, to the description thereof in the Offering Memorandum;

(l) Upon issuance and delivery of the Convertible Notes in accordance with the Purchase Agreement and the Indenture, the Convertible Notes will be convertible at the option of the holder thereof into Shares, cash or a combination of cash and Shares, if applicable, in accordance with the terms of the Convertible Notes; the Shares reserved for issuance upon conversion of the Convertible Notes have been duly authorized and reserved and, when issued upon conversion of the Convertible Notes in accordance with the terms of the Convertible Notes, will be validly issued, fully paid and non-assessable, and the issuance of the Shares will not be subject to any preemptive or similar rights;

(m) Neither Counterparty nor any controlled affiliate (as defined in Rule 501(b) of Regulation D of the Securities Act of 1933, as amended (the "**Securities Act**")) of Counterparty has directly, or through any agent, sold, offered for sale, solicited offers to buy or otherwise negotiated in respect of, any security (as defined in the Securities Act) which is or will be integrated with the sale of the Convertible Notes in a manner that would require the registration under the Securities Act of the offering contemplated by the Offering Memorandum;

(n) None of Counterparty, any controlled affiliate of Counterparty or any person acting on its or their behalf (other than the Initial Purchasers for whom we make no representation) has offered or sold the Convertible Notes by means of any general solicitation or general advertising within the meaning of Rule 502(c) under the Securities Act;

(o) The Convertible Notes satisfy the requirements set forth in Rule 144A(d)(3) under the Securities Act;

(p) The issue and sale of the Convertible Notes, the issuance by Counterparty of the Shares upon conversion of the Convertible Notes and the compliance by Counterparty with all of the provisions of the Convertible Notes, the Indenture, the Purchase Agreement and this Confirmation and the consummation of the transactions herein and therein contemplated (A) will not conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, any material indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which Counterparty or any of its subsidiaries is a party or by which Counterparty or any of its subsidiaries is bound or to which any of the property or assets of Counterparty or any of its subsidiaries is subject, except such conflict, breach or violation as would not have a Material Adverse Effect, (B) will not result in any violation of the provisions of the certificate of incorporation or bylaws of Counterparty, and (C) will not result in the violation of any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over Counterparty or any of its subsidiaries or any of its properties, except such violations as would not have a Material Adverse Effect; and except as disclosed in the Offering Memorandum, to Counterparty's knowledge, no consent, approval, authorization, order, registration or qualification of or with any such court or governmental agency or body is required for the issue and sale of the Convertible Notes or the consummation by Counterparty of the transactions contemplated by the Purchase Agreement or the Indenture, except for the filing and effectiveness of a registration statement by Counterparty with the Commission pursuant to the Securities Act, the qualification of the Indenture under the Trust Indenture Act of 1939 ("**Trust Indenture Act**") in relation to the Shares and such consents, approvals, authorizations, registrations or qualifications as may be required under state Securities or Blue Sky laws in connection with the purchase and distribution of the Convertible Notes by the Initial Purchasers in the manner contemplated by the Purchase Agreement and Offering Memorandum and except for such consents the failure to obtain would not have a Material Adverse Effect. "**Material Adverse Effect**" means any change in the capital stock, increase in long-term debt or any decreases in consolidated net current assets or stockholders' equity of Counterparty or any of its subsidiaries or any material adverse change, or

any development involving a prospective material adverse change, in or affecting the general affairs, management, current or future consolidated financial position, stockholders' equity or results of operations of Counterparty and its subsidiaries taken as a whole;

(q) Counterparty is subject to Section 13 or 15(d) of the Exchange Act;

(r) Prior to the Trade Date, Counterparty has not taken any action which is designed to or which has constituted or which might have been expected to cause or result in stabilization or manipulation of the price of any security of Counterparty in connection with the offering of the Convertible Notes;

(s) None of Counterparty or any of its subsidiaries is in violation of its certificate of incorporation or certificate of formation, or its bylaws or limited liability company agreement (or other organizational documents), or in default in the performance or observance of any material obligation, covenant or condition contained in any material indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which it is a party or by which it or any of its properties may be bound, other than such defaults that individually or in the aggregate would not have a Material Adverse Effect;

(t) Other than as set forth in the Offering Memorandum, there are no legal or governmental proceedings pending to which Counterparty or any of its subsidiaries is a party or of which any property of Counterparty or any of its subsidiaries is the subject which, if determined adversely to Counterparty or any of its subsidiaries, would individually or in the aggregate have a Material Adverse Effect; and, to the best of Counterparty's knowledge, no such proceedings are threatened or contemplated by governmental authorities or threatened by others.

(u) (x) Counterparty is acting for its own account, and it has made its own independent decisions to enter into the Transaction and as to whether the Transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary, (y) Counterparty is not relying on any communication (written or oral) of Dealer or any of its affiliates as investment advice or as a recommendation to enter into the Transaction (it being understood that information and explanations related to the terms and conditions of the Transaction shall not be considered investment advice or a recommendation to enter into the Transaction) and (z) no communication (written or oral) received from Dealer or any of its affiliates shall be deemed to be an assurance or guarantee as to the expected results of the Transaction; and

(v) The assets used in the Transaction (1) are not assets of any "plan" (as such term is defined in Section 4975 of the United States 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.

(B) Each party makes to the other the representations and warranties set forth in Sections 3(a) through (f) of the Agreement with respect to the Agreement as supplemented by this Confirmation; *provided* that Dealer makes the representation and warranty set forth in Section 3(e) and Counterparty makes the representation and warranty set forth in Section 3(f). In addition, each of Dealer and Counterparty acknowledges that the offer and sale of the Transaction to Counterparty is intended to be exempt from registration under the Securities Act, by virtue of Section 4(2) thereof. Accordingly, Counterparty represents and warrants to Dealer that (i) it has the financial ability to bear the economic risk of its investment in the Transaction and is able to bear a total loss of its investment and its investments in and liabilities in respect of the Transaction, which it understands are not readily marketable, are not disproportionate to its net worth, and it is able to bear any loss in connection with the Transaction, including the loss of its entire investment in the Transaction, (ii) it is an "accredited investor" as that term is defined in Regulation D as promulgated under the Securities Act, (iii) it is entering into the Transaction for its own account and without a view to the distribution or resale thereof, (iv) the assignment, transfer or other disposition of the Transaction has not been and will not be registered under the Securities Act and is restricted under this Confirmation, the Securities Act and state securities laws, and (v) its financial condition is such that it has no need for liquidity with respect to its investment in the Transaction and no need to dispose of any portion thereof to satisfy any existing or contemplated undertaking or indebtedness and is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of the Transaction.

8. Other Provisions:

(a) *Opinions*. Counterparty shall deliver to Dealer an opinion of counsel, dated as of the Trade Date, with respect to the matters set forth in Section 3(a) of the Agreement and Section 7(A)(g) of this Confirmation; *provided* that such opinion may contain customary exceptions and qualifications, including, without limitation, exceptions and qualifications relating to indemnification provisions.

(b) *Repurchase Notices*. Counterparty shall, on any day on which Counterparty effects any repurchase of Shares, give Dealer a written notice of such repurchase (a "**Repurchase Notice**") on such day if following such repurchase the Notice Percentage as determined on such day is (i) greater than 4.5% and (ii) greater by 0.5% than the Notice Percentage included in the immediately preceding Repurchase Notice (or, in the case of the first such Repurchase Notice, greater than the Notice Percentage as of the date hereof). The "**Notice Percentage**" as of any day is the fraction, expressed as a percentage, the numerator of which is the product of the Number of Options and the Option Entitlement and the denominator of which is the number of Shares outstanding on such day.

(c) *Regulation M*. Counterparty is not on the date hereof 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 engage in any such distribution (x) until the second Scheduled Trading Day immediately following the Trade Date and (y)(A) on any day during any Conversion Period, the Shares or securities that are convertible into, or exchangeable or exercisable for Shares, are not, and shall not be, subject to a "restricted period," as defined in Regulation M and (B) Counterparty shall not engage in any "distribution," as such term is defined in Regulation M, other than a distribution meeting the requirements of the exceptions set forth in sections 101(b)(10) and 102(b)(7) of Regulation M, until the second Exchange Business Day immediately following the last day in such Conversion Period.

(d) *No Manipulation*. Counterparty is not entering into this 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) *Number of Repurchased Shares*. Counterparty represents that it could have purchased Shares, in an amount equal to the product of the Number of Options and the Option Entitlement, on the Exchange or otherwise, in compliance with applicable law, its organizational documents and any orders, decrees, contractual agreements binding upon Counterparty, on the Trade Date.

(f) *Early Unwind*. In the event the sale of the additional Convertible Notes is not consummated with the initial purchasers for any reason by the close of business in New York on August 13, 2012 (or such later date as agreed upon by the parties) (August 13, 2012 or such later date as agreed upon being the "**Early Unwind Date**"), this 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; *provided* that, Counterparty shall reimburse Dealer for reasonable costs or expenses (including market losses) relating to the unwinding of its, or the Hedging Party's, Hedging Activities in connection with the Transaction (including any loss or cost incurred as a result of its terminating, liquidating, obtaining or reestablishing any hedge or related trading position) unless the sale of Convertible Bonds is not consummated with the initial purchasers as a result of breach of the Purchase Agreement by the initial purchasers (in which case no such reimbursement will be payable). The amount of any such reimbursement shall be determined by Dealer in good faith and in a commercially reasonable manner. Dealer shall notify Counterparty of such amount and Counterparty shall deliver Share Termination Delivery Property or, at the election of Counterparty, pay such amount in immediately available funds on the Early Unwind Date. Dealer and Counterparty represent and acknowledge to the other that,

subject to the proviso included in this paragraph, upon an Early Unwind, all obligations with respect to the Transaction shall be deemed fully and finally discharged. Notwithstanding anything herein or in the Agreement to the contrary, in no event shall Counterparty be required to deliver an aggregate number of Shares in connection with the Early Unwind in excess of 222,861 Shares, subject to adjustment from time to time as a result of actions of Counterparty or events within Counterparty's control and in accordance with the provisions of this Confirmation and the Equity Definitions.

(g) *Transfer or Assignment*. Neither party may transfer any of its rights or obligations hereunder and under the Transaction and Agreement without the prior written consent of the non-transferring party (such consent not to be unreasonably withheld); *provided* that, subject to applicable law, Dealer may transfer or assign without any consent of Counterparty its rights and obligations hereunder, in whole or in part, to any of its affiliates of credit quality at least equivalent to that of Dealer as of the Trade Date or to any other of its affiliates *provided* that Counterparty shall receive a full guaranty of such affiliate's obligations from Dealer in form and substance reasonably satisfactory to Counterparty if (i) an Event of Default, Potential Event of Default or Termination Event will not occur as a result of such transfer or assignment and (ii) as a result of such transfer or assignment, Counterparty will not be required to pay the transferee on any payment date an amount under Section 2(d)(i)(4) of the Agreement greater than an amount that Counterparty would have been required to pay to Dealer in the absence of such transfer or assignment. Except for the transfer or assignment contemplated in the proviso to the first sentence of this paragraph 8(g), in the case of a transfer or assignment by Counterparty or Dealer of its rights and obligations hereunder and under the Agreement, in whole or in part (any Options so transferred or assigned, the "**Transfer Options**"), to any party, withholding of consent by the other party (the "**Remaining Party**") shall not be considered unreasonable if such transfer or assignment does not meet the following reasonable conditions that the Remaining Party may impose: (i) with respect to any Transfer Options, Counterparty shall not be released from its notice and indemnification obligations pursuant to paragraph 8(b) ("Repurchase Notices") or any obligations under paragraph 2 regarding Extraordinary Events or paragraph 8(m) ("Registration") of this Confirmation; (ii) any Transfer Options shall only be transferred or assigned to a third party that is a U.S. person (as defined in the Internal Revenue Code of 1986, as amended); (iii) such transfer or assignment shall be effected on terms, including any reasonable undertakings by such transferee (including, but not limited to, undertakings with respect to compliance with applicable securities laws in a manner that, in the reasonable judgment of the Remaining Party, will not expose the Remaining Party 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 transferee and the transferor as are reasonably requested and reasonably satisfactory to the Remaining Party; (iv) the Remaining Party will not, as a result of such transfer or assignment, be required to pay the transferee on any payment date an amount under Section 2(d)(i)(4) of the Agreement greater than an amount that the Remaining Party would have been required to pay to the transferor in the absence of such transfer or assignment; (v) an Event of Default, Potential Event of Default or Termination Event will not occur as a result of such transfer or assignment; (vi) without limiting the generality of clause (ii), the transferor shall have caused the transferee to make such Payee Tax Representations and to provide such tax documentation as may be reasonably requested by the Remaining Party to permit the Remaining Party to determine that results described in clauses (iv) and (v) will not occur upon or after such transfer or assignment; and (vii) the transferor shall be responsible for all reasonable costs and expenses, including reasonable counsel fees, incurred by the Remaining Party in connection with such transfer or assignment.

Notwithstanding the foregoing, at any time at which a transaction proposed to be entered into by Dealer would cause the Articles Ownership Percentage to exceed 4.9%, unless Counterparty provides an acknowledgment to Dealer to the effect that the Shares owned or controlled by Dealer or any of its affiliates will not be deemed as owned or controlled by an "Alien" (as defined in Article Twelve Section 6 of Counterparty's Certificate of Incorporation), Dealer may (or shall, if requested by Counterparty) transfer or assign to a third party such portion of the Transaction that would otherwise cause the Articles Ownership Percentage to exceed 4.9% (it being understood and agreed that Dealer would make such a transfer or assignment to (a) one of its U.S. affiliates, if, in Counterparty's view, such a transfer or assignment would result in the Shares owned or controlled by such U.S. affiliates not being owned or controlled by an "Alien" for purposes of Article Twelve of Counterparty's Certificate of Incorporation) or (b) unless otherwise consented by Counterparty, to a third party who is not an "Alien" for purposes of Article Twelve of Counterparty's Certificate of Incorporation, if the transfer or assignment would otherwise result in such Shares deemed owned or controlled by an "Alien" for purposes of Article Twelve of Counterparty's Certificate of Incorporation); *provided further* that if Dealer is unable to effect a transfer or assignment to a third party after its commercially reasonable efforts on pricing terms reasonably acceptable to

Dealer (or to one of its U.S. affiliates, if, in Counterparty's view, such a transfer or assignment would result in the Shares owned or controlled by such U.S. affiliates not being owned or controlled by an "Alien" for purposes of Article Twelve of Counterparty's Articles of Incorporation) such that the Articles Ownership Percentage does not exceed 4.9%, Dealer may designate any Scheduled Trading Day as an Early Termination Date with respect to a portion (the "**Articles Terminated Portion**") of the Transaction, such that the Articles Ownership Percentage following such partial termination will be equal to 4.9%.

Notwithstanding the foregoing, at any time at which (1) the Option Equity Percentage exceeds 9.0% or (2) Dealer, Dealer Group (as defined below) or any person whose ownership position would be aggregated with that of Dealer or Dealer Group (Dealer, Dealer Group or any such person, a "**Dealer Person**") under any relevant state corporate law or any state or federal bank holding company or banking laws, or other federal, state or local laws, regulations or regulatory orders applicable to ownership of Shares ("**Applicable Laws**"), owns, beneficially owns, constructively owns, controls, holds the power to vote or otherwise meets a relevant definition of ownership in excess of a number of Shares equal to (x) the number of Shares that, in the good faith determination of the relevant Dealer Person, would give rise to materially burdensome reporting or registration obligations or other requirements (including obtaining prior approval by a state or federal regulator) of a Dealer Person under Applicable Laws (including, without limitation, "interested stockholder" or "acquiring person" status under Section 203 of the Delaware General Corporation Law, but excluding any report or filing required pursuant to Section 13 of the Exchange Act and the rules promulgated thereunder) and with respect to which such requirements have not been met or the relevant approval has not been received *minus* (y) 1.0% of the number of Shares outstanding on the date of determination (either such condition described in clause (1) or (2), an "**Excess Ownership Position**") and Dealer is unable, after commercially reasonable efforts, to eliminate such Excess Ownership Position or effect a transfer or assignment to a third party with a rating (or whose guarantor has a rating) for its long term, unsecured and unsubordinated indebtedness at least equal to that of Dealer as of the Trade Date on pricing terms and within a time period reasonably acceptable to it of all or a portion of the Transaction such that an Excess Ownership Position no longer exists, Dealer may designate any Scheduled Trading Day as an Early Termination Date with respect to a portion (the "**Reporting Terminated Portion**") of the Transaction, such that an Excess Ownership Position no longer exists.

In the event that Dealer so designates an Early Termination Date with respect to an Articles Terminated Portion or a Reporting Terminated Portion, a payment shall be made pursuant to Section 6 of the Agreement as if (i) an Early Termination Date had been designated in respect of a Transaction having terms identical to this Transaction and a Number of Options equal to the Articles Terminated Portion or the Reporting Terminated Portion, as the case may be, (ii) Counterparty shall be the sole Affected Party with respect to such partial termination and (iii) such Transaction shall be the only Terminated Transaction (and, for the avoidance of doubt, the provisions of paragraph 8(k) shall apply to any amount that is payable by Dealer to Counterparty pursuant to this sentence).

The "**Articles Ownership 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 its affiliates "own or control" (within the meaning of Article 12 Section 2 of Counterparty's Certificate of Incorporation) on such day, and (B) the denominator of which is the number of Shares outstanding on such day.

The "**Option Equity Percentage**" as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the sum of (i) the number of Shares that Dealer and any of its affiliates subject to aggregation with Dealer, for purposes of the "beneficial ownership" test under Section 13 of the Exchange Act, and all persons who may form a "group" (within the meaning of Rule 13d-5(b)(1) under the Exchange Act) with Dealer ("**Dealer Group**") "beneficially owns" (within the meaning of Section 13 of the Exchange Act) on such day, other than any Shares so owned as a hedge of the Transaction, and (ii) the product of the Number of Options and the Option Entitlement and (B) the denominator of which is the number of Shares outstanding on such day. For purposes of this Section 8(g), the term "Dealer" shall include any of the Dealer's permitted successors or assigns.

(h) *Staggered Settlement*. If upon advice of counsel with respect to applicable legal and regulatory requirements, including any requirements relating to Dealer's, or the Hedging Party's, Hedge Activities hereunder, Dealer reasonably determines that it would not be advisable to deliver, or to acquire Shares to deliver, any or all of the Shares to be delivered by Dealer on the 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 (each of which will be on or prior to 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) if the Settlement terms set forth above were to apply on the Nominal Settlement Date, then the Settlement terms will apply on each Staggered Settlement Date, except that the Shares to be delivered pursuant to such terms will be allocated among such Staggered Settlement Dates as specified by Dealer in the notice referred to in clause (i) above.

(i) *Terms Relating to the Agent*.

(i) The Agent is registered as a broker-dealer with the U.S. Securities and Exchange Commission and the Financial Industry Regulatory Authority (FINRA), is acting hereunder for and on behalf of Dealer solely in its capacity as agent for Dealer pursuant to instructions from Dealer, and is not and will not be acting as the Counterparty's agent, broker, advisor or fiduciary in any respect under or in connection with the Transaction.

(ii) In addition to acting as Dealer's agent in executing this Transaction, the Agent is authorized from time to time to give written payment and/or delivery instructions to the Counterparty directing it to make its payments and/or deliveries under this Transaction to an account of the Agent for remittance to Dealer (or its designee), and for that purpose any such payment or delivery by the Counterparty to the Agent shall be treated as a payment or delivery to Dealer.

(iii) Except as otherwise provided herein, any and all notices, demands, or communications of any kind transmitted in writing by either Dealer or the Counterparty under or in connection with this Transaction will be transmitted exclusively by such party to the other party through the Agent at the following address:

Wells Fargo Securities, LLC
201 South College Street, 6th Floor
Charlotte, NC 28288-0601
Facsimile No.: (704) 383-8425
Telephone No.: (704) 715-8086
Attention: Equity Derivatives

(iv) The Agent shall have no responsibility or liability to Dealer or the Counterparty for or arising from (a) any failure by either Dealer or the Counterparty to perform any of their respective obligations under or in connection with this Transaction, (b) the collection or enforcement of any such obligations, or (c) the exercise of any of the rights and remedies of either Dealer or the Counterparty under or in connection with this Transaction. Each of Dealer and the Counterparty agrees to proceed solely against the other to collect or enforce any such obligations, and the Agent shall have no liability in respect of this Transaction except for its gross negligence or willful misconduct in performing its duties as the agent of Dealer.

(v) Upon written request, the Agent will furnish to Dealer and the Counterparty the date and time of the execution of this Transaction and a statement as to the source and amount of any remuneration received or to be received by the Agent in connection with this Transaction.

(j) *No Collateral or Setoff*. Notwithstanding any provision of the Agreement or any other agreement between the parties, the obligations of Dealer hereunder are not secured by any collateral. In addition obligations under the Transaction shall not be netted, recouped or set off (including pursuant to Section 6 of the Agreement) against any other obligations of the parties, whether arising under the Agreement, this Confirmation, under any other agreement between the parties hereto, by operation of law or otherwise, and no other obligations of the parties shall be netted, recouped or set off (including pursuant to Section 6 of the Agreement) against obligations under the Transaction, whether arising under the Agreement, this Confirmation, under any other agreement between the parties hereto, by operation of law or otherwise, and each party hereby waives any such right of setoff, netting or recoupment; *provided* that both parties agree that subparagraph (ii) of Section 2(c) of the Agreement shall apply to the Transaction.

(k) *Alternative Calculations and Payment on Early Termination and on Certain Extraordinary Events*. If in respect of this Transaction, an amount is payable by Dealer to Counterparty (i) pursuant to Section 12.2 of the Equity Definitions and "Consequences of Merger Events" above, or Sections 12.3, 12.6, 12.7 or 12.9 of the Equity Definitions, (ii) pursuant to Section 6(d)(ii) of the Agreement or (iii) pursuant to "Early Unwind" above (each, a "**Payment Obligation**"), Dealer shall satisfy any such Payment Obligation by the Share Termination Alternative (as defined below) unless Counterparty elects for Dealer to satisfy such Payment Obligation by delivery of cash or in the event of a Nationalization, Insolvency or a Merger Event, in each case, in which the consideration to be paid to holders of Shares consists solely of cash, or 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)(i), (ii), (iii), (iv), (v) or (vi) of the Agreement in each case that resulted from an event or events outside Counterparty's control, in which case the provisions of Sections 12.2, 12.3, 12.6, 12.7 or 12.9 of the Equity Definitions or Section 6(d)(ii) of the Agreement, as the case may be, shall apply in lieu of the provisions set forth in this paragraph 8(k). Counterparty shall give irrevocable telephonic notice to Dealer of any such selection, confirmed in writing within one Currency Business Day, no later than 12:00 p.m. New York local time on the Merger Date, the Announcement Date (in the case of Nationalization or Insolvency), the Early Termination Date or date of cancellation, as applicable; where such notice shall include a representation and warranty from Counterparty that it is not, as of the date of the telephonic notice and the date of such written notice, aware of any "material non-public information" (within the meaning of Section 10(b) of the Exchange Act and the rules promulgated thereunder) concerning itself or the Shares. In calculating any amounts under Section 6(e) of the Agreement, notwithstanding anything to the contrary in the Agreement, (1) separate amounts shall be calculated as set forth in Section 6(e) with respect to (i) this Transaction and (ii) all other Transactions, and (2) such separate amounts shall be payable pursuant to Section 6(d)(ii) of the Agreement.

Share Termination Alternative:	Applicable, if elected as per above, and means that Dealer shall deliver to Counterparty the Share Termination Delivery Property on the date when the Payment Obligation would otherwise be due pursuant to "Consequences of Merger Events" above or Section 12.7 or 12.9 of the Equity Definitions or Section 6(d)(ii) and 6(e) of the Agreement, as applicable (the "**Share Termination Payment Date**"), 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 on the date such Share Termination Delivery Units are to be delivered as Share Termination Delivery Property, 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.

Share Termination Delivery Unit:	In the case of a Termination Event, Event of Default, Delisting, one Share or, in the case of an Insolvency, Nationalization or Merger Event, one Share or a unit consisting of the number or amount of each type of 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 Insolvency, Nationalization or Merger Event, as applicable. If such Insolvency, Nationalization or Merger Event involves a choice of consideration to be received by holders, such holder shall be deemed to have elected to receive the maximum possible amount of cash.
Failure to Deliver:	Applicable
Other applicable provisions:	If this Transaction is to be Share Termination Settled, the provisions of Sections 9.1(c), 9.8, 9.9, 9.11, 9.12 and 10.5 (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 this Transaction means that Share Termination Alternative is applicable to this Transaction.

(l) *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 this 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 this Transaction, as applicable, by, among other things, the mutual waivers and certifications provided herein.

(m) *Registration*. Counterparty hereby agrees that if, in the good faith and 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 this Transaction cannot be sold in the public market by Dealer without registration under 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 enter into an agreement substantially similar in underwriting agreements customary for registered secondary offerings of a substantially similar size, in form and substance reasonably satisfactory to Dealer (*provided however*, that if Dealer, in its 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 Section shall apply at the election of Counterparty); (ii) in order to allow Dealer to sell the Hedge Shares in a private placement, enter into a private placement agreement substantially similar to private placement purchase agreements customary for private placements of equity offerings of a substantially similar size, in form and substance reasonably satisfactory to Dealer (in which case, the Calculation Agent shall make any adjustments to the terms of this 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 closing price on such Exchange Business Days, and in the amounts, reasonably requested by Dealer.

(n) *Tax Disclosure*. Effective from the date of commencement of discussions concerning the Transaction, each party and each of their respective 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) relating to such tax treatment and tax structure.

(o) *Status of Claims in Bankruptcy*. Dealer acknowledges and agrees that this Confirmation is not intended to convey to Dealer rights with respect to the Transaction that are senior to the claims of common stockholders in any U.S. 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.

(p) *Securities Contract*. Each of Dealer and Counterparty agrees and acknowledges that Dealer is one or more of a "financial institution" and "financial participant" within the meaning of sections 101(22) and 101(22A) of Title 11 of the United States Code (the "**Bankruptcy Code**"). The parties further agree and acknowledge (A) that this Confirmation is 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 is a "settlement payment" (as such term is defined in Section 741(8) of the Bankruptcy Code) or a "transfer" within the meaning of section 546 of the Bankruptcy Code and (B) that is the parties are entitled to the protections afforded by, among other sections, section 362(b)(6), 362(b)(27), 362(o), 546(e), 546(j), 548(d)(2), 555 and 561 of the Bankruptcy Code.

(q) *Additional Provisions*. Counterparty covenants and agrees that, as promptly as practicable following the public announcement of any consolidation, merger and binding share exchange to which Counterparty is a party, or any sale of all or substantially all of Counterparty's assets, in each case pursuant to which the Shares will be converted into cash, securities or other property, Counterparty shall notify Dealer in writing of the types and amounts of consideration that holders of Shares have elected to receive upon consummation of such transaction or 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 transaction or event is consummated.

(r) *Method of Delivery.* Whenever delivery of funds or other assets is required hereunder by or to Dealer, such delivery shall be effected through Agent.

(s) *Regulatory Provisions.* The time of dealing for the Transaction will be confirmed by Dealer upon written request by Counterparty.

(t) *Additional Termination Events*.

(i) The occurrence of an event of default with respect to Counterparty under the terms of the Convertible Notes as set forth in Section 7.01 of the Indenture that results in an acceleration of the Convertible Notes pursuant to the terms of the Indenture shall be 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.

(ii) The occurrence of an Amendment Event shall be 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. "**Amendment Event**" means that Counterparty amends, modifies, supplements or obtains a waiver in respect of any term of the Indenture or the Convertible Notes governing the principal amount, coupon, maturity, repurchase obligation of Counterparty, redemption right of Counterparty, any term relating to conversion of the Convertible Notes (including changes to the conversion price, conversion settlement dates or conversion conditions) that may adversely affect the rights or obligations of Dealer hereunder, or any term that would require consent of the holders of not less than 100% of the principal amount of the Convertible Notes to amend, in each case without the prior consent of Dealer, such consent not to be unreasonably withheld.

(iii) If any Repurchase Event occurs, (A) Counterparty shall notify Dealer as promptly as practicable of such event, (B) such an event shall be an Additional Termination Event, (C) an Early Termination Date shall be deemed to occur automatically on the date of such notice with respect to a portion of the Transaction relating to a number of Options equal to (1) the number of

Convertible Securities in denominations of USD 1,000 principal amount so repurchased, exchanged or repaid in connection with such Repurchase Event (the "Affected Portion") less (2) the number of Options constituting an Affected Portion with respect to such Repurchase Event under Section 8(t)(iii) of the Base Call Option Transaction Confirmation, but payment of the Close-out Amount in respect of such Early Termination Date shall not be due until one Settlement Cycle following the date on which Dealer delivered the statement provided pursuant to Section 6(d)(i) of the Agreement, and (D) Counterparty shall be deemed the sole Affected Party and the Affected Portion shall be deemed the sole Affected Transaction.

"**Repurchase Event**" means the occurrence of any of the following:

(1) any Convertible Securities are repurchased (other than as a result of a fundamental change, as defined in the Indenture) by Counterparty or any of its subsidiaries;

(2) any Convertible Securities are delivered to Counterparty in exchange for delivery of any property or assets of Counterparty or any of its subsidiaries (howsoever described);

(3) any principal of any of the Convertible Securities is repaid prior to the final maturity date of the Convertible Securities (whether following acceleration of the Convertible Notes or otherwise); or

(4) any Convertible Securities are exchanged by or for the benefit of the holders thereof for any other securities of Counterparty or any of its affiliates (or any other property, or any combination thereof) pursuant to any exchange offer or similar transaction.

For the avoidance of doubt, in the case of each of clauses (1) through (4), conversions of the Convertible Securities pursuant to the terms of the Indenture shall not constitute a Repurchase Event.

(u) *Additional ISDA Schedule Terms*.

(i) "**Specified Entity**" means in relation to each of Dealer and Counterparty for purposes of Sections 5(a)(v), 5(a)(vi), 5(a)(vii) and 5(b)(v) of the Agreement, not applicable.

(ii) "**Specified Transaction**" will have the meaning specified in Section 14 of the Agreement.

(iii) The "Cross-Default" provisions of Section 5(a)(vi) of the Agreement shall not apply to either party.

(iv) **Automatic Early Termination**. The "Automatic Early Termination" provision of Section 6(a) of the Agreement will not apply to Dealer and will not apply to Counterparty.

(v) "**Termination Currency**" means United States Dollars ("**USD**").

(vi) **Payment by Counterparty**. In the event that (i) an Early Termination Date occurs or is designated with respect to the Transaction as a result of an Event of Default (other than an Event of Default arising under Section 5(a)(ii) or 5(a)(iv) of the Agreement) or a Termination Event 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.

(vii) **Consent to Recording**. Each party (i) consents to the monitoring or recording, at any time and from time to time, by the other party of any and all communications between officers or employees of the parties, (ii) waives any further notice of such monitoring or recording, and (iii) agrees to notify (and, if required by law, obtain the consent of) its officers and employees with respect to such monitoring or recording. Any such recording may be submitted in evidence to any court or in any Proceeding for the purpose of establishing any matters pertinent to this Transaction.

(viii) **Severability**. In the event any one or more of the provisions contained in this Confirmation or the Agreement shall be held illegal, invalid or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby.

(ix) **Fully Paid Transactions**. The condition precedent in Section 2(a)(iii)(1) of the Agreement shall not apply to a payment and delivery owing by a party if the other party shall have satisfied in full all its payment or delivery obligations under Section 2(a)(i) of the Agreement and shall at the relevant time have no future payment or delivery obligations, whether absolute or contingent, under Section 2(a)(i) of the Agreement.

(x) **Part 2(b) of the ISDA Schedule—Payee Representation:**

For the purpose of Section 3(f) of this Agreement, Counterparty makes the following representation to Dealer:

Counterparty is a corporation established under the laws of the State of Delaware and is a U.S. person (as that term is defined in Section 7701(a)(30) of the Code).

For the purpose of Section 3(f) of this Agreement, Dealer makes the following representation to Counterparty:

Dealer is a national banking association organized or formed under the laws of the United States and is a United States resident for United States federal income tax purposes.

(xi) **Part 3(a) of the ISDA Schedule—Tax Forms:**

Party Required to Deliver Document	Form/Document/Certificate	Date by which to be Delivered
Counterparty	A complete and duly executed United States Internal Revenue Service Form W-9 (or successor thereto.)	(i) Upon execution and delivery of this Agreement; (ii) promptly upon reasonable demand by Dealer; and (iii) promptly upon learning that any such Form previously provided by Counterparty has become obsolete or incorrect.
Dealer	A complete and duly executed United States Internal Revenue Service Form W-9 (or successor thereto).	(i) Upon execution and delivery of this Agreement; (ii) promptly upon reasonable demand by Counterparty; and (iii) promptly upon learning that any such Form previously provided by Dealer has become obsolete or incorrect.

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing a copy of this Confirmation and returning it to us by facsimile at 212-214-5913 (Attention: Derivatives Structuring Group).

Very truly yours,

WELLS FARGO SECURITIES, LLC,
acting solely in its capacity as Agent
of Wells Fargo Bank, National Association

By: /s/ Cathleen Burke
Name: Cathleen Burke
Title: Managing Director

WELLS FARGO BANK, NATIONAL ASSOCIATION
By: Wells Fargo Securities, LLC,
acting solely in its capacity as its Agent

By: /s/ Cathleen Burke
Name: Cathleen Burke
Title: Managing Director

Accepted and confirmed as of the Trade Date:

HORNBECK OFFSHORE SERVICES, INC.

By: /s/ James O. Harp, Jr.
Name: James O. Harp, Jr.
Title: Executive Vice President and CFO

SCHEDULE A

For purposes of this Transaction, the following terms shall have the following values/meanings:

1. Strike Price: USD 53.8451.
2. Premium: USD 2,921,280.00.

Exhibit 4.8

Execution version

Barclays Bank PLC
5 The North Colonnade
Canary Wharf, London E14 4BB
Facsimile:+44(20)77736461
Telephone: +44 (20) 777 36810

c/o Barclays Capital Inc.
as Agent for Barclays Bank PLC
745 Seventh Ave
New York, NY 10019
Telephone: +1 212 412 4000

August 7, 2012

To: Hornbeck Offshore Services, Inc.
103 Northpark Boulevard, Suite 300
Covington, Louisiana, 70433
Attention: Sam Giberga, General Counsel
Facsimile No.: (985) 727-2006

Re: **Base Warrants**

The purpose of this letter agreement (this "**Confirmation**") is to confirm the terms and conditions of the Transaction entered into between Barclays Bank PLC ("**Dealer**"), through its agent Barclays Capital Inc. (the "**Agent**"), and Hornbeck Offshore Services, Inc. ("**Company**") on the Trade Date specified below (the "**Transaction**"). This Confirmation constitutes a "Confirmation" as referred to in the Agreement specified below. Dealer is regulated by the Financial Services Authority. Dealer is not a member of the Securities Investor Protection Corporation ("**SIPC**").

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.

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 Company as to the terms of the Transaction to which this Confirmation relates. This Confirmation shall supplement, form a part of, and be subject to an agreement in the form of the ISDA 2002 Master Agreement (the "**Agreement**") as if Dealer and Company had executed an agreement in such form (but without any Schedule except for (i) the election of the laws of the State of New York as the governing law, and (ii) the election of US Dollars ("**USD**") as the Termination Currency, and (iii) the other provisions set forth in paragraph 9(w) below) on the Trade Date. In the event of any inconsistency between provisions of that Agreement and this Confirmation, this Confirmation will prevail for the purpose of the Transaction to which this Confirmation relates. The parties hereby agree that no Transaction other than the Transaction to which this Confirmation relates shall be governed by the Agreement.

2. The Transaction is a Warrant Transaction, which shall be considered a Share Option Transaction for purposes of the Equity Definitions. The terms of the particular Transaction to which this Confirmation relates are as follows:

General Terms:

Trade Date:	August 7, 2012
Effective Date:	August 13, 2012; *provided* that either Buyer or Seller may cancel all (but not less than all) the Warrants by notice to the other party prior to payment of the Premium on the Effective Date, in which case these Warrants shall never become effective and neither party shall have any obligation to the other party in respect of the Transaction.
Warrants:	Equity call warrants, each giving the holder the right to purchase one Share at the Strike Price, subject to the Settlement Terms set forth below. For the purposes of the Equity Definitions, each reference to a Warrant herein shall be deemed to be a reference to a Call Option.
Warrant Style:	European
Seller:	Company
Buyer:	Dealer
Shares:	The common stock of Company, par value USD 0.01 per Share (Exchange symbol “HOS”)
Number of Warrants:	For each Expiration Date, a number of Warrants set forth next to such an Expiration Date on Annex A hereto (the “**Daily Number of Warrants**”), subject to adjustment as provided herein.
Warrant Entitlement:	One Share per Warrant
Strike Price:	USD 68.5300. Notwithstanding anything to the contrary in the Agreement, this Confirmation or the Equity Definitions, in no event shall the Strike Price be subject to adjustment to the extent that, after giving effect to such adjustment, the Strike Price would be less than USD 39.16, except for any adjustment pursuant to the terms of this Confirmation and the Equity Definitions in connection with stock splits or similar changes to Company’s capitalization
Premium:	USD 12,541,620.00 (Premium per Warrant USD 8.6577).
Premium Payment Date:	The Effective Date.
Exchange:	New York Stock Exchange
Related Exchange(s):	All Exchanges

Procedures for Exercise:

Expiration Time:	The Valuation Time
Expiration Date(s):	Each Scheduled Trading Day during the period from and including the First Expiration Date and to and including the

	39th Scheduled Trading Day following the First Expiration Date shall be an "Expiration Date" for a number of Warrants equal to the Daily Number of Warrants on such date; provided that, notwithstanding anything to the contrary in the Equity Definitions, if any such date is a Disrupted Day, the Calculation Agent may determine that such date is a Disrupted Day in full or a Disrupted Day in part. If the Calculation Agent determines such Disrupted Day is a Disrupted day in full, the Daily Number of Warrants for such day shall be reduced to zero. If the Calculation Agent Determines that such Disrupted Day is a Disrupted Day in part, the Calculation Agent shall make adjustments, if applicable, to the Daily Number of Warrants or shall reduce such Daily Number of Warrants to zero for such date. In either case, the Calculation Agent shall designate a Scheduled Trading Day or a number of Scheduled Trading Days as the Expiration Date(s) for the remaining Daily Number of Warrants or a portion thereof for the originally scheduled Expiration Date; and provided further that if such Expiration Date has not occurred pursuant to this clause as of the eighth Scheduled Trading Day following the last scheduled Expiration Date under this Transaction, the Calculation Agent shall have the right to declare such Scheduled Trading Day to be the final Expiration Date and the Calculation Agent shall determine its good faith estimate of the fair market value for the Shares as of the Valuation Time on that eighth Scheduled Trading Day or on any subsequent Scheduled Trading Day, as the Calculation Agent shall determine using commercially reasonable means. Any Scheduled Trading Day on which, as of the date hereof, the Exchange is scheduled to close prior to its normal close of trading shall be deemed not to be a Scheduled Trading Day; if a closure of the Exchange prior to its normal close of trading on any Scheduled Trading Day is scheduled (i) following the date hereof and (ii) on or prior to the Scheduled Trading Day that is at least one Scheduled Trading Day before such Scheduled Trading Day, then such Scheduled Trading Day shall be deemed to be a Disrupted Day in full. If a closure of the Exchange prior to its normal close of trading on any Scheduled Trading Day is scheduled on such Scheduled Trading Day, such Scheduled Trading Day shall be deemed to be a Disrupted Day in part.
First Expiration Date:	Monday, December 2, 2019 (or if such day is not a Scheduled Trading Day, the next following Scheduled Trading Day), subject to Market Disruption Event below.
Multiple Exercise:	Applicable
Minimum Number of Warrants:	1
Maximum Number of Warrants:	All Warrants remaining unexercised as of the remaining Exercise Date(s).
Automatic Exercise:	Applicable; and means that a number of Warrants (as adjusted pursuant to the terms hereof) for each Expiration Date equal to the Daily Number of Warrants (as adjusted pursuant to the terms hereof) for such Expiration Date will be deemed to be automatically exercised; *provided* that "In-the-Money" means

	that the Settlement Price for such Expiration Date exceeds the Strike Price for such Expiration Date; and *provided further* that all references in Section 3.4(b) of the Equity Definitions to "Physical Settlement" shall be read as references to "Net Share Settlement".
Market Disruption Event:	Section 6.3(a)(ii) of the Equity Definitions is hereby amended by replacing clause (ii) in its entirety with "(ii) an Exchange Disruption, or" and inserting immediately following clause (iii) the phrase "; in each case that the Calculation Agent determines is material."
Valuation:	
Valuation Time:	Scheduled Closing Time; *provided* that if the principal trading session is extended, the Calculation Agent shall determine the Valuation Time in its reasonable discretion.
Valuation Date:	Each Exercise Date.
Settlement Terms:	
Settlement Method Election:	Applicable; provided that the same Settlement Method shall apply to each Warrant under the Transaction; and *provided further* that references to "Physical Settlement" in Section 7.1 of the Equity Definitions shall be replaced with "Net Share Settlement"; and *provided further* that Company may elect Cash Settlement only if at the time of such election it provides to Barclays a written statement that the representations contained in paragraph 8(A)(c) below are true and correct as of and as if made on the date of such election.
Electing Party:	Company
Settlement Method Election Date:	No less than 10 Scheduled Trading Days prior to the First Expiration Date.
Default Settlement Method:	Net Share Settlement
Settlement Currency:	USD
Cash Settlement Payment Date:	Three (3) Currency Business Days after the Valuation Date.
Net Share Settlement:	If Net Share Settlement is applicable to the Transaction, on the relevant Settlement Date, Company shall deliver to Dealer the Share Delivery Quantity of Shares for such Settlement Date to the account specified herein free of payment through the Clearance System.
Share Delivery Quantity:	For any Settlement Date, a number of Shares, as calculated by the Calculation Agent, equal to the Net Share Settlement Amount for such Settlement Date divided by the Settlement Price on the Valuation Date in respect of such Settlement Date, rounded down to the nearest whole number plus any Fractional Share Amount.

Net Share Settlement Amount:	For any Settlement Date, an amount equal to the *product* of (i) the Number of Warrants exercised or deemed exercised on the relevant Exercise Date, (ii) the Strike Price Differential for such Exercise Date and (iii) the Warrant Entitlement.
Option Cash Settlement Amount	For any Cash Settlement Payment Date, an amount equal to the *product* of (i) the Number of Warrants exercised or deemed exercised on the relevant Exercise Date, (ii) the Strike Price Differential for such Exercise Date *and* (iii) the Warrant Entitlement.
Settlement Price:	For any Valuation Date, the per Share volume-weighted average price as displayed under the heading "Bloomberg VWAP" on Bloomberg page "HOS <EQUITY> AQR" (or any successor thereto) in respect of the period from the scheduled opening time of the Exchange to the Scheduled Closing Time on such Valuation Date (or if such volume-weighted average price is unavailable, the market value of one Share on such Valuation Date, as determined by the Calculation Agent using a volume-weighted method). Notwithstanding the foregoing, if (i) any Expiration Date is a Disrupted Day and (ii) the Calculation Agent determines that such Expiration Date shall be an Expiration Date for fewer than the Daily Number of Warrants, as described above, then the Settlement Price for the relevant Valuation Date shall be the volume-weighted average price per Share on such Valuation Date on the Exchange, as determined by the Calculation Agent based on such sources as it deems appropriate using a volume-weighted methodology, for the portion of such Valuation Date for which the Calculation Agent determines there is no Market Disruption Event.
Settlement Date(s):	As determined in reference to Section 9.4 of the Equity Definitions, subject to paragraph 9(j)(i) hereof.
Other Applicable Provisions:	The provisions of Sections 9.1(c), 9.8, 9.9, 9.11, 9.12 and 10.5 of the Equity Definitions will be applicable (except that the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by excluding any representations therein relating to restrictions, obligations, limitations or requirements under applicable securities laws as a result of the fact that Company is the Issuer of the Shares and except that all references in such provisions to "Physically-Settled" shall be read as references to "Net Share Settled"). "Net Share Settled" in relation to any Warrant means that Net Share Settlement is applicable to that Warrant.

3. Additional Terms applicable to the Transaction:

Adjustments applicable to the Warrants:

Method of Adjustment:	Calculation Agent Adjustment. For the avoidance of doubt, in making any adjustments under the Equity Definitions, the Calculation Agent may make adjustments, if any, to any one or more of the Strike Price, the Number of Warrants, the Daily Number of Warrants and the Warrant Entitlement.

	Notwithstanding the foregoing, any cash dividends or distributions on the Shares, whether or not extraordinary, shall be governed by paragraph 9(f) of this Confirmation in lieu of Article 10 or Section 11.2(c) of the Equity Definitions.
Extraordinary Events applicable to the Transaction:	
New Shares:	Section 12.1(i) of the Equity Definitions is hereby amended by deleting the text in clause (i) in its entirety and replacing it with the phrase "publicly quoted, traded or listed on any of the New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or their respective successors)".
Consequence of Merger Events:	
Share-for-Share:	Modified Calculation Agent Adjustment
Share-for-Other:	Cancellation and Payment (Calculation Agent Determination)
Share-for-Combined:	Cancellation and Payment (Calculation Agent Determination); *provided* that Dealer may elect, in its commercially reasonable judgment, Component Adjustment (Calculation Agent Determination).
Consequence of Tender Offers:	
Tender Offer:	Applicable; *provided however* that if an event occurs that constitutes both a Tender Offer under Section 12.1(d) of the Equity Definitions and Additional Termination Event under paragraph 9(g)(iii)(C) of this Confirmation, Dealer may elect, in its commercially reasonable judgment, whether the provisions of Section 12.3 of the Equity Definitions or paragraph 9(g)(iii)(C) of this Confirmation will apply.
Share-for-Share:	Modified Calculation Agent Adjustment
Share-for-Other:	Modified Calculation Agent Adjustment
Share-for-Combined:	Modified Calculation Agent Adjustment
Nationalization, Insolvency or Delisting:	Cancellation and Payment (Calculation Agent Determination); *provided* that, for purposes of Section 12.6(a)(iii) of the Equity Definitions, it will 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), a Delisting shall not have occurred and such exchange or quotation system shall thereafter be deemed to be the Exchange.

Additional Disruption Events:

Change in Law:	Applicable; *provided* that Section 12.9(a)(ii) of the Equity Definitions is hereby amended replacing the word “Shares” where it appears in clause (X) thereof with the words “Hedge Position”.
Failure to Deliver:	Applicable
Insolvency Filing:	Applicable
Hedging Disruption:	Applicable; *provided* that Section 12.9(a)(v) of the Equity Definitions is hereby modified by inserting the following two phrases at the end of such Section: “The term “equity price risk” shall be deemed to include stock price and volatility risk. Any such transactions or assets referred to in phrases (A) or (B) above must be available on commercially reasonable pricing terms.”
Increased Cost of Hedging:	Not Applicable
Loss of Stock Borrow:	Applicable
Maximum Stock Loan Rate:	200 basis points
Increased Cost of Stock Borrow:	Applicable
Initial Stock Loan Rate:	25 basis points, as adjusted by the Calculation Agent to reflect any subsequent Price Adjustment due to an Increased Cost of Stock Borrow.
Hedging Party:	Dealer or an affiliate of Dealer that is involved in the hedging of this Transaction for all applicable Additional Disruption Events. Section 13.2(b) of the Equity Definitions is hereby amended by adding the words “(or an Affiliate of such party)” following the words “by a party” in the third line thereof.
Determining Party:	Dealer for all applicable Extraordinary Events
Non-Reliance:	Applicable
Agreements and Acknowledgments Regarding Hedging Activities:	Applicable
Additional Acknowledgments:	Applicable

4. Calculation Agent: Dealer, whose judgments, determinations and calculations shall be made in good faith and in a commercially reasonable manner. Following any determination or calculation by the Calculation Agent hereunder, upon a request by Company, the Calculation Agent shall promptly (but in any event within three Scheduled Trading Days) provide to Company by e-mail to the e-mail address provided by Company 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 determination or calculation (including any assumptions used in making such determination or calculation), it being understood that the Calculation Agent shall not be obligated to disclose any proprietary models used by it for such determination or calculation.

5. Account Details:

(a) Account for payments to Company:	Capital One, N.A. New Orleans, LA ABA 065-000-090 For credit to: Hornbeck Offshore Services, Inc. 103 Northpark Blvd., Suite 300 Covington, LA 70433 Account 812519859
Account for delivery of Shares to Company:	To be provided under separate cover by Company.
(b) Account for payments to Dealer:	Bank: Barclays Bank plc NY ABA# 026 00 2574 BIC: BARCUS33 Acct: 50038524 Beneficiary: BARCGB33 Ref: Barclays Bank plc London Equity Derivatives

6. Offices:

The Office of Company for the Transaction is:	Inapplicable, Company is not a Multibranch Party.
The Office of Dealer for the Transaction is:	Inapplicable, Dealer is not a Multibranch Party.

7. Notices: For purposes of this Confirmation:

(a) Address for notices or communications to Company:	Hornbeck Offshore Services, Inc. 103 Northpark Boulevard, Suite 300 Covington, Louisiana, 70433 Attention: Sam Giberga, General Counsel Facsimile No.: (985) 727-2006
(b) Address for notices or communications to Dealer:	Barclays Capital, Inc. 745 Seventh Ave. New York, NY 10019 Attention: General Counsel Telephone: (+1) 212-412-4000 Facsimile: (+1) 212-412-7519 with a copy to: Barclays Capital Inc. 745 Seventh Ave. New York, NY 10019 Attn: Paul Robinson Telephone: (+1) 212-526-0111 Facsimile: (+1) 917-522-0458 and Barclays Bank PLC, 5 The North Colonnade Canary Wharf, London E14 4BB Facsimile: 44(20) 777 36461 Phone: 44(20) 777 36810

8. Representations, Warranties and Agreements of Company

(A) The Company hereby represents and warrants to, and agrees with, Dealer that:

(a) The Shares initially issuable upon exercise of the Warrant by the net share settlement method (the "**Warrant Shares**") have been reserved for issuance by all required corporate action of Company. The Warrant Shares have been duly authorized and, when delivered against payment therefor (which may include Net Share Settlement in lieu of cash) and otherwise as contemplated by the terms of the Warrant following the exercise of the Warrant in accordance with the terms and conditions of the Warrant, will be validly issued, fully-paid and non-assessable, and the issuance of the Warrant Shares will not be subject to any preemptive or similar rights;

(b) Company is an "eligible contract participant" (as such term is defined in the Commodity Exchange Act, as amended (the "**CEA**"));

(c) Company is not, on the date hereof, in possession of any material non-public information with respect to Company;

(d) Without limiting the generality of Section 13.1 of the Equity Definitions, Company acknowledges that Dealer is not making any representations or warranties 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, 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 under FASB's Liabilities & Equity Project;

(e) Prior to or on the Trade Date, Company shall deliver to Dealer a resolution of Company's board of directors authorizing the Transaction;

(f) Company is not, and after giving effect to 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;

(g) On the Trade Date (A) the assets of Company at their fair valuation exceed the liabilities of Company, including contingent liabilities, (B) the capital of Company is adequate to conduct the business of Company and (C) Company has the ability to pay its debts and obligations as such debts mature and does not intend to, or does not believe that it will, incur debt beyond its ability to pay as such debts mature;

(h) Company understands that no obligations of Dealer to it hereunder will be entitled to the benefit of deposit insurance and that such obligations will not be guaranteed by any affiliate of Dealer or any governmental agency;

(i) During the period starting on the first Expiration Date and ending on the last Expiration Date (the "**Settlement Period**"), the Shares or securities that are convertible into, or exchangeable or exercisable for Shares, are not, and shall not be, subject to a "restricted period," as such term is defined in Regulation M ("**Regulation M**") under the Securities Exchange Act of 1934, as amended ("**Exchange Act**") and (B) Issuer shall not engage in any "distribution," as such term is defined in Regulation M, other than a distribution meeting the requirements of the exceptions set forth in sections 101(b)(10) and 102(b)(7) of Regulation M, until the second Exchange Business Day immediately following the Settlement Period;

(j) Prior to the Trade Date, the Company has not taken any action which is designed to or which has constituted or which might have been expected to cause or result in stabilization or manipulation of the price of any security of the Company in connection with the offering of the Convertible Notes;

(k) None of the Company or any of its subsidiaries is in violation of its certificate of incorporation or certificate of formation, or its bylaws or limited liability company agreement (or other organizational documents), or in default in the performance or observance of any material obligation, covenant or condition contained in any material indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which it is a party or by which it or any of its properties may be bound, other than such defaults that individually or in the aggregate would not have a Material Adverse Effect on this Transaction or Dealer's rights or obligations relating to this Transaction. "**Material Adverse Effect**" means any change in the capital stock, increase in long-term debt or any decreases in consolidated net current assets or stockholders' equity of the Company or any of its subsidiaries or any material adverse change, or any development involving a prospective material adverse change, in or affecting the general affairs, management, current or future consolidated financial position, stockholders' equity or results of operations of the Company and its subsidiaries taken as a whole;

(l) (A) Company is acting for its own account, and it has made its own independent decisions to enter into the Transaction and as to whether the Transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary, (B) Company is not relying on any communication (written or oral) of Dealer or any of its affiliates as investment advice or as a recommendation to enter into the Transaction (it being understood that information and explanations related to the terms and conditions of the Transaction shall not be considered investment advice or a recommendation to enter into the Transaction) and (C) no communication (written or oral) received from Dealer or any of its affiliates shall be deemed to be an assurance or guarantee as to the expected results of the Transaction;

(m) Company understands, agrees and acknowledges that Dealer has no obligation or intention to register the Transaction under the Securities Act of 1933, as amended (the "**Securities Act**"), any state securities law or other applicable federal securities law;

(n) Company shall use its reasonable best efforts to have the Warrant Shares duly listed, subject to notice of issuance, on the New York Stock Exchange;

(o) Company shall not take any action to decrease the number of Available Shares below the Maximum Amount (each as defined below);

(p) The assets used in the Transaction (1) are not assets of any "plan" (as such term is defined in Section 4975 of the United States 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;

(q) During the Settlement Period and on any other Exercise Date, neither Company nor any "affiliate" or "affiliated purchaser" (each as defined in Rule 10b-18 under the Exchange Act ("**Rule 10b-18**")) shall directly or indirectly (including, without limitation, by means of any cash-settled or other derivative instrument) purchase, offer to purchase, place any bid or limit order that would effect a purchase of, or commence any tender offer relating to, any Shares (or an equivalent interest, including a unit of beneficial interest in a trust or limited partnership or a depository share) or any security convertible into or exchangeable or exercisable for Shares, except through Dealer; and

(r) Company agrees that it (A) will not during the Settlement Period make, or permit to be made, any public announcement (as defined in Rule 165(f) under the Securities Act) of any Merger Transaction or potential Merger Transaction unless such public announcement is made prior to the opening or after the close of the regular trading session on the Exchange for the Shares; (B) shall promptly (but in any event prior to the next opening of the regular trading session on the Exchange) notify Dealer following any such announcement that such announcement has been made; and (C) shall promptly (but in any event prior to the next opening of the regular trading session on the Exchange) provide Dealer with written notice specifying (i) Company's average daily Rule 10b-18 Purchases (as defined in Rule 10b-18) during the three full calendar months immediately preceding the announcement date that were not effected through Dealer or its affiliates and (ii) the number of Shares purchased pursuant to the proviso in Rule 10b-18(b)(4) under the Exchange Act for the three full calendar months preceding the announcement date. Such written notice shall be deemed to be a certification by Company to Dealer that such information is true and correct. In addition, Company shall promptly notify Dealer of the earlier to occur of the completion of such transaction and the completion of the vote by target shareholders. "**Merger Transaction**" means any merger, acquisition or similar transaction involving a recapitalization as contemplated by Rule 10b-18(a)(13)(iv) under the Exchange Act.

(B) Each party makes to the other the representations and warranties set forth in Sections 3(a) through (f) of the Agreement with respect to the Agreement as supplemented by this Confirmation; *provided* that Dealer makes the representation and warranty set forth in Section 3(f) and Company makes the representation and warranty set forth in Section 3(e). In addition, each of Dealer and Company acknowledges that the offer and sale of the Transaction to it is intended to be exempt from registration under the Securities Act, by virtue of Section 4(2) thereof. Accordingly, Dealer represents and warrants to Company that (i) it has the financial ability to bear the economic risk of its investment in the Transaction and is able to bear a total loss of its investment and its investments in and liabilities in respect of the Transaction, which it understands are not readily marketable, are not disproportionate to its net worth, and it is able to bear any loss in connection with the Transaction, including the loss of its entire investment in the Transaction, (ii) it is an "accredited investor" as that term is defined in Regulation D as promulgated under the Securities Act, (iii) it is entering into the Transaction for its own account without a view to the distribution or resale thereof, (iv) the assignment, transfer or other disposition of the Transaction has not been and will not be registered under the Securities Act and is restricted under the Securities Act and state securities laws, (v) its financial condition is such that it has no need for liquidity with respect to its investment in the Transaction and no need to dispose of any portion thereof to satisfy any existing or contemplated undertaking or indebtedness and is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of the Transaction.

9. Other Provisions:

(a) *Opinions*. Company shall deliver an opinion of counsel, dated as of the Trade Date, to Dealer with respect to the matters set forth in Section 3(a) of the Agreement and Section 8(A)(f) of this Confirmation; *provided* that such opinion of counsel may contain customary exceptions and qualifications, including, without limitation, exceptions and qualifications relating to indemnification provisions.

(b) *Repurchase Notices*. Company shall, on any day on which Company 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 Notice Percentage as determined on such day is (i) greater than 4.5% and (ii) greater by 0.5% than the Notice Percentage included in the immediately preceding Repurchase Notice (or, in the case of the first such Repurchase Notice, greater than the Notice Percentage as of the date hereof). The "**Notice Percentage**" as of any day is the fraction, expressed as a percentage, the numerator of which is the product of the Number of Warrants and the Warrant Entitlement and the denominator of which is the number of Shares outstanding on such day.

(c) *Regulation M*. Company is not on the date hereof engaged in a distribution, as such term is used in Regulation M under the Securities Exchange Act, of any securities of Company, other than a distribution meeting the requirements of the exception set forth in Rules 101(b)(10) and 102(b)(7) of Regulation M. Company shall not, until the second Scheduled Trading Day immediately following the Trade Date, engage in any such distribution.

(d) *No Manipulation*. Company is not entering into this 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 and Assignment*. Subject to applicable law, Dealer may transfer and assign all of its rights and obligations hereunder and under the Transaction and Agreement, in whole or in part, without the consent of Company (1) to any affiliate of Dealer of credit quality at least equivalent to that of Dealer as of the Trade Date or to any other affiliate of Dealer with respect to which Company shall have received a full guaranty of such affiliate's obligations from Dealer in form and substance reasonably satisfactory to Company or (2) any third party with a rating (or whose guarantor has a rating) for its long term, unsecured and unsubordinated indebtedness equal to the Required Rating, in each case, if (x) an Event of Default, Potential Event of Default or Termination Event will not occur as a result of such transfer or assignment and (y) as a result of such transfer or assignment, Company will

not be required to pay the transferee on any payment date an amount under Section 2(d)(i)(4) of the Agreement, if at all applicable, greater than an amount that Company would have been required to pay to Dealer in the absence of such transfer or assignment. The Company may not transfer or assign any of its rights or obligations under the Transaction or the Agreement without the prior written consent of Dealer. "**Required Rating**" means a rating of A- or better by Standard & Poor's Ratings Services or its successor ("**S&P**"), or A3 or better by Moody's Investors Service, Inc. or its successor ("**Moody's**") or, if either S&P or Moody's ceases to rate such debt, at least an equivalent rating or better by a substitute rating agency mutually agreed by Counterparty and Dealer.

(f) *Dividends*. If at any time during the period from and including the Trade Date, to but excluding the final Expiration Date, an ex-dividend date for a cash dividend occurs with respect to the Shares (an "**Ex-Dividend Date**"), then the Calculation Agent will adjust the Strike Price and/or the Number of Warrants to preserve the fair value of the Transaction, after taking into account such dividend, of the Warrants representing the aggregate Daily Number of Warrants for all Expiration Dates occurring on or after such Ex-Dividend Date.

(g) *Additional Provisions*.

(i) *Amendments to the Equity Definitions*:

(A) Section 11.2(a) of the Equity Definitions is hereby amended by deleting the words "that may have a diluting or concentrative" and replacing them with the words "that may have a material".

(B) Section 11.2(c) of the Equity Definitions is hereby amended by (x) deleting the words "diluting or concentrative" and (y) deleting the phrase "(provided that no adjustments will be made to account solely for changes in volatility, expected dividends, stock loan rate or liquidity relative to the relevant Shares)" and replacing it with the phrase "(and, for the avoidance of doubt, adjustments may be made to account solely for changes in volatility, expected dividends, stock loan rate or liquidity relative to the relevant Shares)."

(C) Section 11.2(e)(vii) of the Equity Definitions is hereby amended by deleting the words "that may have a diluting or concentrative" and replacing them with the word "that is the result of a corporate event involving the Company and that may have a material"; and adding the phrase "or Warrants" at the end of the sentence.

(D) Section 12.9(b)(iv) of the Equity Definitions is hereby amended by:

(x) deleting (1) subsection (A) in its entirety, (2) the phrase "or (B)" following subsection (A) and (3) the phrase "in each case" in subsection (B); and

(y) deleting the phrase "neither the Non-Hedging Party nor the Lending Party lends Shares in the amount of the Hedging Shares or" in the penultimate sentence.

(ii) *Announcement Event*. If an Announcement Date occurs in respect of a Merger Event or Tender Offer (such occurrence, an "Announcement Event"), then on the earliest to occur of the Expiration Date, the date occurring a commercially reasonable period of time after the relevant Announcement Cessation Date, an Early Termination Date or other date of cancellation (the "Announcement Event Adjustment Date") in respect of each Warrant, the Calculation Agent will determine the cumulative economic effect on such Warrant of the Announcement Event and the Announcement Cessation Date, if any (without duplication in respect of any other adjustment or cancellation valuation made pursuant to the Equity Definitions, regardless of whether the Announcement Event actually results in a Merger Event or Tender Offer, and taking into account such factors as the Calculation Agent shall determine, including, without limitation, stock price movement, changes in volatility, expected dividends, stock loan rate or liquidity relevant to the Shares or the Transaction whether prior to or after the Announcement Event or for any period of time, including, without limitation, the period from the Announcement Event to the relevant Announcement Event Adjustment Date). If the Calculation Agent determines that such cumulative economic effect on any Warrant is material, then on the Announcement Event Adjustment Date for such

Warrant, the Calculation Agent shall make such adjustment to the exercise, settlement, payment or any other terms of such Warrant as the Calculation Agent determines appropriate to account for such cumulative economic effect, which adjustment shall be effective immediately prior to the Announcement Event Adjustment Date.

"**Announcement Cessation Date**" means, in respect of an Announcement Event, (i) in the case of an Announcement Event relating to an intention to engage in a transaction that, if completed, would lead to a Merger Event, the date of the first public announcement by the Issuer, any potential counterparty to such transaction or any of their agents or affiliates of its withdrawal from, or the discontinuation of, such transaction, or (ii) in the case of an Announcement Event relating to an intention to purchase or otherwise obtain Shares that, if completed, would lead to a Tender Offer, the date of the first public announcement by any potential offeror in respect of such Tender Offer or any of their agents or affiliates of its withdrawal from, or the discontinuation of, such purchase or other acquisition of Shares. If any such announcement is made after the actual closing time for the regular trading session of on the relevant Exchange, without regard to any after hours or any other trading outside of such regular trading session hours, the Announcement Cessation Date shall be deemed to be the next following Scheduled Trading Day; *provided* that, for the avoidance of doubt, the occurrence of an Announcement Cessation Date with respect to any transaction shall not preclude the occurrence of a later Announcement Date with respect to such transaction. For purposes hereof, the definition of "Announcement Date" in Section 12.1 of the Equity Definitions shall be amended by (i) replacing the word "leads to the" in the third and the fifth lines thereof with the words ", if completed, would lead to a"; (ii) replacing the words "voting shares" in the fifth line thereof with the word "Shares"; (iii) inserting the words "by any entity" after the word "announcement" in the second and the fourth lines thereof; (iv) replacing the words "a firm" with the word "any bona fide" in the second and fourth lines thereof; (v) inserting the words "or to explore the possibility of engaging in" after the words "engage in" in the second line thereto; and (vi) inserting the words "or to explore the possibility of purchasing or otherwise obtaining" after the word "obtain" in the fourth line thereto.

(iii) Notwithstanding anything to the contrary in this Confirmation, upon the occurrence of one of the following events, with respect to this Transaction, (1) Dealer shall have the right to designate such event an Additional Termination Event and designate an Early Termination Date pursuant to Section 6(b) of the Agreement, and (2) Company shall be deemed the sole Affected Party and the Transaction shall be deemed the sole Affected Transaction:

(A) the consummation of (i) any binding share exchange, consolidation or merger of Company pursuant to which the Shares will be converted into cash, securities or other property; or (ii) any sale, lease or other transfer in one transaction or a series of transactions of all of the consolidated assets of Company and its subsidiaries, taken as a whole, to any person other than one of Company's subsidiaries; *provided*, *however*, that a transaction in which the holders of more than 50% of all classes of common equity of Company 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 any direct or indirect parent thereof immediately after the consummation of such transaction shall not be an Additional Termination Event;

(B) There is a default by Company under any of its Public Indebtedness under which there may be outstanding in excess of $25 million, whether such Public Indebtedness now exists or shall hereafter be created, resulting in such Public Indebtedness becoming or being declared due and payable; "**Public Indebtedness**" shall mean any indebtedness of the Company for money borrowed under notes, bonds or similar instruments offered and sold by the Company in an offering registered with the Securities and Exchange Commission or pursuant to Rule 144A under the Securities Act;

(C) Any "person" or "group" within the meaning of Section 13(d) of the Exchange Act other than Company, any of its subsidiaries or its employee benefit plans, files a Schedule TO or any schedule, form or report under the Exchange Act disclosing that such person or group has become the direct or indirect ultimate "beneficial owner", as defined in Rule 13d-3 under the Exchange Act, of the common equity of Company representing more than 50% of the ordinary voting power of such common equity;

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

(E) the Shares (or other common stock or depositary shares or receipts in respect thereof) cease to be listed or quoted on any of the New York Stock Exchange, The NASDAQ Global Select Market, The NASDAQ Global Market or any other national securities exchange or automated quotation system (or any of their respective successors) for a period of 30 consecutive scheduled trading days;

(F) Dealer, despite using commercially reasonable efforts, is unable or reasonably determines based on the advice of counsel that it is illegal or inadvisable, to hedge its obligations pursuant to this Transaction in the public market without registration under the Securities Act or as a result of any legal, regulatory or self-regulatory requirements or related policies and procedures (whether or not such requirements, policies or procedures are imposed by law or have been voluntarily adopted by Dealer).

Notwithstanding any provision of paragraph 9(g)(iii)(A) or (C), however, an Additional Termination Event will not be deemed to have occurred if 90% of the consideration received or exchanged by common stockholders of Company (excluding cash payments for fractional shares and cash payments made pursuant to dissenters' appraisal rights), in connection with the transaction or transactions otherwise constituting the Additional Termination Event consists of shares of common stock or depositary shares or receipts in respect thereof traded on any of the New York Stock Exchange, The NASDAQ Global Select Market, The NASDAQ Global Market or any other national securities exchange or automated quotation system (or any of their respective successors) or which will be so traded when issued or exchanged in connection with such transaction or transactions ("**Publicly Traded Securities**") and as a result of such transaction or transactions the Convertible Notes (as defined in the Purchase Agreement) become convertible into cash, such Publicly Traded Securities or a combination of cash and such Publicly Traded Securities.

(h) *No Collateral or Setoff*. Notwithstanding any provision of the Agreement or any other agreement between the parties to the contrary, the obligations of Company hereunder are not secured by any collateral. In addition, obligations under this Transaction shall not be netted, recouped or set off (including pursuant to Section 6 of the Agreement) against any other obligations of the parties, whether arising under the Agreement, this Confirmation, under any other agreement between the parties hereto, by operation of law or otherwise, and no other obligations of the parties shall be netted, recouped or set off (including pursuant to Section 6 of the Agreement) against obligations under the Transaction, whether arising under the Agreement, this Confirmation, under any other agreement between the parties hereto, by operation of law or otherwise, and each party hereby waives any such right of setoff, netting or recoupment; provided that both parties agree that subparagraph (ii) of Section 2(c) of the Agreement shall apply to the Transaction.

(i) *Alternative Calculations and Payment on Early Termination and on Certain Extraordinary Events*. If, in respect of this Transaction, an amount is payable by Company to Dealer, (i) pursuant to Sections 12.2, 12.3, 12.6, 12.7 or 12.9 of the Equity Definitions (except in the event of an Insolvency, Nationalization, Tender Offer or Merger Event in which the consideration or proceeds to be paid to holders of shares consists solely of cash) or (ii) pursuant to Section 6(d)(ii) of the Agreement (except in the event of an Event of Default in which Company is the Defaulting Party or a Termination Event in which Company is the Affected Party, other than an Event of Default of the type described in (x) Section 5(a)(iii), (v), (vi), (vii) or (viii) of the Agreement or (y) a Termination Event of the type described in Section 5(b)(i), (ii), (iii), (iv), (v) or (vi) of the Agreement, in the case of both (x) and (y), resulting from an event or events outside Company's control) (a "**Payment Obligation**"), Company shall satisfy any such Payment Obligation by the Share Termination Alternative (as defined below), unless Company elects to satisfy any such Payment Obligation by delivering cash (in which case the provisions of Sections 12.2, 12.3, 12.6, 12.7 or 12.9 of the Equity Definitions or Section 6(d)(ii) of the Agreement, as the case may be, shall apply in lieu of the provisions of this paragraph 9(i)), by giving irrevocable telephonic notice to Dealer, confirmed in writing within one Scheduled Trading Day, no later than 12:00 p.m. New York local 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 where such notice shall include a representation and warranty from Company that it is

not, as of the date of the telephonic notice and the date of such written notice, aware of any "material non-public information" (within the meaning of Section 10(b) of the Exchange Act and the rules promulgated thereunder) concerning itself or the Shares. Notwithstanding the foregoing, satisfaction of a Payment Obligation in the Share Termination Alternative as set forth in this clause shall only apply to this Transaction and, notwithstanding anything to the contrary in the Agreement, (1) separate amounts shall be calculated with respect to (a) the Transaction and (b) all other Transactions under the Agreement, and (2) such separate amounts shall be payable pursuant to Section 6(d)(ii) of the Agreement, subject to, in the case of clause (a), Company's right to deliver cash in satisfaction of any Payment Obligation hereunder.

Share Termination Alternative:	If applicable, Company shall deliver to Dealer the Share Termination Delivery Property on the date (the "**Share Termination Payment Date**") on which the Payment Obligation would otherwise be due pursuant to Section 12.7 or Section 12.9 of the Equity Definitions or pursuant to Section 6(d)(ii) of the Agreement, subject to paragraph (j)(i) below, in satisfaction, subject to paragraph (j)(ii) below, of the Payment Obligation in the manner reasonably requested by Dealer 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 amount of 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 on the date such Share Termination Delivery Units are to be delivered as Share Termination Delivery Property, as determined by the Calculation Agent in its discretion by commercially reasonable means. The Calculation Agent shall notify Company of such Share Termination Unit Price at the time of notification of the Payment Obligation. In the case of a Private Placement of Share Termination Delivery Units that are Restricted Shares (as defined below), as set forth in paragraph (j)(i) below, the Share Termination Unit Price shall be determined by the discounted price applicable to such Share Termination Delivery Units. In the case of a Registration Settlement of Share Termination Delivery Units that are Restricted Shares (as defined below) as set forth in paragraph (j)(ii) below, the Share Termination Unit Price shall be the Settlement Price on the Merger Date, the Announcement Date (in the case of a Nationalization, Insolvency or Delisting) or the Early Termination Date, as applicable.
Share Termination Delivery Unit:	In the case of a Termination Event, Event of Default or Delisting, one Share or, in the case of Nationalization, Insolvency, Tender Offer or Merger Event, a unit consisting of the number or amount of each type of 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, Tender Offer or Merger Event. If such Nationalization, Insolvency, Tender Offer or Merger Event involves a choice of consideration to be received by holders, such holder shall be deemed to have elected to receive the maximum possible amount of cash.
Failure to Deliver:	Inapplicable
Other applicable provisions:	If Share Termination Alternative is applicable, the provisions of Sections 9.1(c), 9.8, 9.9, 9.11, 9.12 and 10.5 (as modified above) of the Equity Definitions will be applicable, except that the Representation and Agreement

contained in Section 9.11 of the Equity Definitions shall be modified by excluding any representations therein relating to restrictions, obligations, limitations or requirements under applicable securities laws as a result of the fact that Company is the Issuer of the Shares or any portion of the Share Termination Delivery Units, and 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 this Transaction means that Share Termination Alternative is applicable to this Transaction.

(j) *Registration/Private Placement Procedures*. If, in the commercially reasonable judgment of Dealer based on the advice of counsel, following any delivery of Shares or Share Termination Delivery Property to Dealer hereunder, such Shares or Share Termination Delivery Property would be in the hands of Dealer subject to any applicable restrictions with respect to any registration or qualification requirement or prospectus delivery requirement for such Shares or Share Termination Delivery Property pursuant to any applicable federal or any applicable material restrictions pursuant to any applicable state securities law (including, without limitation, any such requirement arising under Section 5 of the Securities Act as a result of such Shares or Share Termination Delivery Property being "restricted securities", as such term is defined in Rule 144 under the Securities Act, or as a result of the sale of such Shares or Share Termination Delivery Property being subject to paragraph (c) of Rule 145 under the Securities Act) (such Shares or Share Termination Delivery Property, "**Restricted Shares**"), then delivery of such Restricted Shares shall be effected pursuant to either clause (i) or (ii) below at the election of Company, unless Dealer waives the need for registration/private placement procedures set forth in (i) and (ii) below. Notwithstanding the foregoing, solely in respect of any Daily Number of Warrants exercised or deemed exercised on any Expiration Date, Company shall, if applicable, elect, prior to the first Settlement Date for the first Expiration Date, a Private Placement Settlement or Registration Settlement for all deliveries of Restricted Shares for all such Expiration Dates which election shall be applicable to all Settlement Dates for such Warrants and the procedures in clause (i) or clause (ii) below shall apply for all such delivered Restricted Shares on an aggregate basis commencing after the final Settlement Date for such Warrants. The Calculation Agent shall make reasonable adjustments to settlement terms and provisions under this Confirmation to reflect a single Private Placement or Registration Settlement for such aggregate Restricted Shares delivered hereunder.

(i) If Company elects to settle the Transaction pursuant to this clause (i) (a "**Private Placement Settlement**"), then delivery of Restricted Shares by Company shall be effected in accordance with customary private placement procedures for private placements of equity offerings of substantially similar size reasonably acceptable to Dealer; *provided* that Company may not elect a Private Placement Settlement if, on the date of its election, it has taken, or caused to be taken, any action that would make unavailable either the exemption pursuant to Section 4(2) of the Securities Act for the sale by Company to Dealer (or any affiliate designated by Dealer) of the Restricted Shares or the exemption pursuant to Section 4(1) or Section 4(3) of the Securities Act for resales of the Restricted Shares by Dealer (or any such affiliate of Dealer). The Private Placement Settlement of such Restricted Shares shall include customary representations, covenants, blue sky and other governmental filings and/or registrations, indemnities to Dealer, due diligence rights (for Dealer or any designated buyer of the Restricted Shares by Dealer), opinions and certificates, and such other documentation as is customary for private placements of equity offerings of substantially similar size, all reasonably acceptable to Dealer. In the case of a Private Placement Settlement, Dealer shall determine the appropriate discount to the Share Termination Unit Price (in the case of settlement of Share Termination Delivery Units pursuant to paragraph (i) above) or any Settlement Price (in the case of settlement of Shares pursuant to paragraph 2 above) applicable to such Restricted Shares in a commercially reasonable manner to account for the lack of marketability and illiquidity of such Restricted Shares and appropriately adjust the number of such Restricted Shares to be delivered to Dealer hereunder; *provided* that in no event shall such number be greater than 2 times the Number of Warrants multiplied by the Warrant Entitlement (the "**Maximum Amount**"). Notwithstanding the Agreement or this Confirmation, the date of delivery of such Restricted Shares shall be the Exchange Business Day following notice by Dealer to Company, of such applicable discount and the number of Restricted Shares to be delivered pursuant to this clause (i). For the avoidance of doubt, delivery of Restricted Shares shall be due as set forth in the previous sentence and not be due on the Share Termination Payment Date (in the case of settlement of Share Termination Delivery Units pursuant to paragraph (i) above) or on the Settlement Date for such Restricted Shares (in the case of settlement in Shares pursuant to paragraph 2 above).

In the event Company shall not have delivered the full number of Restricted Shares otherwise applicable as a result of the proviso above relating to the Maximum Amount (such deficit, the "**Deficit Restricted Shares**"), Company shall be continually obligated to deliver, from time to time until the full number of Deficit Restricted Shares have been delivered pursuant to this paragraph, Restricted Shares when, and to the extent, that (i) Shares are repurchased, acquired or otherwise received by Company or any of its subsidiaries after the Trade Date (whether or not in exchange for cash, fair value or any other consideration), (ii) Company authorized any unissued Shares reserved for issuance in respect of other transactions prior to such date which prior to the relevant date become no longer so reserved and (iii) Company additionally authorizes any unissued Shares that are not reserved for other transactions. At such time as there may be Deficit Restricted Shares, Company shall promptly notify Dealer of the occurrence of any of the foregoing events (including the number of Shares subject to clause (i), (ii) or (iii) and the corresponding number of Restricted Shares to be delivered) and promptly deliver such Restricted Shares thereafter.

(ii) If Company elects to settle the Transaction pursuant to this clause (ii) (a "**Registration Settlement**"), then Company shall file and use its reasonable best efforts to make effective under the Securities Act a registration statement or supplement or amend an outstanding registration statement in form and substance reasonably satisfactory to Dealer, to cover the resale of such Restricted Shares (and any Company Make-whole Shares) in accordance with customary resale registration procedures for registered secondary offerings of a substantially similar size, including covenants, conditions, representations, underwriting discounts (if applicable), commissions (if applicable), indemnities due diligence rights, opinions and certificates, and such other documentation as is customary for equity resale underwriting agreements for registered secondary offerings of a substantially similar size, all reasonably acceptable to Dealer. If Dealer, in its good faith and reasonable discretion, is not satisfied with such procedures and documentation, Private Placement Settlement shall apply. If Dealer is satisfied with such procedures and documentation, it shall sell the Restricted Shares pursuant to such registration statement during a period (the "**Resale Period**") commencing on the Exchange Business Day following delivery of such Restricted Shares (and any Company Make-whole Shares) (which, for the avoidance of doubt, shall be (x) any Settlement Date in the case of an exercise of Warrants prior to the first Expiration Date pursuant to paragraph 2 above, (y) the Share Termination Payment Date in case of settlement in Share Termination Delivery Units pursuant to paragraph (i) above or (z) the Settlement Date in respect of the final Expiration Date for all Daily Number of Warrants) and ending on the earliest of (i) the Exchange Business Day on which Dealer completes the sale of all Restricted Shares or, in the case of settlement of Share Termination Delivery Units, a sufficient number of Restricted Shares so that the realized net proceeds of such sales exceed the Payment Obligation (as defined above) and (ii) the date upon which all Restricted Shares have been sold or transferred pursuant to Rule 144 (or similar provisions then in force) or Rule 145(d)(1) or (2) (or any similar provision then in force) under the Securities Act.

(iii) (A) If (ii) above is applicable and the Net Share Settlement Amount or the Payment Obligation, as applicable, exceeds the realized net proceeds from such resale, or if (i) above is applicable and the Freely Tradable Value (as defined below) of the Net Share Settlement Amount or the Payment Obligation (in each case as adjusted pursuant to (i) above), as applicable, exceeds the realized net proceeds from such resale, Company shall transfer to Dealer by the open of the regular trading session on the Exchange on the Exchange Trading Day immediately following the last day of the Resale Period a number of Shares ("**Company Make-whole Shares**") in an amount that, based on the Settlement Price on the last day of the Resale Period (as if such day was the "Valuation Date" for purposes of computing such Settlement Price), has a dollar value equal to the amount of such excess (the "**Company Additional Amount**"), or if Company so elects, an amount in cash equal to the Company Additional Amount. The Resale Period shall continue to enable the sale of the Company Make-whole Shares. If Company elects to pay the Additional Amount in Shares, the requirements and provisions for Registration Settlement or Private Placement Settlement, as the case may be, shall apply. This provision shall be applied successively until the Additional Amount is equal to zero. In no event shall Company deliver a number of Restricted Shares greater than the Maximum Amount.

If (ii) above is applicable and the realized net proceeds from such resale (including the sale of any Company Make-whole Shares) exceed the Net Share Settlement Amount or the Payment Obligation, as applicable, or if (i) above is applicable and the realized net proceeds from such resale (including the sale of any Company Make-whole Shares) exceed the Freely Tradeable Value (as defined below) of the Net Share Settlement Amount or the Payment Obligation (in each case as adjusted pursuant to (i) above), as applicable, Dealer shall transfer to Company the amount of such excess (the "**Dealer Additional Amount**") in a number of Shares ("**Dealer Make-whole Shares**") that, based on the Settlement Price on the last day of the Resale Period (as if such day was the Valuation Date for purposes of computing such Settlement Price), has a value equal to the Dealer Additional Amount, or, at Company's option, in cash in an amount equal to the Dealer Additional Amount. The transfer of the Dealer Additional Amount shall be made (x) if in cash, by the open of the regular trading session on the Exchange on the Exchange Trading Day immediately following the last day of the Resale Period, and (y) if in Shares, one Settlement Cycle following the date Dealer is able, using commercially reasonable efforts, to purchase Dealer Make-whole Shares. This provision shall be applied successively until the Dealer Additional Amount is equal to zero.

"**Freely Tradeable Value**" means the value of the number of Shares delivered to Dealer which such Shares would have if they were freely tradeable (without prospectus delivery) upon receipt by Dealer, as determined by the Calculation Agent by commercially reasonable means.

(iv) Without limiting the generality of the foregoing, Company agrees that any Restricted Shares delivered to Dealer, as purchaser of such Restricted Shares, (i) may be transferred by and among Dealer and its affiliates and Company shall effect such transfer without any further action by Dealer and (ii) after the minimum "holding period" within the meaning of Rule 144(d) under the Securities Act has elapsed after any Settlement Date for such Restricted Shares, Company shall promptly remove, or cause the transfer agent for such Restricted Shares to remove, any legends referring to any such restrictions or requirements from such Restricted Shares upon delivery by Dealer (or such affiliate of Dealer) to Company or such transfer agent of seller's and broker's representation letters customarily delivered by Dealer in connection with resales of restricted securities pursuant to Rule 144 under the Securities Act, without any further requirement for the delivery of any certificate, consent, agreement, opinion of counsel, notice or any other document, any transfer tax stamps or payment of any other amount or any other action by Dealer (or such affiliate of Dealer).

If the Private Placement Settlement or the Registration Settlement shall not be effected as set forth in clauses (i) or (ii), as applicable, then failure to effect such Private Placement Settlement or such Registration Settlement shall constitute an Event of Default with respect to which Company shall be the Defaulting Party.

(k) *Limit on Beneficial Ownership*. Except as provided below in this paragraph (k), notwithstanding any other provision to the contrary in this Confirmation, in no event shall Dealer be entitled to receive, or shall be deemed to receive, Shares to the extent that, immediately upon giving effect to such receipt of such Shares,

(i) the Option Equity Percentage (as defined below) exceeds 4.9%,

(ii) Dealer, Dealer Group (as defined below) or any person whose ownership position would be aggregated with that of Dealer or Dealer Group (Dealer, Dealer Group or any such person, a "**Dealer Person**") under any relevant state corporate law or other state, federal or local laws, regulations or regulatory orders applicable to ownership of Shares ("**Applicable Laws**"), owns, beneficially owns, constructively owns, controls, holds the power to vote or otherwise meets a relevant definition of ownership in excess of a number of Shares equal to (x) the number of Shares that, in the good faith determination of the relevant Dealer Person, would give rise to materially burdensome reporting or registration obligations or other requirements (including obtaining prior approval by a state or federal regulator) of a Dealer Person under Applicable Laws (including, without limitation, "interested stockholder" or "acquiring person" status under Section 203 of the Delaware General Corporation Law, but excluding any report or filing required pursuant to Section 13 of the Exchange Act and the rules promulgated thereunder) and with respect to which such requirements have not been met or the relevant approval has not been received *minus* (y) 1.0% of the number of Shares outstanding on the date of determination,

(iii) the Maritime Law Ownership Percentage (as defined below) of the Maritime Law Dealer Group (as defined below) would be greater than 4.9% of the outstanding Shares, unless Dealer has established to the reasonable satisfaction of the Company that it (or the person designated to take delivery) is a citizen of the United States for purposes of the U.S. coastwise trade under the Maritime Laws (as defined below),

(iv) such Shares would reasonably be anticipated by the Company to be "Excess Shares" ("**Excess Shares**") as defined in the Company's Second Restated Certificate of Incorporation (the "**Certificate**") or

(v) such Shares, in the good faith determination of the Company, would cause the Company to cease to be qualified under Maritime Laws (as defined below) or Applicable Laws to own and operate vessels in the coastwise trade of the United States (each of clause (i) through (iv) above and this clause (v), an "**Ownership Limitation**").

If any delivery owed to Dealer hereunder is not made, in whole or in part, as a result of an Ownership Limitation, the Company's obligation to make such delivery shall not be extinguished and the Company shall make such delivery as promptly as practicable after, but in no event later than three Exchange Business Days after, Dealer gives notice to the Company that such delivery would not result in any of such Ownership Limitations being breached. Such notice by Dealer will include details sufficient to support the position taken by Dealer in such notice.

The "**Option Equity Percentage**" as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the sum of (i) the number of Shares that Dealer and any of its affiliates subject to aggregation with Dealer, for purposes of the "beneficial ownership" test under Section 13 of the Exchange Act, and all persons who may form a "group" (within the meaning of Rule 13d-5(b)(1) under the Exchange Act) with Dealer ("**Dealer Group**") "beneficially owns" (within the meaning of Section 13 of the Exchange Act) on such day, other than any Shares so owned as a hedge of the Transaction, and (ii) the product of the Number of Warrants and the Warrant Entitlement and (B) the denominator of which is the number of Shares outstanding on such day. "**Maritime Law Ownership Percentage**" means the ownership, as construed under the Maritime Laws, of Shares by Dealer or any person whose ownership would be aggregated with that of Dealer or Dealer's parent entity under the Maritime Laws (collectively, the "**Maritime Law Dealer Group**"). "**Maritime Laws**" means, collectively and without duplication, Chapters 121 and 505 of Title 46 of the United States Code and any successor or replacement statute thereto, and the regulations promulgated under such Title or successor or replacement statute or, to the extent remaining in force, under any predecessor statute, in each case as amended or supplemented from time to time.

The Company represents and warrants that, assuming the accuracy of any factual information regarding Dealer that is provided by Dealer to the Company upon the Company's request, any Shares delivered by the Company to Dealer pursuant to the Transaction shall not be Excess Shares, and the issuance and delivery of such Shares shall have been approved by the board of directors of the Company. If Dealer designates any person to receive any Shares pursuant to Section 9(t), clauses (iii), (iv) and (v) of this Section 9(k) shall apply as if such person were Dealer. If the Company is unable to deliver any Shares to Dealer as a result of this Section 9(k), notwithstanding Company's continuing obligation to deliver such Shares as described herein, the Company may at any time following the Settlement Date, upon one Exchange Business Day's prior written notice to Dealer, elect to deliver cash in lieu of any or all such Shares, in which case the Shares for which cash delivery has been so elected shall be valued by the Calculation Agent in a commercially reasonable manner over such time period as the Calculation Agent reasonably determines appropriate in light of the liquidity of the Shares at such time and applicable law and related regulations, policies and procedures. The Company's right to elect cash pursuant to the foregoing sentence shall be subject to the Company giving representations, warranties and covenants customary for transactions under Rule 10b5-1 under the Exchange Act and satisfactory to Dealer. The Company shall promptly notify Dealer if at any time either (i) any purported transfer of any shares of any class or series of capital stock of the Company is void and ineffective pursuant to Section 2 of Article Twelve of the Certificate or (ii) any shares of any class or series of capital stock of the Company are "Excess Shares" pursuant to Section 3 of Article Twelve of the Certificate. The Company covenants that it shall provide prompt written notice to Dealer upon having actual knowledge that more than 10% of the aggregate Shares outstanding are owned by persons other than citizens of the United States for purposes of the U.S. coastwise trade under the Maritime Laws and upon becoming aware of each additional 5% thereafter.

The Company shall provide Dealer with a copy of any filings submitted to any regulatory authority relating to the Company's or the Company's stockholders' citizenship under the Maritime Laws so long as Dealer (or any assignee of Dealer) has agreed to keep any such filings and the information contained therein confidential on terms reasonably acceptable to the Company and Dealer. Dealer acknowledges that Dealer will not have any rights as a holder of the Company's common stock with respect to Shares, prior to the delivery thereof hereunder, that the Company is unable to deliver as a result of this Section 9(k). The Company acknowledges that, as a result of this Section 9(k), it will not treat Dealer (or any affiliate or designee of Dealer) as the owner, for any purpose (including, without limitation, for purposes of the Maritime Laws or Article Twelve of the Certificate), of Shares, prior to the delivery of such Shares hereunder, that the Company is unable to deliver as a result of this Section 9(k). For purposes of this Section 9(k), the term "Dealer" shall include any of the Dealer's permitted successors or assigns.

(l) *Share Deliveries*. Company acknowledges and agrees that, to the extent the holder of this Warrant is not then an affiliate, as such term is used in Rule 144 under the Securities Act, of Company and has not been such an affiliate of Company for 90 days (it being understood that Dealer will not be considered an affiliate of Company solely by reason of its receipt of or right to receive Shares pursuant to this Transaction), and otherwise satisfies all holding period and other requirements of Rule 144 of the Securities Act applicable to it, any delivery of Shares or Share Termination Delivery Property hereunder at any time after 6 months from the Trade Date (or 1 year from the Trade Date if, at such time, informational requirements of Rule 144(c) are not satisfied with respect to Company) shall be eligible for resale under Rule 144 of the Securities Act, and Company agrees to promptly remove, or cause the transfer agent for such Shares or Share Termination Delivery Property to remove, any legends referring to any restrictions on resale under the Securities Act from the certificates representing such Shares or Share Termination Delivery Property. Company further agrees and acknowledges that Dealer shall run a holding period under Rule 144 under the Securities Act with respect to the Warrants and/or any Shares or Share Termination Delivery Property delivered hereunder notwithstanding the existence of any other transaction or transactions between Company and Dealer relating to the Shares. Company further agrees that Shares or Share Termination Delivery Property delivered hereunder prior to the date that is 6 months from the Trade Date (or 1 year from the Trade Date, if, at such time, informational requirements of Rule 144(c) are not satisfied with respect to Company) may be freely transferred by and among Dealer and its affiliates, and Company shall effect such transfer without any further action by Dealer. Notwithstanding anything to the contrary herein, Company agrees that any delivery of Shares or Share Termination Delivery Property shall be effected by book-entry transfer through the facilities of DTC, or any successor depositary, if, at the time of delivery, the certificates representing such Shares or Share Termination Delivery Property would not contain any restrictive legend as described above. Notwithstanding anything to the contrary herein, to the extent the provisions of Rule 144 of the Securities Act or any successor rule are amended, or the applicable interpretation thereof by the Securities and Exchange Commission or any court changes after the Trade Date, including without limitation to lengthen or shorten the holding periods, the agreements of Company herein shall be deemed modified to the extent necessary, in the opinion of outside counsel of Company, to comply with Rule 144 of the Securities Act, including Rule 144, as in effect at the time of delivery of the relevant Shares or Share Termination Delivery Property.

(m) *Additional Termination Event*. If within the period commencing on the Trade Date and ending on the first anniversary of the Premium Payment Date, Dealer reasonably determines that it is advisable to terminate a portion of the Transaction so that Dealer's related hedging activities will comply with applicable securities laws, rules or regulations, an Additional Termination Event shall occur in respect of which (1) Company shall be the sole Affected Party and (2) the Transaction shall be the sole Affected Transaction.

(n) *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 this Transaction. Each party (i) certifies that no representative, agent or attorney of the other 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 this Transaction, as applicable, by, among other things, the mutual waivers and certifications provided herein.

(o) *Tax Disclosure*. Effective from the date of commencement of discussions concerning the Transaction, each party and each of their respective 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) relating to such tax treatment and tax structure.

(p) *Maximum Share Delivery*. Notwithstanding any other provision of this Confirmation or the Agreement, in no event will Company be required to deliver more than the lesser of (i) the Maximum Amount of Shares in the aggregate to Dealer in connection with this Transaction and (ii) 2,112,465 Shares, subject to the provisions regarding Deficit Restricted Shares.

(q) *Status of Claims in Bankruptcy*. Dealer acknowledges and agrees that this Confirmation is not intended to convey to Dealer rights with respect to the Transaction that are senior to the claims of common stockholders in any U.S. bankruptcy proceedings of Company; *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 Company 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.

(r) *Securities Contract*. Each of Dealer and Company agrees and acknowledges that Dealer is one or more of a "financial institution" and "financial participant" within the meaning of sections 101(22) and 101(22A) of Title 11 of the United States Code (the "**Bankruptcy Code**"). The parties further agree and acknowledge (A) that this Confirmation is 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 is a "settlement payment" (as such term is defined in Section 741(8) of the Bankruptcy Code) or a "transfer" within the meaning of section 546 of the Bankruptcy Code, and (B) that is the parties are entitled to the protections afforded by, among other sections, section 362(b)(6), 362(b)(27), 362(o), 546(e), 546(j), 548(d)(2), 555 and 561 of the Bankruptcy Code.

(s) *Right to Extend*. Dealer may postpone any Exercise Date, Settlement Date or any other date of valuation or delivery with respect to some or all of the relevant Warrants (in which case the Calculation Agent may make appropriate adjustments to the relevant number of Warrants being exercised), if Dealer determines, in its good faith and commercially reasonable judgment based on the advice of counsel, that such action is advisable to preserve Dealer's Hedging Activity hereunder in light of existing liquidity conditions to enable Dealer to effect purchases of Shares in connection with its Hedging Activity hereunder in a manner that would, if Dealer were the Company or an affiliated purchaser of the Company, be in compliance with applicable legal and regulatory requirements.

(t) *Method of Delivery*. Whenever delivery of funds or other assets is required hereunder by or to Company, such delivery shall be effected through Agent.

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 to or from Company, Dealer may designate any of its affiliates to purchase, sell, receive or deliver such Shares or other securities 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 Company to the extent of any such performance.

(u) *Regulatory Provisions*. The time of dealing for the Transaction will be confirmed by Dealer upon written request by Company. The Agent will furnish to Company upon written request a statement as to the source and amount of any remuneration received or to be received by the Agent in connection with the Transaction.

(v) *Role of Agent*. Each of Dealer and Company acknowledges to and agrees with the other party hereto and to and with the Agent that (i) the Agent is acting as agent for Dealer under the Transaction pursuant to instructions from such party, (ii) the Agent is not a principal or party to the Transaction, and may transfer its rights and obligations with respect to the Transaction, (iii) the Agent shall have no responsibility, obligation or liability, by way of issuance, guaranty, endorsement or otherwise in any manner with respect to the performance of either party under the Transaction, (iv) Dealer and the Agent have not given, and Company is not relying (for purposes of making any investment decision or otherwise) upon, any statements, opinions or representations (whether written or oral) of Dealer or the Agent, other than the representations expressly set forth in this Confirmation or the Agreement, and (v) each party agrees to proceed solely against the other party, and not the Agent, to collect or recover any money or securities owed to it in connection with the Transaction. Each party hereto acknowledges and agrees that the Agent is an intended third party beneficiary hereunder. Company acknowledges that the Agent is an affiliate of Dealer. Dealer will be acting for its own account in respect of this Confirmation and the Transaction contemplated hereunder. Dealer appoints Agent as Dealer's Process Agent for purposes of Section 13(c) of the Agreement.

(w) *Additional ISDA Schedule Terms*.

(i) "**Specified Entity**" means in relation to each of Dealer and Company for purposes of Sections 5(a)(v), 5(a)(vi), 5(a)(vii) and 5(b)(v) of the Agreement, not applicable.

(ii) "Specified Transaction" will have the meaning specified in Section 14 of the Agreement.

(iii) The "Cross-Default" provisions of Section 5(a)(vi) of the Agreement shall not apply to either party.

(iv) **Automatic Early Termination**. The "Automatic Early Termination" provision of Section 6(a) of the Agreement will not apply to Dealer and will not apply to Company.

(v) "**Termination Currency**" means United States Dollars ("**USD**").

(vi) **Consent to Recording**. Each party (i) consents to the monitoring or recording, at any time and from time to time, by the other party of any and all communications between officers or employees of the parties, (ii) waives any further notice of such monitoring or recording, and (iii) agrees to notify (and, if required by law, obtain the consent of) its officers and employees with respect to such monitoring or recording. Any such recording may be submitted in evidence to any court or in any Proceeding for the purpose of establishing any matters pertinent to this Transaction.

(vii) **Severability**. In the event any one or more of the provisions contained in this Confirmation or the Agreement shall be held illegal, invalid or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby.

(viii) **Deduction or Withholding for Tax.** So long as Company is organized under the laws of the United States or any State thereof, the provisions of Section 2(d)(i)(4) of the Agreement shall not apply to the Transaction.

(ix) **Part 2(b) of the ISDA Schedule – Payee Representation**:

For the purpose of Section 3(f) of this Agreement, Company makes the following representation to Dealer:

Company is a corporation established under the laws of the State of Delaware and is a U.S. person (as that term is defined in Section 7701(a)(30) of the Code).

For the purpose of Section 3(f) of this Agreement, Dealer makes the following representation to Company:

(A) Each payment received or to be received by it in connection with this Agreement is effectively connected with its conduct of a trade or business within the United States; and

(B) It is a "foreign person" (as that term is used in Section 1.6041-4(a)(4) of the United States Treasury Regulations) for United States federal income tax purposes.

(x) **Part 3(a) of the ISDA Schedule – Tax Forms:**

Party Required to Deliver Document	Form/Document/Certificate	Date by which to be Delivered
Company	A complete and duly executed United States Internal Revenue Service Form W-9 (or successor thereto.)	(i) Upon execution and delivery of this Agreement; (ii) promptly upon reasonable demand by Dealer; and (iii) promptly upon learning that any such Form previously provided by Company has become obsolete or incorrect.
Dealer	A complete and duly executed United States Internal Revenue Service Form W-8ECI (or successor thereto).	(i) Upon execution and delivery of this Agreement; (ii) promptly upon reasonable demand by Company; and (iii) promptly upon learning that any such Form previously provided by Dealer has become obsolete or incorrect.

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.

THE SECURITIES REPRESENTED BY THE CONFIRMATION HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED, OR ANY OTHER UNITED STATES FEDERAL OR STATE SECURITIES LAWS; SUCH SECURITIES MAY NOT BE SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF APPROPRIATE REGISTRATION UNDER SUCH SECURITIES LAWS OR EXCEPT IN A TRANSACTION EXEMPT FROM OR NOT SUBJECT TO THE REGISTRATION REQUIREMENTS OF SUCH SECURITIES LAWS.

Company 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 a facsimile of the fully-executed Confirmation to Dealer at (+1) 917-522-0458. Originals shall be provided for your execution upon your request.

Very truly yours,

BARCLAYS CAPITAL INC.
acting solely as Agent in connection with this Transaction

By: /s/ Paul Robinson
Name: Paul Robinson
Title: Managing Director

Accepted and confirmed as of the Trade Date:

HORNBECK OFFSHORE SERVICES, INC.

By: /s/ James O. Harp, Jr.
Name: James O. Harp, Jr.
Title: Executive Vice President and CFO

ANNEX A: Daily Number of Warrants

Expiration Date	Number of Warrants
Monday, December 02, 2019	36,215
Tuesday, December 03, 2019	36,215
Wednesday, December 04, 2019	36,215
Thursday, December 05, 2019	36,215
Friday, December 06, 2019	36,215
Monday, December 09, 2019	36,215
Tuesday, December 10, 2019	36,215
Wednesday, December 11, 2019	36,215
Thursday, December 12, 2019	36,215
Friday, December 13, 2019	36,215
Monday, December 16, 2019	36,215
Tuesday, December 17, 2019	36,215
Wednesday, December 18, 2019	36,215
Thursday, December 19, 2019	36,215
Friday, December 20, 2019	36,215
Monday, December 23, 2019	36,215
Tuesday, December 24, 2019	36,215
Thursday, December 26, 2019	36,215
Friday, December 27, 2019	36,215
Monday, December 30, 2019	36,215
Tuesday, December 31, 2019	36,215
Thursday, January 02, 2020	36,215
Friday, January 03, 2020	36,215
Monday, January 06, 2020	36,215
Tuesday, January 07, 2020	36,215
Wednesday, January 08, 2020	36,215
Thursday, January 09, 2020	36,215
Friday, January 10, 2020	36,215
Monday, January 13, 2020	36,215
Tuesday, January 14, 2020	36,215
Wednesday, January 15, 2020	36,215
Thursday, January 16, 2020	36,215
Friday, January 17, 2020	36,215
Tuesday, January 21, 2020	36,215
Wednesday, January 22, 2020	36,215
Thursday, January 23, 2020	36,215
Friday, January 24, 2020	36,215
Monday, January 27, 2020	36,215
Tuesday, January 28, 2020	36,215
Wednesday, January 29, 2020	36,216

Exhibit 4.9

J.P.Morgan

Execution version

JPMorgan Chase Bank, National Association
London Branch
P.O. Box 161
60 Victoria Embankment
London EC4Y 0JP
England

August 7, 2012

To: Hornbeck Offshore Services, Inc.
103 Northpark Boulevard, Suite 300
Covington, Louisiana, 70433
Attention: Sam Giberga, General Counsel
Facsimile No.: (985) 727-2006

Re: **Base Warrants**

The purpose of this letter agreement (this "**Confirmation**") is to confirm the terms and conditions of the Transaction entered into between JPMorgan Chase Bank, National Association, London Branch ("**Dealer**") and Hornbeck Offshore Services, Inc. ("**Company**") on the Trade Date specified below (the "**Transaction**"). This Confirmation constitutes a "Confirmation" as referred to in the Agreement specified below.

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.

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 Company as to the terms of the Transaction to which this Confirmation relates. This Confirmation shall supplement, form a part of, and be subject to an agreement in the form of the ISDA 2002 Master Agreement (the "**Agreement**") as if Dealer and Company had executed an agreement in such form (but without any Schedule except for (i) the election of the laws of the State of New York as the governing law, and (ii) the election of US Dollars ("**USD**") as the Termination Currency, and (iii) the other provisions set forth in paragraph 9(v) below) on the Trade Date. In the event of any inconsistency between provisions of that Agreement and this Confirmation, this Confirmation will prevail for the purpose of the Transaction to which this Confirmation relates. The parties hereby agree that no Transaction other than the Transaction to which this Confirmation relates shall be governed by the Agreement.

2. The Transaction is a Warrant Transaction, which shall be considered a Share Option Transaction for purposes of the Equity Definitions. The terms of the particular Transaction to which this Confirmation relates are as follows:

General Terms:

Trade Date:	August 7, 2012
Effective Date:	August 13, 2012; *provided* that either Buyer or Seller may cancel all (but not less than all) the Warrants by notice to the other party prior to payment of the Premium on the Effective Date, in which case these Warrants shall never become effective and neither party shall have any obligation to the other party in respect of the Transaction.
Warrants:	Equity call warrants, each giving the holder the right to purchase one Share at the Strike Price, subject to the Settlement Terms set forth below. For the purposes of the Equity Definitions, each reference to a Warrant herein shall be deemed to be a reference to a Call Option.
Warrant Style:	European
Seller:	Company
Buyer:	Dealer
Shares:	The common stock of Company, par value USD 0.01 per Share (Exchange symbol “HOS”)
Number of Warrants:	For each Expiration Date, a number of Warrants set forth next to such an Expiration Date on Annex A hereto (the “**Daily Number of Warrants**”), subject to adjustment as provided herein.
Warrant Entitlement:	One Share per Warrant
Strike Price:	USD 68.5300. Notwithstanding anything to the contrary in the Agreement, this Confirmation or the Equity Definitions, in no event shall the Strike Price be subject to adjustment to the extent that, after giving effect to such adjustment, the Strike Price would be less than USD 39.16, except for any adjustment pursuant to the terms of this Confirmation and the Equity Definitions in connection with stock splits or similar changes to Company’s capitalization
Premium:	USD 16,722,160.00 (Premium per Warrant USD 8.6578).
Premium Payment Date:	The Effective Date.
Exchange:	New York Stock Exchange
Related Exchange(s):	All Exchanges
Procedures for Exercise:	
Expiration Time:	The Valuation Time
Expiration Date(s):	Each Scheduled Trading Day during the period from and including the First Expiration Date and to and including the 39th Scheduled Trading Day following the First Expiration Date

	shall be an "Expiration Date" for a number of Warrants equal to the Daily Number of Warrants on such date; *provided* that, notwithstanding anything to the contrary in the Equity Definitions, if any such date is a Disrupted Day, the Calculation Agent may determine that such date is a Disrupted Day in full or a Disrupted Day in part. If the Calculation Agent determines such Disrupted Day is a Disrupted day in full, the Daily Number of Warrants for such day shall be reduced to zero. If the Calculation Agent Determines that such Disrupted Day is a Disrupted Day in part, the Calculation Agent shall make adjustments, if applicable, to the Daily Number of Warrants or shall reduce such Daily Number of Warrants to zero for such date. In either case, the Calculation Agent shall designate a Scheduled Trading Day or a number of Scheduled Trading Days as the Expiration Date(s) for the remaining Daily Number of Warrants or a portion thereof for the originally scheduled Expiration Date; and *provided further* that if such Expiration Date has not occurred pursuant to this clause as of the eighth Scheduled Trading Day following the last scheduled Expiration Date under this Transaction, the Calculation Agent shall have the right to declare such Scheduled Trading Day to be the final Expiration Date and the Calculation Agent shall determine its good faith estimate of the fair market value for the Shares as of the Valuation Time on that eighth Scheduled Trading Day or on any subsequent Scheduled Trading Day, as the Calculation Agent shall determine using commercially reasonable means. Any Scheduled Trading Day on which, as of the date hereof, the Exchange is scheduled to close prior to its normal close of trading shall be deemed not to be a Scheduled Trading Day; if a closure of the Exchange prior to its normal close of trading on any Scheduled Trading Day is scheduled (i) following the date hereof and (ii) on or prior to the Scheduled Trading Day that is at least one Scheduled Trading Day before such Scheduled Trading Day, then such Scheduled Trading Day shall be deemed to be a Disrupted Day in full. If a closure of the Exchange prior to its normal close of trading on any Scheduled Trading Day is scheduled on such Scheduled Trading Day, such Scheduled Trading Day shall be deemed to be a Disrupted Day in part.
First Expiration Date: [1]	Monday, December 2, 2019 (or if such day is not a Scheduled Trading Day, the next following Scheduled Trading Day), subject to Market Disruption Event below.
Multiple Exercise:	Applicable
Minimum Number of Warrants:	1
Maximum Number of Warrants:	All Warrants remaining unexercised as of the remaining Exercise Date(s).
Automatic Exercise:	Applicable; and means that a number of Warrants (as adjusted pursuant to the terms hereof) for each Expiration Date equal to the Daily Number of Warrants (as adjusted pursuant to the terms hereof) for such Expiration Date will be deemed to be

[1] 3 months after Convertible Notes mature.

	automatically exercised; *provided* that "In-the-Money" means that the Settlement Price for such Expiration Date exceeds the Strike Price for such Expiration Date; and *provided further* that all references in Section 3.4(b) of the Equity Definitions to "Physical Settlement" shall be read as references to "Net Share Settlement".
Market Disruption Event:	Section 6.3(a)(ii) of the Equity Definitions is hereby amended by replacing clause (ii) in its entirety with "(ii) an Exchange Disruption, or" and inserting immediately following clause (iii) the phrase "; in each case that the Calculation Agent determines is material."
Valuation:	
Valuation Time:	Scheduled Closing Time; *provided* that if the principal trading session is extended, the Calculation Agent shall determine the Valuation Time in its reasonable discretion.
Valuation Date:	Each Exercise Date.
Settlement Terms:	
Settlement Method Election:	Applicable; *provided* that the same Settlement Method shall apply to each Warrant under the Transaction; and *provided further* that references to "Physical Settlement" in Section 7.1 of the Equity Definitions shall be replaced with "Net Share Settlement"; and *provided further* that Company may elect Cash Settlement only if at the time of such election it provides to Dealer a written statement that the representations contained in paragraph 8(A)(c) below are true and correct as of and as if made on the date of such election.
Electing Party:	Company
Settlement Method Election Date:	No less than 10 Scheduled Trading Days prior to the First Expiration Date.
Default Settlement Method:	Net Share Settlement
Settlement Currency:	USD
Cash Settlement Payment Date:	Three (3) Currency Business Days after the Valuation Date.
Net Share Settlement:	If Net Share Settlement is applicable to the Transaction, on the relevant Settlement Date, Company shall deliver to Dealer the Share Delivery Quantity of Shares for such Settlement Date to the account specified herein free of payment through the Clearance System.
Share Delivery Quantity:	For any Settlement Date, a number of Shares, as calculated by the Calculation Agent, equal to the Net Share Settlement Amount for such Settlement Date divided by the Settlement Price on the Valuation Date in respect of such Settlement Date, rounded down to the nearest whole number plus any Fractional Share Amount.

Net Share Settlement Amount:	For any Settlement Date, an amount equal to the *product* of (i) the Number of Warrants exercised or deemed exercised on the relevant Exercise Date, (ii) the Strike Price Differential for such Exercise Date *and* (iii) the Warrant Entitlement.
Option Cash Settlement Amount	For any Cash Settlement Payment Date, an amount equal to the *product* of (i) the Number of Warrants exercised or deemed exercised on the relevant Exercise Date, (ii) the Strike Price Differential for such Exercise Date *and* (iii) the Warrant Entitlement.
Settlement Price:	For any Valuation Date, the per Share volume-weighted average price as displayed under the heading "Bloomberg VWAP" on Bloomberg page "HOS <EQUITY> AQR" (or any successor thereto) in respect of the period from the scheduled opening time of the Exchange to the Scheduled Closing Time on such Valuation Date (or if such volume-weighted average price is unavailable, the market value of one Share on such Valuation Date, as determined by the Calculation Agent using a volume-weighted method). Notwithstanding the foregoing, if (i) any Expiration Date is a Disrupted Day and (ii) the Calculation Agent determines that such Expiration Date shall be an Expiration Date for fewer than the Daily Number of Warrants, as described above, then the Settlement Price for the relevant Valuation Date shall be the volume-weighted average price per Share on such Valuation Date on the Exchange, as determined by the Calculation Agent based on such sources as it deems appropriate using a volume-weighted methodology, for the portion of such Valuation Date for which the Calculation Agent determines there is no Market Disruption Event.
Settlement Date(s):	As determined in reference to Section 9.4 of the Equity Definitions, subject to paragraph 9(j)(i) hereof.
Other Applicable Provisions:	The provisions of Sections 9.1(c), 9.8, 9.9, 9.11, 9.12 and 10.5 of the Equity Definitions will be applicable (except that the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by excluding any representations therein relating to restrictions, obligations, limitations or requirements under applicable securities laws as a result of the fact that Company is the Issuer of the Shares and except that all references in such provisions to "Physically-Settled" shall be read as references to "Net Share Settled"). "Net Share Settled" in relation to any Warrant means that Net Share Settlement is applicable to that Warrant.

3. Additional Terms applicable to the Transaction:

Adjustments applicable to the Warrants:

Method of Adjustment:	Calculation Agent Adjustment. For the avoidance of doubt, in making any adjustments under the Equity Definitions, the Calculation Agent may make adjustments, if any, to any one or more of the Strike Price, the Number of Warrants, the Daily Number of Warrants and the Warrant Entitlement. Notwithstanding the foregoing, any cash dividends or distributions on the Shares, whether or not extraordinary, shall be governed by paragraph 9(f) of this Confirmation in lieu of Article 10 or Section 11.2(c) of the Equity Definitions.

Extraordinary Events applicable to the Transaction:

New Shares:	Section 12.1(i) of the Equity Definitions is hereby amended by deleting the text in clause (i) in its entirety and replacing it with the phrase "publicly quoted, traded or listed on any of the New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or their respective successors)".
Consequence of Merger Events:	
Share-for-Share:	Modified Calculation Agent Adjustment
Share-for-Other:	Cancellation and Payment (Calculation Agent Determination)
Share-for-Combined:	Cancellation and Payment (Calculation Agent Determination); *provided* that Dealer may elect, in its commercially reasonable judgment, Component Adjustment (Calculation Agent Determination).
Consequence of Tender Offers:	
Tender Offer:	Applicable; *provided however* that if an event occurs that constitutes both a Tender Offer under Section 12.1(d) of the Equity Definitions and Additional Termination Event under paragraph 9(g)(iii)(C) of this Confirmation, Dealer may elect, in its commercially reasonable judgment, whether the provisions of Section 12.3 of the Equity Definitions or paragraph 9(g)(iii)(C) of this Confirmation will apply.
Share-for-Share:	Modified Calculation Agent Adjustment
Share-for-Other:	Modified Calculation Agent Adjustment
Share-for-Combined:	Modified Calculation Agent Adjustment
Nationalization, Insolvency or Delisting:	Cancellation and Payment (Calculation Agent Determination); *provided* that, for purposes of Section 12.6(a)(iii) of the Equity Definitions, it will 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), a Delisting shall not have occurred and such exchange or quotation system shall thereafter be deemed to be the Exchange.

Additional Disruption Events:

Change in Law:	Applicable; *provided* that Section 12.9(a)(ii) of the Equity Definitions is hereby amended replacing the word “Shares” where it appears in clause (X) thereof with the words “Hedge Position”.
Failure to Deliver:	Applicable
Insolvency Filing:	Applicable
Hedging Disruption:	Applicable; *provided* that Section 12.9(a)(v) of the Equity Definitions is hereby modified by inserting the following two phrases at the end of such Section: “The term “equity price risk” shall be deemed to include stock price and volatility risk. Any such transactions or assets referred to in phrases (A) or (B) above must be available on commercially reasonable pricing terms.”
Increased Cost of Hedging:	Not Applicable
Loss of Stock Borrow:	Applicable
Maximum Stock Loan Rate:	200 basis points
Increased Cost of Stock Borrow:	Applicable
Initial Stock Loan Rate:	25 basis points, as adjusted by the Calculation Agent to reflect any subsequent Price Adjustment due to an Increased Cost of Stock Borrow.
Hedging Party:	Dealer or an affiliate of Dealer that is involved in the hedging of this Transaction for all applicable Additional Disruption Events. Section 13.2(b) of the Equity Definitions is hereby amended by adding the words “(or an Affiliate of such party)” following the words “by a party” in the third line thereof.
Determining Party:	Dealer for all applicable Extraordinary Events
Non-Reliance:	Applicable
Agreements and Acknowledgments Regarding Hedging Activities:	Applicable
Additional Acknowledgments:	Applicable

4. Calculation Agent: Dealer, whose judgments, determinations and calculations shall be made in good faith and in a commercially reasonable manner. Following any determination or calculation by the Calculation Agent hereunder, upon a request by Company, the Calculation Agent shall promptly (but in any event within three Scheduled Trading Days) provide to Company by e-mail to the e-mail address provided by Company 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 determination or calculation (including any assumptions used in making such determination or calculation), it being understood that the Calculation Agent shall not be obligated to disclose any proprietary models used by it for such determination or calculation.

5. Account Details:

(a) Account for payments to Company:	Capital One, N.A. New Orleans, LA ABA 065-000-090 For credit to: Hornbeck Offshore Services, Inc. 103 Northpark Blvd., Suite 300 Covington, LA 70433 Account 812519859
Account for delivery of Shares to Company:	To be provided under separate cover by Company.
(b) Account for payments to Dealer:	Bank: JPMorgan Chase Bank, N.A. ABA#: 021000021 Acct No.: 099997979 Beneficiary: JPMorgan Chase Bank, N.A. New York Ref: Derivatives
Account for delivery of Shares to Dealer:	DTC 0060

6. Offices:

The Office of Company for the Transaction is:	Inapplicable, Company is not a Multibranch Party.
The Office of Dealer for the Transaction is:	London JPMorgan Chase Bank, National Association London Branch P.O. Box 161 60 Victoria Embankment London EC4Y 0JP England

7. Notices: For purposes of this Confirmation:

(a) Address for notices or communications to Company:	Hornbeck Offshore Services, Inc. 103 Northpark Boulevard, Suite 300 Covington, Louisiana, 70433 Attention: Sam Giberga, General Counsel Facsimile No.: (985) 727-2006
(b) Address for notices or communications to Dealer:	EDG Marketing Support Email: EDG_OTC_HEDGING_MS@jpmorgan.com Fax: 1-866-886-4506 With a copy to: Jason M. Wood Managing Director Equity-Linked & Derivative Capital Markets 560 Mission St. San Francisco CA Telephone No: 415-315-8783 Facsimile No: 415-226-0616 Email: jason.m.wood@jpmorgan.com

8. Representations, Warranties and Agreements of Company

(A) The Company hereby represents and warrants to, and agrees with, Dealer that:

(a) The Shares initially issuable upon exercise of the Warrant by the net share settlement method (the "**Warrant Shares**") have been reserved for issuance by all required corporate action of Company. The Warrant Shares have been duly authorized and, when delivered against payment therefor (which may include Net Share Settlement in lieu of cash) and otherwise as contemplated by the terms of the Warrant following the exercise of the Warrant in accordance with the terms and conditions of the Warrant, will be validly issued, fully-paid and non-assessable, and the issuance of the Warrant Shares will not be subject to any preemptive or similar rights;

(b) Company is an "eligible contract participant" (as such term is defined in the Commodity Exchange Act, as amended (the "**CEA**"));

(c) Company is not, on the date hereof, in possession of any material non-public information with respect to Company;

(d) Without limiting the generality of Section 13.1 of the Equity Definitions, Company acknowledges that Dealer is not making any representations or warranties 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, 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 under FASB's Liabilities & Equity Project;

(e) Prior to or on the Trade Date, Company shall deliver to Dealer a resolution of Company's board of directors authorizing the Transaction;

(f) Company is not, and after giving effect to 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;

(g) On the Trade Date (A) the assets of Company at their fair valuation exceed the liabilities of Company, including contingent liabilities, (B) the capital of Company is adequate to conduct the business of Company and (C) Company has the ability to pay its debts and obligations as such debts mature and does not intend to, or does not believe that it will, incur debt beyond its ability to pay as such debts mature;

(h) Company understands that no obligations of Dealer to it hereunder will be entitled to the benefit of deposit insurance and that such obligations will not be guaranteed by any affiliate of Dealer or any governmental agency;

(i) During the period starting on the first Expiration Date and ending on the last Expiration Date (the "**Settlement Period**"), the Shares or securities that are convertible into, or exchangeable or exercisable for Shares, are not, and shall not be, subject to a "restricted period," as such term is defined in Regulation M ("**Regulation M**") under the Securities Exchange Act of 1934, as amended ("**Exchange Act**") and (B) Issuer shall not engage in any "distribution," as such term is defined in Regulation M, other than a distribution meeting the requirements of the exceptions set forth in sections 101(b)(10) and 102(b)(7) of Regulation M, until the second Exchange Business Day immediately following the Settlement Period;

(j) Prior to the Trade Date, the Company has not taken any action which is designed to or which has constituted or which might have been expected to cause or result in stabilization or manipulation of the price of any security of the Company in connection with the offering of the Convertible Notes;

(k) None of the Company or any of its subsidiaries is in violation of its certificate of incorporation or certificate of formation, or its bylaws or limited liability company agreement (or other organizational documents), or in default in the performance or observance of any material obligation, covenant or condition contained in any material indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which it is a party or by which it or any of its properties may be bound, other than such defaults that individually or in the aggregate would not have a Material Adverse Effect on this Transaction or Dealer's rights or obligations relating to this Transaction. "**Material Adverse Effect**" means any change in the capital stock, increase in long-term debt or any decreases in consolidated net current assets or stockholders' equity of the Company or any of its subsidiaries or any material adverse change, or any development involving a prospective material adverse change, in or affecting the general affairs, management, current or future consolidated financial position, stockholders' equity or results of operations of the Company and its subsidiaries taken as a whole;

(l) (A) Company is acting for its own account, and it has made its own independent decisions to enter into the Transaction and as to whether the Transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary, (B) Company is not relying on any communication (written or oral) of Dealer or any of its affiliates as investment advice or as a recommendation to enter into the Transaction (it being understood that information and explanations related to the terms and conditions of the Transaction shall not be considered investment advice or a recommendation to enter into the Transaction) and (C) no communication (written or oral) received from Dealer or any of its affiliates shall be deemed to be an assurance or guarantee as to the expected results of the Transaction;

(m) Company understands, agrees and acknowledges that Dealer has no obligation or intention to register the Transaction under the Securities Act of 1933, as amended (the "**Securities Act**"), any state securities law or other applicable federal securities law;

(n) Company shall use its reasonable best efforts to have the Warrant Shares duly listed, subject to notice of issuance, on the New York Stock Exchange;

(o) Company shall not take any action to decrease the number of Available Shares below the Maximum Amount (each as defined below);

(p) The assets used in the Transaction (1) are not assets of any "plan" (as such term is defined in Section 4975 of the United States 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;

(q) During the Settlement Period and on any other Exercise Date, neither Company nor any "affiliate" or "affiliated purchaser" (each as defined in Rule 10b-18 under the Exchange Act ("**Rule 10b-18**")) shall directly or indirectly (including, without limitation, by means of any cash-settled or other derivative instrument) purchase, offer to purchase, place any bid or limit order that would effect a purchase of, or commence any tender offer relating to, any Shares (or an equivalent interest, including a unit of beneficial interest in a trust or limited partnership or a depository share) or any security convertible into or exchangeable or exercisable for Shares, except through Dealer; and

(r) Company agrees that it (A) will not during the Settlement Period make, or permit to be made, any public announcement (as defined in Rule 165(f) under the Securities Act) of any Merger Transaction or potential Merger Transaction unless such public announcement is made prior to the opening or after the close of the regular trading session on the Exchange for the Shares; (B) shall promptly (but in any event prior to the next opening of the regular trading session on the Exchange) notify Dealer following any such announcement that such announcement has been made; and (C) shall promptly (but in any event prior to the next opening of the regular trading session on the Exchange) provide Dealer with written notice specifying (i) Company's average daily Rule 10b-18 Purchases (as defined in Rule 10b-18) during the three full calendar months immediately preceding the announcement date that were not effected through Dealer or its affiliates and (ii) the number of Shares purchased pursuant to the proviso in Rule 10b-18(b)(4) under the Exchange Act for the three full calendar months preceding the announcement date. Such written notice shall be deemed to be a certification by Company to Dealer that such information is true and correct. In addition, Company shall promptly notify Dealer of the earlier to occur of the completion of such transaction and the completion of the vote by target shareholders. "**Merger Transaction**" means any merger, acquisition or similar transaction involving a recapitalization as contemplated by Rule 10b-18(a)(13)(iv) under the Exchange Act.

(s) The Company (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 $50 million as of the date hereof.

(B) Each party makes to the other the representations and warranties set forth in Sections 3(a) through (f) of the Agreement with respect to the Agreement as supplemented by this Confirmation; *provided* that Dealer makes the representation and warranty set forth in Section 3(f) and Company makes the representation and warranty set forth in Section 3(e). In addition, each of Dealer and Company acknowledges that the offer and sale of the Transaction to it is intended to be exempt from registration under the Securities Act, by virtue of Section 4(2) thereof. Accordingly, Dealer represents and warrants to Company that (i) it has the financial ability to bear the economic risk of its investment in the Transaction and is able to bear a total loss of its investment and its investments in and liabilities in respect of the Transaction, which it understands are not readily marketable, are not disproportionate to its net worth, and it is able to bear any loss in connection with the Transaction, including the loss of its entire investment in the Transaction, (ii) it is an "accredited investor" as that term is defined in Regulation D as promulgated under the Securities Act, (iii) it is entering into the Transaction for its own account without a view to the distribution or resale thereof, (iv) the assignment, transfer or other disposition of the Transaction has not been and will not be registered under the Securities Act and is restricted under the Securities Act and state securities laws, (v) its financial condition is such that it has no need for liquidity with respect to its investment in the Transaction and no need to dispose of any portion thereof to satisfy any existing or contemplated undertaking or indebtedness and is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of the Transaction.

9. Other Provisions:

(a) *Opinions*. Company shall deliver an opinion of counsel, dated as of the Trade Date, to Dealer with respect to the matters set forth in Section 3(a) of the Agreement and Section 8(A)(f) of this Confirmation; *provided* that such opinion of counsel may contain customary exceptions and qualifications, including, without limitation, exceptions and qualifications relating to indemnification provisions.

(b) *Repurchase Notices*. Company shall, on any day on which Company 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 Notice Percentage as determined on such day is (i) greater than 4.5% and (ii) greater by 0.5% than the Notice Percentage included in the immediately preceding Repurchase Notice (or, in the case of the first such Repurchase Notice, greater than the Notice Percentage as of the date hereof). The "**Notice Percentage**" as of any day is the fraction, expressed as a percentage, the numerator of which is the product of the Number of Warrants and the Warrant Entitlement and the denominator of which is the number of Shares outstanding on such day.

(c) *Regulation M*. Company is not on the date hereof engaged in a distribution, as such term is used in Regulation M under the Securities Exchange Act, of any securities of Company, other than a distribution meeting the requirements of the exception set forth in Rules 101(b)(10) and 102(b)(7) of Regulation M. Company shall not, until the second Scheduled Trading Day immediately following the Trade Date, engage in any such distribution.

(d) *No Manipulation*. Company is not entering into this 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 and Assignment*. Subject to applicable law, Dealer may transfer and assign all of its rights and obligations hereunder and under the Transaction and Agreement, in whole or in part, without the consent of Company (1) to any affiliate of Dealer of credit quality at least equivalent to that of Dealer as of the Trade Date or to any other affiliate of Dealer with respect to which Company shall have received a full guaranty of such affiliate's obligations from Dealer in form and substance reasonably satisfactory to Company or (2) any third party

with a rating (or whose guarantor has a rating) for its long term, unsecured and unsubordinated indebtedness equal to the Required Rating, in each case, if (x) an Event of Default, Potential Event of Default or Termination Event will not occur as a result of such transfer or assignment and (y) as a result of such transfer or assignment, Company will not be required to pay the transferee on any payment date an amount under Section 2(d)(i)(4) of the Agreement, if at all applicable, greater than an amount that Company would have been required to pay to Dealer in the absence of such transfer or assignment. The Company may not transfer or assign any of its rights or obligations under the Transaction or the Agreement without the prior written consent of Dealer. "**Required Rating**" means a rating of A- or better by Standard & Poor's Ratings Services or its successor ("**S&P**"), or A3 or better by Moody's Investors Service, Inc. or its successor ("**Moody's**") or, if either S&P or Moody's ceases to rate such debt, at least an equivalent rating or better by a substitute rating agency mutually agreed by Counterparty and Dealer.

(f) *Dividends*. If at any time during the period from and including the Trade Date, to but excluding the final Expiration Date, an ex-dividend date for a cash dividend occurs with respect to the Shares (an "**Ex-Dividend Date**"), then the Calculation Agent will adjust the Strike Price and/or the Number of Warrants to preserve the fair value of the Transaction, after taking into account such dividend, of the Warrants representing the aggregate Daily Number of Warrants for all Expiration Dates occurring on or after such Ex-Dividend Date.

(g) *Additional Provisions*.

(i) *Amendments to the Equity Definitions*:

(A) Section 11.2(a) of the Equity Definitions is hereby amended by deleting the words "that may have a diluting or concentrative" and replacing them with the words "that may have a material".

(B) Section 11.2(c) of the Equity Definitions is hereby amended by (x) deleting the words "diluting or concentrative" and (y) deleting the phrase "(provided that no adjustments will be made to account solely for changes in volatility, expected dividends, stock loan rate or liquidity relative to the relevant Shares)" and replacing it with the phrase "(and, for the avoidance of doubt, adjustments may be made to account solely for changes in volatility, expected dividends, stock loan rate or liquidity relative to the relevant Shares)."

(C) Section 11.2(e)(vii) of the Equity Definitions is hereby amended by deleting the words "that may have a diluting or concentrative" and replacing them with the word "that is the result of a corporate event involving the Company and that may have a material"; and adding the phrase "or Warrants" at the end of the sentence.

(D) Section 12.9(b)(iv) of the Equity Definitions is hereby amended by:

(x) deleting (1) subsection (A) in its entirety, (2) the phrase "or (B)" following subsection (A) and (3) the phrase "in each case" in subsection (B); and

(y) deleting the phrase "neither the Non-Hedging Party nor the Lending Party lends Shares in the amount of the Hedging Shares or" in the penultimate sentence.

(ii) *Announcement Event*. If an Announcement Date occurs in respect of a Merger Event or Tender Offer (such occurrence, an "Announcement Event"), then on the earliest to occur of the Expiration Date, the date occurring a commercially reasonable period of time after the relevant Announcement Cessation Date, an Early Termination Date or other date of cancellation (the "Announcement Event Adjustment Date") in respect of each Warrant, the Calculation Agent will determine the cumulative economic effect on such Warrant of the Announcement Event and the Announcement Cessation Date, if any (without duplication in respect of any other adjustment or cancellation valuation made pursuant to the Equity Definitions, regardless of whether the Announcement Event actually results in a Merger Event or Tender Offer, and taking into account such factors as the Calculation Agent shall determine, including, without limitation, stock price movement, changes in volatility, expected dividends, stock loan rate or liquidity relevant to the Shares or the Transaction whether prior to or after the Announcement Event or for any period of time, including, without limitation, the period from the Announcement Event to the relevant

Announcement Event Adjustment Date). If the Calculation Agent determines that such cumulative economic effect on any Warrant is material, then on the Announcement Event Adjustment Date for such Warrant, the Calculation Agent shall make such adjustment to the exercise, settlement, payment or any other terms of such Warrant as the Calculation Agent determines appropriate to account for such cumulative economic effect, which adjustment shall be effective immediately prior to the Announcement Event Adjustment Date.

"**Announcement Cessation Date**" means, in respect of an Announcement Event, (i) in the case of an Announcement Event relating to an intention to engage in a transaction that, if completed, would lead to a Merger Event, the date of the first public announcement by the Issuer, any potential counterparty to such transaction or any of their agents or affiliates of its withdrawal from, or the discontinuation of, such transaction, or (ii) in the case of an Announcement Event relating to an intention to purchase or otherwise obtain Shares that, if completed, would lead to a Tender Offer, the date of the first public announcement by any potential offeror in respect of such Tender Offer or any of their agents or affiliates of its withdrawal from, or the discontinuation of, such purchase or other acquisition of Shares. If any such announcement is made after the actual closing time for the regular trading session of on the relevant Exchange, without regard to any after hours or any other trading outside of such regular trading session hours, the Announcement Cessation Date shall be deemed to be the next following Scheduled Trading Day; *provided* that, for the avoidance of doubt, the occurrence of an Announcement Cessation Date with respect to any transaction shall not preclude the occurrence of a later Announcement Date with respect to such transaction. For purposes hereof, the definition of "Announcement Date" in Section 12.1 of the Equity Definitions shall be amended by (i) replacing the word "leads to the" in the third and the fifth lines thereof with the words ", if completed, would lead to a"; (ii) replacing the words "voting shares" in the fifth line thereof with the word "Shares"; (iii) inserting the words "by any entity" after the word "announcement" in the second and the fourth lines thereof; (iv) replacing the words "a firm" with the word "any bona fide" in the second and fourth lines thereof; (v) inserting the words "or to explore the possibility of engaging in" after the words "engage in" in the second line thereto; and (vi) inserting the words "or to explore the possibility of purchasing or otherwise obtaining" after the word "obtain" in the fourth line thereto.

(iii) Notwithstanding anything to the contrary in this Confirmation, upon the occurrence of one of the following events, with respect to this Transaction, (1) Dealer shall have the right to designate such event an Additional Termination Event and designate an Early Termination Date pursuant to Section 6(b) of the Agreement, and (2) Company shall be deemed the sole Affected Party and the Transaction shall be deemed the sole Affected Transaction:

(A) the consummation of (i) any binding share exchange, consolidation or merger of Company pursuant to which the Shares will be converted into cash, securities or other property; or (ii) any sale, lease or other transfer in one transaction or a series of transactions of all of the consolidated assets of Company and its subsidiaries, taken as a whole, to any person other than one of Company's subsidiaries; *provided*, *however*, that a transaction in which the holders of more than 50% of all classes of common equity of Company 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 any direct or indirect parent thereof immediately after the consummation of such transaction shall not be an Additional Termination Event;

(B) There is a default by Company under any of its Public Indebtedness under which there may be outstanding in excess of $25 million, whether such Public Indebtedness now exists or shall hereafter be created, resulting in such Public Indebtedness becoming or being declared due and payable; "**Public Indebtedness**" shall mean any indebtedness of the Company for money borrowed under notes, bonds or similar instruments offered and sold by the Company in an offering registered with the Securities and Exchange Commission or pursuant to Rule 144A under the Securities Act;

(C) Any "person" or "group" within the meaning of Section 13(d) of the Exchange Act other than Company, any of its subsidiaries or its employee benefit plans, files a Schedule TO or any schedule, form or report under the Exchange Act disclosing that such person or group has become the direct or indirect ultimate "beneficial owner", as defined in Rule 13d-3 under the Exchange Act, of the common equity of Company representing more than 50% of the ordinary voting power of such common equity;

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

(E) the Shares (or other common stock or depositary shares or receipts in respect thereof) cease to be listed or quoted on any of the New York Stock Exchange, The NASDAQ Global Select Market, The NASDAQ Global Market or any other national securities exchange or automated quotation system (or any of their respective successors) for a period of 30 consecutive scheduled trading days;

(F) Dealer, despite using commercially reasonable efforts, is unable or reasonably determines based on the advice of counsel that it is illegal or inadvisable, to hedge its obligations pursuant to this Transaction in the public market without registration under the Securities Act or as a result of any legal, regulatory or self-regulatory requirements or related policies and procedures (whether or not such requirements, policies or procedures are imposed by law or have been voluntarily adopted by Dealer).

Notwithstanding any provision of paragraph 9(g)(iii)(A) or (C), however, an Additional Termination Event will not be deemed to have occurred if 90% of the consideration received or exchanged by common stockholders of Company (excluding cash payments for fractional shares and cash payments made pursuant to dissenters' appraisal rights), in connection with the transaction or transactions otherwise constituting the Additional Termination Event consists of shares of common stock or depositary shares or receipts in respect thereof traded on any of the New York Stock Exchange, The NASDAQ Global Select Market, The NASDAQ Global Market or any other national securities exchange or automated quotation system (or any of their respective successors) or which will be so traded when issued or exchanged in connection with such transaction or transactions ("**Publicly Traded Securities**") and as a result of such transaction or transactions the Convertible Notes (as defined in the Purchase Agreement) become convertible into cash, such Publicly Traded Securities or a combination of cash and such Publicly Traded Securities.

(h) *No Collateral or Setoff*. Notwithstanding any provision of the Agreement or any other agreement between the parties to the contrary, the obligations of Company hereunder are not secured by any collateral. In addition, obligations under this Transaction shall not be netted, recouped or set off (including pursuant to Section 6 of the Agreement) against any other obligations of the parties, whether arising under the Agreement, this Confirmation, under any other agreement between the parties hereto, by operation of law or otherwise, and no other obligations of the parties shall be netted, recouped or set off (including pursuant to Section 6 of the Agreement) against obligations under the Transaction, whether arising under the Agreement, this Confirmation, under any other agreement between the parties hereto, by operation of law or otherwise, and each party hereby waives any such right of setoff, netting or recoupment; provided that both parties agree that subparagraph (ii) of Section 2(c) of the Agreement shall apply to the Transaction.

(i) *Alternative Calculations and Payment on Early Termination and on Certain Extraordinary Events*. If, in respect of this Transaction, an amount is payable by Company to Dealer, (i) pursuant to Sections 12.2, 12.3, 12.6, 12.7 or 12.9 of the Equity Definitions (except in the event of an Insolvency, Nationalization, Tender Offer or Merger Event in which the consideration or proceeds to be paid to holders of shares consists solely of cash) or (ii) pursuant to Section 6(d)(ii) of the Agreement (except in the event of an Event of Default in which Company is the Defaulting Party or a Termination Event in which Company is the Affected Party, other than an Event of Default of the type described in (x) Section 5(a)(iii), (v), (vi), (vii) or (viii) of the Agreement or (y) a Termination Event of the type described in Section 5(b)(i), (ii), (iii), (iv), (v) or (vi) of the Agreement, in the case of both (x) and (y), resulting from an event or events outside Company's control) (a "**Payment Obligation**"), Company shall satisfy any such Payment Obligation by the Share Termination Alternative (as defined below), unless Company elects to satisfy any such Payment Obligation by delivering cash (in which case the provisions of Sections 12.2, 12.3, 12.6, 12.7 or 12.9 of the Equity Definitions or Section 6(d)(ii) of the Agreement, as the case may be, shall apply in lieu of the provisions of this paragraph 9(i)), by giving irrevocable telephonic notice to Dealer, confirmed in writing within one

Scheduled Trading Day, no later than 12:00 p.m. New York local 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 where such notice shall include a representation and warranty from Company that it is not, as of the date of the telephonic notice and the date of such written notice, aware of any "material non-public information" (within the meaning of Section 10(b) of the Exchange Act and the rules promulgated thereunder) concerning itself or the Shares. Notwithstanding the foregoing, satisfaction of a Payment Obligation in the Share Termination Alternative as set forth in this clause shall only apply to this Transaction and, notwithstanding anything to the contrary in the Agreement, (1) separate amounts shall be calculated with respect to (a) the Transaction and (b) all other Transactions under the Agreement, and (2) such separate amounts shall be payable pursuant to Section 6(d)(ii) of the Agreement, subject to, in the case of clause (a), Company's right to deliver cash in satisfaction of any Payment Obligation hereunder.

Share Termination Alternative:	If applicable, Company shall deliver to Dealer the Share Termination Delivery Property on the date (the "**Share Termination Payment Date**") on which the Payment Obligation would otherwise be due pursuant to Section 12.7 or Section 12.9 of the Equity Definitions or pursuant to Section 6(d)(ii) of the Agreement, subject to paragraph (j)(i) below, in satisfaction, subject to paragraph (j)(ii) below, of the Payment Obligation in the manner reasonably requested by Dealer 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 amount of 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 on the date such Share Termination Delivery Units are to be delivered as Share Termination Delivery Property, as determined by the Calculation Agent in its discretion by commercially reasonable means. The Calculation Agent shall notify Company of such Share Termination Unit Price at the time of notification of the Payment Obligation. In the case of a Private Placement of Share Termination Delivery Units that are Restricted Shares (as defined below), as set forth in paragraph (j)(i) below, the Share Termination Unit Price shall be determined by the discounted price applicable to such Share Termination Delivery Units. In the case of a Registration Settlement of Share Termination Delivery Units that are Restricted Shares (as defined below) as set forth in paragraph (j)(ii) below, the Share Termination Unit Price shall be the Settlement Price on the Merger Date, the Announcement Date (in the case of a Nationalization, Insolvency or Delisting) or the Early Termination Date, as applicable.
Share Termination Delivery Unit:	In the case of a Termination Event, Event of Default or Delisting, one Share or, in the case of Nationalization, Insolvency, Tender Offer or Merger Event, a unit consisting of the number or amount of each type of 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, Tender Offer or Merger Event. If such Nationalization, Insolvency, Tender Offer or Merger Event involves a choice of consideration to be received by holders, such holder shall be deemed to have elected to receive the maximum possible amount of cash.
Failure to Deliver:	Inapplicable

Other applicable provisions:	If Share Termination Alternative is applicable, the provisions of Sections 9.1(c), 9.8, 9.9, 9.11, 9.12 and 10.5 (as modified above) of the Equity Definitions will be applicable, except that the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by excluding any representations therein relating to restrictions, obligations, limitations or requirements under applicable securities laws as a result of the fact that Company is the Issuer of the Shares or any portion of the Share Termination Delivery Units, and 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 this Transaction means that Share Termination Alternative is applicable to this Transaction.

(j) *Registration/Private Placement Procedures*. If, in the commercially reasonable judgment of Dealer based on the advice of counsel, following any delivery of Shares or Share Termination Delivery Property to Dealer hereunder, such Shares or Share Termination Delivery Property would be in the hands of Dealer subject to any applicable restrictions with respect to any registration or qualification requirement or prospectus delivery requirement for such Shares or Share Termination Delivery Property pursuant to any applicable federal or any applicable material restrictions pursuant to any applicable state securities law (including, without limitation, any such requirement arising under Section 5 of the Securities Act as a result of such Shares or Share Termination Delivery Property being "restricted securities", as such term is defined in Rule 144 under the Securities Act, or as a result of the sale of such Shares or Share Termination Delivery Property being subject to paragraph (c) of Rule 145 under the Securities Act) (such Shares or Share Termination Delivery Property, "**Restricted Shares**"), then delivery of such Restricted Shares shall be effected pursuant to either clause (i) or (ii) below at the election of Company, unless Dealer waives the need for registration/private placement procedures set forth in (i) and (ii) below. Notwithstanding the foregoing, solely in respect of any Daily Number of Warrants exercised or deemed exercised on any Expiration Date, Company shall, if applicable, elect, prior to the first Settlement Date for the first Expiration Date, a Private Placement Settlement or Registration Settlement for all deliveries of Restricted Shares for all such Expiration Dates which election shall be applicable to all Settlement Dates for such Warrants and the procedures in clause (i) or clause (ii) below shall apply for all such delivered Restricted Shares on an aggregate basis commencing after the final Settlement Date for such Warrants. The Calculation Agent shall make reasonable adjustments to settlement terms and provisions under this Confirmation to reflect a single Private Placement or Registration Settlement for such aggregate Restricted Shares delivered hereunder.

(i) If Company elects to settle the Transaction pursuant to this clause (i) (a "**Private Placement Settlement**"), then delivery of Restricted Shares by Company shall be effected in accordance with customary private placement procedures for private placements of equity offerings of substantially similar size reasonably acceptable to Dealer; *provided* that Company may not elect a Private Placement Settlement if, on the date of its election, it has taken, or caused to be taken, any action that would make unavailable either the exemption pursuant to Section 4(2) of the Securities Act for the sale by Company to Dealer (or any affiliate designated by Dealer) of the Restricted Shares or the exemption pursuant to Section 4(1) or Section 4(3) of the Securities Act for resales of the Restricted Shares by Dealer (or any such affiliate of Dealer). The Private Placement Settlement of such Restricted Shares shall include customary representations, covenants, blue sky and other governmental filings and/or registrations, indemnities to Dealer, due diligence rights (for Dealer or any designated buyer of the Restricted Shares by Dealer), opinions and certificates, and such other documentation as is customary for private placements of equity offerings of substantially similar size, all reasonably acceptable to Dealer. In the case of a Private Placement Settlement, Dealer shall determine the appropriate discount to the Share Termination Unit Price (in the case of settlement of Share Termination Delivery Units pursuant to paragraph (i) above) or any Settlement Price (in the case of settlement of Shares pursuant to paragraph 2 above) applicable to such Restricted Shares in a commercially reasonable manner to account for the lack of marketability and illiquidity of such Restricted Shares and appropriately adjust the number of such Restricted Shares to be delivered to Dealer hereunder; *provided* that in no event shall such number be greater than 2 times the Number of Warrants multiplied by the Warrant Entitlement (the "**Maximum Amount**"). Notwithstanding the Agreement or this Confirmation, the date of delivery of such Restricted Shares shall be the Exchange Business Day following notice by Dealer to Company, of such applicable discount and the number of

Restricted Shares to be delivered pursuant to this clause (i). For the avoidance of doubt, delivery of Restricted Shares shall be due as set forth in the previous sentence and not be due on the Share Termination Payment Date (in the case of settlement of Share Termination Delivery Units pursuant to paragraph (i) above) or on the Settlement Date for such Restricted Shares (in the case of settlement in Shares pursuant to paragraph 2 above).

In the event Company shall not have delivered the full number of Restricted Shares otherwise applicable as a result of the proviso above relating to the Maximum Amount (such deficit, the "**Deficit Restricted Shares**"), Company shall be continually obligated to deliver, from time to time until the full number of Deficit Restricted Shares have been delivered pursuant to this paragraph, Restricted Shares when, and to the extent, that (i) Shares are repurchased, acquired or otherwise received by Company or any of its subsidiaries after the Trade Date (whether or not in exchange for cash, fair value or any other consideration), (ii) Company authorized any unissued Shares reserved for issuance in respect of other transactions prior to such date which prior to the relevant date become no longer so reserved and (iii) Company additionally authorizes any unissued Shares that are not reserved for other transactions. At such time as there may be Deficit Restricted Shares, Company shall promptly notify Dealer of the occurrence of any of the foregoing events (including the number of Shares subject to clause (i), (ii) or (iii) and the corresponding number of Restricted Shares to be delivered) and promptly deliver such Restricted Shares thereafter.

(ii) If Company elects to settle the Transaction pursuant to this clause (ii) (a "**Registration Settlement**"), then Company shall file and use its reasonable best efforts to make effective under the Securities Act a registration statement or supplement or amend an outstanding registration statement in form and substance reasonably satisfactory to Dealer, to cover the resale of such Restricted Shares (and any Company Make-whole Shares) in accordance with customary resale registration procedures for registered secondary offerings of a substantially similar size, including covenants, conditions, representations, underwriting discounts (if applicable), commissions (if applicable), indemnities due diligence rights, opinions and certificates, and such other documentation as is customary for equity resale underwriting agreements for registered secondary offerings of a substantially similar size, all reasonably acceptable to Dealer. If Dealer, in its good faith and reasonable discretion, is not satisfied with such procedures and documentation, Private Placement Settlement shall apply. If Dealer is satisfied with such procedures and documentation, it shall sell the Restricted Shares pursuant to such registration statement during a period (the "**Resale Period**") commencing on the Exchange Business Day following delivery of such Restricted Shares (and any Company Make-whole Shares) (which, for the avoidance of doubt, shall be (x) any Settlement Date in the case of an exercise of Warrants prior to the first Expiration Date pursuant to paragraph 2 above, (y) the Share Termination Payment Date in case of settlement in Share Termination Delivery Units pursuant to paragraph (i) above or (z) the Settlement Date in respect of the final Expiration Date for all Daily Number of Warrants) and ending on the earliest of (i) the Exchange Business Day on which Dealer completes the sale of all Restricted Shares or, in the case of settlement of Share Termination Delivery Units, a sufficient number of Restricted Shares so that the realized net proceeds of such sales exceed the Payment Obligation (as defined above) and (ii) the date upon which all Restricted Shares have been sold or transferred pursuant to Rule 144 (or similar provisions then in force) or Rule 145(d)(1) or (2) (or any similar provision then in force) under the Securities Act.

(iii) (A) If (ii) above is applicable and the Net Share Settlement Amount or the Payment Obligation, as applicable, exceeds the realized net proceeds from such resale, or if (i) above is applicable and the Freely Tradable Value (as defined below) of the Net Share Settlement Amount or the Payment Obligation (in each case as adjusted pursuant to (i) above), as applicable, exceeds the realized net proceeds from such resale, Company shall transfer to Dealer by the open of the regular trading session on the Exchange on the Exchange Trading Day immediately following the last day of the Resale Period a number of Shares ("**Company Make-whole Shares**") in an amount that, based on the Settlement Price on the last day of the Resale Period (as if such day was the "Valuation Date" for purposes of computing such Settlement Price), has a dollar value equal to the amount of such excess (the "**Company Additional Amount**"), or if Company so elects, an amount in cash equal to the Company Additional Amount. The Resale Period shall continue to enable the sale of the Company Make-whole Shares. If Company elects to pay the Additional Amount in Shares, the requirements and provisions for Registration Settlement or Private Placement Settlement, as the case may be, shall apply. This provision shall be applied successively until the Additional Amount is equal to zero. In no event shall Company deliver a number of Restricted Shares greater than the Maximum Amount.

If (ii) above is applicable and the realized net proceeds from such resale (including the sale of any Company Make-whole Shares) exceed the Net Share Settlement Amount or the Payment Obligation, as applicable, or if (i) above is applicable and the realized net proceeds from such resale (including the sale of any Company Make-whole Shares) exceed the Freely Tradeable Value (as defined below) of the Net Share Settlement Amount or the Payment Obligation (in each case as adjusted pursuant to (i) above), as applicable, Dealer shall transfer to Company the amount of such excess (the "**Dealer Additional Amount**") in a number of Shares ("**Dealer Make-whole Shares**") that, based on the Settlement Price on the last day of the Resale Period (as if such day was the Valuation Date for purposes of computing such Settlement Price), has a value equal to the Dealer Additional Amount, or, at Company's option, in cash in an amount equal to the Dealer Additional Amount. The transfer of the Dealer Additional Amount shall be made (x) if in cash, by the open of the regular trading session on the Exchange on the Exchange Trading Day immediately following the last day of the Resale Period, and (y) if in Shares, one Settlement Cycle following the date Dealer is able, using commercially reasonable efforts, to purchase Dealer Make-whole Shares. This provision shall be applied successively until the Dealer Additional Amount is equal to zero.

"**Freely Tradeable Value**" means the value of the number of Shares delivered to Dealer which such Shares would have if they were freely tradeable (without prospectus delivery) upon receipt by Dealer, as determined by the Calculation Agent by commercially reasonable means.

(iv) Without limiting the generality of the foregoing, Company agrees that any Restricted Shares delivered to Dealer, as purchaser of such Restricted Shares, (i) may be transferred by and among Dealer and its affiliates and Company shall effect such transfer without any further action by Dealer and (ii) after the minimum "holding period" within the meaning of Rule 144(d) under the Securities Act has elapsed after any Settlement Date for such Restricted Shares, Company shall promptly remove, or cause the transfer agent for such Restricted Shares to remove, any legends referring to any such restrictions or requirements from such Restricted Shares upon delivery by Dealer (or such affiliate of Dealer) to Company or such transfer agent of seller's and broker's representation letters customarily delivered by Dealer in connection with resales of restricted securities pursuant to Rule 144 under the Securities Act, without any further requirement for the delivery of any certificate, consent, agreement, opinion of counsel, notice or any other document, any transfer tax stamps or payment of any other amount or any other action by Dealer (or such affiliate of Dealer).

If the Private Placement Settlement or the Registration Settlement shall not be effected as set forth in clauses (i) or (ii), as applicable, then failure to effect such Private Placement Settlement or such Registration Settlement shall constitute an Event of Default with respect to which Company shall be the Defaulting Party.

(k) *Limit on Beneficial Ownership*. Except as provided below in this paragraph (k), notwithstanding any other provision to the contrary in this Confirmation, in no event shall Dealer be entitled to receive, or shall be deemed to receive, Shares to the extent that, immediately upon giving effect to such receipt of such Shares,

(i) the Option Equity Percentage (as defined below) exceeds 4.9%,

(ii) Dealer, Dealer Group (as defined below) or any person whose ownership position would be aggregated with that of Dealer or Dealer Group (Dealer, Dealer Group or any such person, a "**Dealer Person**") under any relevant state corporate law or other state, federal or local laws, regulations or regulatory orders applicable to ownership of Shares ("**Applicable Laws**"), owns, beneficially owns, constructively owns, controls, holds the power to vote or otherwise meets a relevant definition of ownership in excess of a number of Shares equal to (x) the number of Shares that, in the good faith determination of the relevant Dealer Person, would give rise to materially burdensome reporting or registration obligations or other requirements (including obtaining prior approval by a state or federal regulator) of a Dealer Person under Applicable Laws (including, without limitation, "interested stockholder" or "acquiring person" status under Section 203 of the Delaware General Corporation Law, but excluding any report or filing required pursuant to Section 13 of the Exchange Act and the rules promulgated thereunder) and with respect to which such requirements have not been met or the relevant approval has not been received *minus* (y) 1.0% of the number of Shares outstanding on the date of determination,

(iii) the Maritime Law Ownership Percentage (as defined below) of the Maritime Law Dealer Group (as defined below) would be greater than 4.9% of the outstanding Shares, unless Dealer has established to the reasonable satisfaction of the Company that it (or the person designated to take delivery) is a citizen of the United States for purposes of the U.S. coastwise trade under the Maritime Laws (as defined below),

(iv) such Shares would reasonably be anticipated by the Company to be "Excess Shares" ("**Excess Shares**") as defined in the Company's Second Restated Certificate of Incorporation (the "**Certificate**") or

(v) such Shares, in the good faith determination of the Company, would cause the Company to cease to be qualified under Maritime Laws (as defined below) or Applicable Laws to own and operate vessels in the coastwise trade of the United States (each of clause (i) through (iv) above and this clause (v), an "**Ownership Limitation**").

If any delivery owed to Dealer hereunder is not made, in whole or in part, as a result of an Ownership Limitation, the Company's obligation to make such delivery shall not be extinguished and the Company shall make such delivery as promptly as practicable after, but in no event later than three Exchange Business Days after, Dealer gives notice to the Company that such delivery would not result in any of such Ownership Limitations being breached. Such notice by Dealer will include details sufficient to support the position taken by Dealer in such notice.

The "**Option Equity Percentage**" as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the sum of (i) the number of Shares that Dealer and any of its affiliates subject to aggregation with Dealer, for purposes of the "beneficial ownership" test under Section 13 of the Exchange Act, and all persons who may form a "group" (within the meaning of Rule 13d-5(b)(1) under the Exchange Act) with Dealer ("**Dealer Group**") "beneficially owns" (within the meaning of Section 13 of the Exchange Act) on such day, other than any Shares so owned as a hedge of the Transaction, and (ii) the product of the Number of Warrants and the Warrant Entitlement and (B) the denominator of which is the number of Shares outstanding on such day. "**Maritime Law Ownership Percentage**" means the ownership, as construed under the Maritime Laws, of Shares by Dealer or any person whose ownership would be aggregated with that of Dealer or Dealer's parent entity under the Maritime Laws (collectively, the "**Maritime Law Dealer Group**"). "**Maritime Laws**" means, collectively and without duplication, Chapters 121 and 505 of Title 46 of the United States Code and any successor or replacement statute thereto, and the regulations promulgated under such Title or successor or replacement statute or, to the extent remaining in force, under any predecessor statute, in each case as amended or supplemented from time to time.

The Company represents and warrants that, assuming the accuracy of any factual information regarding Dealer that is provided by Dealer to the Company upon the Company's request, any Shares delivered by the Company to Dealer pursuant to the Transaction shall not be Excess Shares, and the issuance and delivery of such Shares shall have been approved by the board of directors of the Company. If Dealer designates any person to receive any Shares pursuant to Section 9(t), clauses (iii), (iv) and (v) of this Section 9(k) shall apply as if such person were Dealer. If the Company is unable to deliver any Shares to Dealer as a result of this Section 9(k), notwithstanding Company's continuing obligation to deliver such Shares as described herein, the Company may at any time following the Settlement Date, upon one Exchange Business Day's prior written notice to Dealer, elect to deliver cash in lieu of any or all such Shares, in which case the Shares for which cash delivery has been so elected shall be valued by the Calculation Agent in a commercially reasonable manner over such time period as the Calculation Agent reasonably determines appropriate in light of the liquidity of the Shares at such time and applicable law and related regulations, policies and procedures. The Company's right to elect cash pursuant to the foregoing sentence shall be subject to the Company giving representations, warranties and covenants customary for transactions under Rule 10b5-1 under the Exchange Act and satisfactory to Dealer. The Company shall promptly notify Dealer if at any time either (i) any purported transfer of any shares of any class or series of capital stock of the Company is void and ineffective pursuant to Section 2 of Article Twelve of the Certificate or (ii) any shares of any class or series of capital stock of the Company are "Excess Shares" pursuant to Section 3 of Article Twelve of the Certificate. The Company covenants that it shall provide prompt written notice to Dealer upon having actual knowledge that more than 10% of the aggregate Shares outstanding are owned by persons other than citizens of the United States for purposes of the U.S. coastwise trade under the Maritime Laws and upon becoming aware of each additional 5% thereafter.

The Company shall provide Dealer with a copy of any filings submitted to any regulatory authority relating to the Company's or the Company's stockholders' citizenship under the Maritime Laws so long as Dealer (or any assignee of Dealer) has agreed to keep any such filings and the information contained therein confidential on terms reasonably acceptable to the Company and Dealer. Dealer acknowledges that Dealer will not have any rights as a holder of the Company's common stock with respect to Shares, prior to the delivery thereof hereunder, that the Company is unable to deliver as a result of this Section 9(k). The Company acknowledges that, as a result of this Section 9(k), it will not treat Dealer (or any affiliate or designee of Dealer) as the owner, for any purpose (including, without limitation, for purposes of the Maritime Laws or Article Twelve of the Certificate), of Shares, prior to the delivery of such Shares hereunder, that the Company is unable to deliver as a result of this Section 9(k). For purposes of this Section 9(k), the term "Dealer" shall include any of the Dealer's permitted successors or assigns.

(l) *Share Deliveries*. Company acknowledges and agrees that, to the extent the holder of this Warrant is not then an affiliate, as such term is used in Rule 144 under the Securities Act, of Company and has not been such an affiliate of Company for 90 days (it being understood that Dealer will not be considered an affiliate of Company solely by reason of its receipt of or right to receive Shares pursuant to this Transaction), and otherwise satisfies all holding period and other requirements of Rule 144 of the Securities Act applicable to it, any delivery of Shares or Share Termination Delivery Property hereunder at any time after 6 months from the Trade Date (or 1 year from the Trade Date if, at such time, informational requirements of Rule 144(c) are not satisfied with respect to Company) shall be eligible for resale under Rule 144 of the Securities Act, and Company agrees to promptly remove, or cause the transfer agent for such Shares or Share Termination Delivery Property to remove, any legends referring to any restrictions on resale under the Securities Act from the certificates representing such Shares or Share Termination Delivery Property. Company further agrees and acknowledges that Dealer shall run a holding period under Rule 144 under the Securities Act with respect to the Warrants and/or any Shares or Share Termination Delivery Property delivered hereunder notwithstanding the existence of any other transaction or transactions between Company and Dealer relating to the Shares. Company further agrees that Shares or Share Termination Delivery Property delivered hereunder prior to the date that is 6 months from the Trade Date (or 1 year from the Trade Date, if, at such time, informational requirements of Rule 144(c) are not satisfied with respect to Company) may be freely transferred by and among Dealer and its affiliates, and Company shall effect such transfer without any further action by Dealer. Notwithstanding anything to the contrary herein, Company agrees that any delivery of Shares or Share Termination Delivery Property shall be effected by book-entry transfer through the facilities of DTC, or any successor depositary, if, at the time of delivery, the certificates representing such Shares or Share Termination Delivery Property would not contain any restrictive legend as described above. Notwithstanding anything to the contrary herein, to the extent the provisions of Rule 144 of the Securities Act or any successor rule are amended, or the applicable interpretation thereof by the Securities and Exchange Commission or any court changes after the Trade Date, including without limitation to lengthen or shorten the holding periods, the agreements of Company herein shall be deemed modified to the extent necessary, in the opinion of outside counsel of Company, to comply with Rule 144 of the Securities Act, including Rule 144, as in effect at the time of delivery of the relevant Shares or Share Termination Delivery Property.

(m) *Additional Termination Events*. (i) If within the period commencing on the Trade Date and ending on the first anniversary of the Premium Payment Date, Dealer reasonably determines that it is advisable to terminate a portion of the Transaction so that Dealer's related hedging activities will comply with applicable securities laws, rules or regulations, an Additional Termination Event shall occur in respect of which (1) Company shall be the sole Affected Party and (2) the Transaction shall be the sole Affected Transaction, and (ii) the Warrant Equity Percentage exceeds 15.9%. The "**Warrant 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 Warrants and the Warrant Entitlement and (2) the aggregate number of Shares underlying any other warrants purchased by Dealer from Company, and (B) the denominator of which is the number of Shares outstanding.

(n) *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 this Transaction. Each party (i) certifies that no representative, agent or attorney of the other 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 this Transaction, as applicable, by, among other things, the mutual waivers and certifications provided herein.

(o) *Tax Disclosure*. Effective from the date of commencement of discussions concerning the Transaction, each party and each of their respective 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) relating to such tax treatment and tax structure.

(p) *Maximum Share Delivery*. Notwithstanding any other provision of this Confirmation or the Agreement, in no event will Company be required to deliver more than the lesser of (i) the Maximum Amount of Shares in the aggregate to Dealer in connection with this Transaction and (ii) 2,816,620 Shares, subject to the provisions regarding Deficit Restricted Shares.

(q) *Status of Claims in Bankruptcy*. Dealer acknowledges and agrees that this Confirmation is not intended to convey to Dealer rights with respect to the Transaction that are senior to the claims of common stockholders in any U.S. bankruptcy proceedings of Company; *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 Company 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.

(r) *Securities Contract*. Each of Dealer and Company agrees and acknowledges that Dealer is one or more of a "financial institution" and "financial participant" within the meaning of sections 101(22) and 101(22A) of Title 11 of the United States Code (the "**Bankruptcy Code**"). The parties further agree and acknowledge (A) that this Confirmation is 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 is a "settlement payment" (as such term is defined in Section 741(8) of the Bankruptcy Code) or a "transfer" within the meaning of section 546 of the Bankruptcy Code, and (B) that is the parties are entitled to the protections afforded by, among other sections, section 362(b)(6), 362(b)(27), 362(o), 546(e), 546(j), 548(d)(2), 555 and 561 of the Bankruptcy Code.

(s) *Right to Extend*. Dealer may postpone any Exercise Date, Settlement Date or any other date of valuation or delivery with respect to some or all of the relevant Warrants (in which case the Calculation Agent may make appropriate adjustments to the relevant number of Warrants being exercised), if Dealer determines, in its good faith and commercially reasonable judgment based on the advice of counsel, that such action is advisable to preserve Dealer's Hedging Activity hereunder in light of existing liquidity conditions to enable Dealer to effect purchases of Shares in connection with its Hedging Activity hereunder in a manner that would, if Dealer were the Company or an affiliated purchaser of the Company, be in compliance with applicable legal and regulatory requirements.

(t) *Method of Delivery*. Notwithstanding any other provision in this Confirmation to the contrary requiring or allowing JPMorgan to purchase, sell, receive or deliver any Shares or other securities, or make or receive any payment in cash, to or from Company, JPMorgan may designate any of its affiliates to purchase, sell, receive or deliver such Shares or other securities, or to make or receive such payment in cash, and otherwise to perform JPMorgan's obligations in respect of the Transaction and any such designee may assume such obligations. JPMorgan shall be discharged of its obligations to Company to the extent of any such performance.

(u) *Role of Agent*. Each party agrees and acknowledges that (i) J.P. Morgan Securities LLC, an affiliate of JPMorgan ("**JPMS**"), has acted solely as agent and not as principal with respect to the Transaction and (ii) JPMS has no obligation or liability, by way of guaranty, endorsement or otherwise, in any manner in respect of the Transaction (including, if applicable, in respect of the settlement thereof). Each party agrees it will look solely to the other party (or any guarantor in respect thereof) for performance of such other party's obligations under the Transaction.

(v) *Additional ISDA Schedule Terms*.

(i) "**Specified Entity**" means in relation to each of Dealer and Company for purposes of Sections 5(a)(v), 5(a)(vi), 5(a)(vii) and 5(b)(v) of the Agreement, not applicable.

(ii) "**Specified Transaction**" will have the meaning specified in Section 14 of the Agreement.

(iii) The “Cross-Default” provisions of Section 5(a)(vi) of the Agreement shall not apply to either party.

(iv) **Automatic Early Termination**. The “Automatic Early Termination” provision of Section 6(a) of the Agreement will not apply to Dealer and will not apply to Company.

(v) “**Termination Currency**” means United States Dollars (“**USD**”).

(vi) **Consent to Recording**. Each party (i) consents to the monitoring or recording, at any time and from time to time, by the other party of any and all communications between officers or employees of the parties, (ii) waives any further notice of such monitoring or recording, and (iii) agrees to notify (and, if required by law, obtain the consent of) its officers and employees with respect to such monitoring or recording. Any such recording may be submitted in evidence to any court or in any Proceeding for the purpose of establishing any matters pertinent to this Transaction.

(vii) **Severability**. In the event any one or more of the provisions contained in this Confirmation or the Agreement shall be held illegal, invalid or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby.

(viii) **Deduction or Withholding for Tax.** So long as Company is organized under the laws of the United States or any State thereof, the provisions of Section 2(d)(i)(4) of the Agreement shall not apply to the Transaction.

(ix) **Part 2(b) of the ISDA Schedule – Payee Representation**:

For the purpose of Section 3(f) of this Agreement, Company makes the following representation to Dealer:

Company is a corporation established under the laws of the State of Delaware and is a U.S. person (as that term is defined in Section 7701(a)(30) of the Code).

For the purpose of Section 3(f) of this Agreement, Dealer makes the following representation to Company:

Dealer is a national banking association organized or formed under the laws of the United States and is a United States resident for federal income tax purposes.

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.

THE SECURITIES REPRESENTED BY THE CONFIRMATION HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED, OR ANY OTHER UNITED STATES FEDERAL OR STATE SECURITIES LAWS; SUCH SECURITIES MAY NOT BE SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF APPROPRIATE REGISTRATION UNDER SUCH SECURITIES LAWS OR EXCEPT IN A TRANSACTION EXEMPT FROM OR NOT SUBJECT TO THE REGISTRATION REQUIREMENTS OF SUCH SECURITIES LAWS.

Please confirm that the foregoing correctly sets forth the terms of the Transaction by signing in the space provided below and returning to Dealer a facsimile of the fully-executed Confirmation to Dealer at 1-866-886-4506 (Attention: EDG Marketing Support). Originals shall be provided for your execution upon your request.

Very truly yours,

J.P. MORGAN SECURITIES LLC,
as agent for JPMorgan Chase Bank, National Association

By: /s/ Jason Wood
Name: Jason Wood
Title: Managing Director

Accepted and confirmed as of the Trade Date:

HORNBECK OFFSHORE SERVICES, INC.

By: /s/ James O. Harp, Jr.
Name: James O. Harp, Jr.
Title: Executive Vice President and CFO

ANNEX A: Daily Number of Warrants

Expiration Date	Number of Warrants
Monday, December 02, 2019	48,286
Tuesday, December 03, 2019	48,286
Wednesday, December 04, 2019	48,286
Thursday, December 05, 2019	48,286
Friday, December 06, 2019	48,286
Monday, December 09, 2019	48,286
Tuesday, December 10, 2019	48,286
Wednesday, December 11, 2019	48,286
Thursday, December 12, 2019	48,286
Friday, December 13, 2019	48,286
Monday, December 16, 2019	48,286
Tuesday, December 17, 2019	48,286
Wednesday, December 18, 2019	48,286
Thursday, December 19, 2019	48,286
Friday, December 20, 2019	48,286
Monday, December 23, 2019	48,286
Tuesday, December 24, 2019	48,286
Thursday, December 26, 2019	48,286
Friday, December 27, 2019	48,286
Monday, December 30, 2019	48,286
Tuesday, December 31, 2019	48,286
Thursday, January 02, 2020	48,286
Friday, January 03, 2020	48,286
Monday, January 06, 2020	48,286
Tuesday, January 07, 2020	48,286
Wednesday, January 08, 2020	48,286
Thursday, January 09, 2020	48,286
Friday, January 10, 2020	48,286
Monday, January 13, 2020	48,286
Tuesday, January 14, 2020	48,286
Wednesday, January 15, 2020	48,286
Thursday, January 16, 2020	48,286
Friday, January 17, 2020	48,286
Tuesday, January 21, 2020	48,286
Wednesday, January 22, 2020	48,286
Thursday, January 23, 2020	48,286
Friday, January 24, 2020	48,286
Monday, January 27, 2020	48,286
Tuesday, January 28, 2020	48,286
Wednesday, January 29, 2020	48,313

Exhibit 4.10

Execution version

Wells Fargo Securities, LLC
as agent of Wells Fargo Bank, NA
375 Park Avenue
New York, NY 10152
Facsimile: (212) 214-5913
Telephone: (212) 214-6101

August 7, 2012

To: Hornbeck Offshore Services, Inc.
103 Northpark Boulevard, Suite 300
Covington, Louisiana, 70433
Attention: Sam Giberga, General Counsel
Facsimile No.: (985) 727-2006

Re: **Base Warrants**

The purpose of this letter agreement (this "**Confirmation**") is to confirm the terms and conditions of the Transaction entered into between Wells Fargo Bank, National Association ("**Dealer**"), through its agent Wells Fargo Securities, LLC (the "**Agent**"), and Hornbeck Offshore Services, Inc. ("**Company**") on the Trade Date specified below (the "**Transaction**"). This Confirmation constitutes a "Confirmation" as referred to in the Agreement specified below.

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.

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 Company as to the terms of the Transaction to which this Confirmation relates. This Confirmation shall supplement, form a part of, and be subject to an agreement in the form of the ISDA 2002 Master Agreement (the "**Agreement**") as if Dealer and Company had executed an agreement in such form (but without any Schedule except for (i) the election of the laws of the State of New York as the governing law, and (ii) the election of US Dollars ("**USD**") as the Termination Currency, and (iii) the other provisions set forth in paragraph 9(w) below) on the Trade Date. In the event of any inconsistency between provisions of that Agreement and this Confirmation, this Confirmation will prevail for the purpose of the Transaction to which this Confirmation relates. The parties hereby agree that no Transaction other than the Transaction to which this Confirmation relates shall be governed by the Agreement.

2. The Transaction is a Warrant Transaction, which shall be considered a Share Option Transaction for purposes of the Equity Definitions. The terms of the particular Transaction to which this Confirmation relates are as follows:

General Terms:

Trade Date: August 8, 2012

Effective Date:	August 13, 2012; *provided* that either Buyer or Seller may cancel all (but not less than all) the Warrants by notice to the other party prior to payment of the Premium on the Effective Date, in which case these Warrants shall never become effective and neither party shall have any obligation to the other party in respect of the Transaction.
Warrants:	Equity call warrants, each giving the holder the right to purchase one Share at the Strike Price, subject to the Settlement Terms set forth below. For the purposes of the Equity Definitions, each reference to a Warrant herein shall be deemed to be a reference to a Call Option.
Warrant Style:	European
Seller:	Company
Buyer:	Dealer
Shares:	The common stock of Company, par value USD 0.01 per Share (Exchange symbol “HOS”)
Number of Warrants:	For each Expiration Date, a number of Warrants set forth next to such an Expiration Date on Annex A hereto (the “**Daily Number of Warrants**”), subject to adjustment as provided herein.
Warrant Entitlement:	One Share per Warrant
Strike Price:	USD 68.5300. Notwithstanding anything to the contrary in the Agreement, this Confirmation or the Equity Definitions, in no event shall the Strike Price be subject to adjustment to the extent that, after giving effect to such adjustment, the Strike Price would be less than USD 39.16, except for any adjustment pursuant to the terms of this Confirmation and the Equity Definitions in connection with stock splits or similar changes to Company’s capitalization
Premium:	USD 12,541,620 (Premium per Warrant USD 8.6578).
Premium Payment Date:	The Effective Date.
Exchange:	New York Stock Exchange
Related Exchange(s):	All Exchanges
Procedures for Exercise:	
Expiration Time:	The Valuation Time
Expiration Date(s):	Each Scheduled Trading Day during the period from and including the First Expiration Date and to and including the 39th Scheduled Trading Day following the First Expiration Date shall be an “Expiration Date” for a number of Warrants equal to the Daily Number of Warrants on such date; *provided* that, notwithstanding anything to the contrary in the Equity Definitions, if any such date is a Disrupted Day, the Calculation Agent may determine that such date is a Disrupted

	Day in full or a Disrupted Day in part. If the Calculation Agent determines such Disrupted Day is a Disrupted day in full, the Daily Number of Warrants for such day shall be reduced to zero. If the Calculation Agent Determines that such Disrupted Day is a Disrupted Day in part, the Calculation Agent shall make adjustments, if applicable, to the Daily Number of Warrants or shall reduce such Daily Number of Warrants to zero for such date. In either case, the Calculation Agent shall designate a Scheduled Trading Day or a number of Scheduled Trading Days as the Expiration Date(s) for the remaining Daily Number of Warrants or a portion thereof for the originally scheduled Expiration Date; and *provided further* that if such Expiration Date has not occurred pursuant to this clause as of the eighth Scheduled Trading Day following the last scheduled Expiration Date under this Transaction, the Calculation Agent shall have the right to declare such Scheduled Trading Day to be the final Expiration Date and the Calculation Agent shall determine its good faith estimate of the fair market value for the Shares as of the Valuation Time on that eighth Scheduled Trading Day or on any subsequent Scheduled Trading Day, as the Calculation Agent shall determine using commercially reasonable means. Any Scheduled Trading Day on which, as of the date hereof, the Exchange is scheduled to close prior to its normal close of trading shall be deemed not to be a Scheduled Trading Day; if a closure of the Exchange prior to its normal close of trading on any Scheduled Trading Day is scheduled (i) following the date hereof and (ii) on or prior to the Scheduled Trading Day that is at least one Scheduled Trading Day before such Scheduled Trading Day, then such Scheduled Trading Day shall be deemed to be a Disrupted Day in full. If a closure of the Exchange prior to its normal close of trading on any Scheduled Trading Day is scheduled on such Scheduled Trading Day, such Scheduled Trading Day shall be deemed to be a Disrupted Day in part.
First Expiration Date:	Monday, December 2, 2019 (or if such day is not a Scheduled Trading Day, the next following Scheduled Trading Day), subject to Market Disruption Event below.
Multiple Exercise:	Applicable
Minimum Number of Warrants:	1
Maximum Number of Warrants:	All Warrants remaining unexercised as of the remaining Exercise Date(s).
Automatic Exercise:	Applicable; and means that a number of Warrants (as adjusted pursuant to the terms hereof) for each Expiration Date equal to the Daily Number of Warrants (as adjusted pursuant to the terms hereof) for such Expiration Date will be deemed to be automatically exercised; *provided* that "In-the-Money" means that the Settlement Price for such Expiration Date exceeds the Strike Price for such Expiration Date; and *provided further* that all references in Section 3.4(b) of the Equity Definitions to "Physical Settlement" shall be read as references to "Net Share Settlement".

Market Disruption Event:	Section 6.3(a)(ii) of the Equity Definitions is hereby amended by replacing clause (ii) in its entirety with "(ii) an Exchange Disruption, or" and inserting immediately following clause (iii) the phrase "; in each case that the Calculation Agent determines is material."
Valuation:	
Valuation Time:	Scheduled Closing Time; *provided* that if the principal trading session is extended, the Calculation Agent shall determine the Valuation Time in its reasonable discretion.
Valuation Date:	Each Exercise Date.
Settlement Terms:	
Settlement Method Election:	Applicable; *provided* that the same Settlement Method shall apply to each Warrant under the Transaction; and *provided further* that references to "Physical Settlement" in Section 7.1 of the Equity Definitions shall be replaced with "Net Share Settlement"; and *provided further* that Company may elect Cash Settlement only if at the time of such election it provides to Dealer a written statement that the representations contained in paragraph 8(A)(c) below are true and correct as of and as if made on the date of such election.
Electing Party:	Company
Settlement Method Election Date:	No less than 10 Scheduled Trading Days prior to the First Expiration Date.
Default Settlement Method:	Net Share Settlement
Settlement Currency:	USD
Cash Settlement Payment Date:	Three (3) Currency Business Days after the Valuation Date.
Net Share Settlement:	If Net Share Settlement is applicable to the Transaction, on the relevant Settlement Date, Company shall deliver to Dealer the Share Delivery Quantity of Shares for such Settlement Date to the account specified herein free of payment through the Clearance System.
Share Delivery Quantity:	For any Settlement Date, a number of Shares, as calculated by the Calculation Agent, equal to the Net Share Settlement Amount for such Settlement Date divided by the Settlement Price on the Valuation Date in respect of such Settlement Date, rounded down to the nearest whole number plus any Fractional Share Amount.
Net Share Settlement Amount:	For any Settlement Date, an amount equal to the *product* of (i) the Number of Warrants exercised or deemed exercised on the relevant Exercise Date, (ii) the Strike Price Differential for such Exercise Date *and* (iii) the Warrant Entitlement.

Option Cash Settlement Amount	For any Cash Settlement Payment Date, an amount equal to the *product* of (i) the Number of Warrants exercised or deemed exercised on the relevant Exercise Date, (ii) the Strike Price Differential for such Exercise Date *and* (iii) the Warrant Entitlement.
Settlement Price:	For any Valuation Date, the per Share volume-weighted average price as displayed under the heading "Bloomberg VWAP" on Bloomberg page "HOS <EQUITY> AQR" (or any successor thereto) in respect of the period from the scheduled opening time of the Exchange to the Scheduled Closing Time on such Valuation Date (or if such volume-weighted average price is unavailable, the market value of one Share on such Valuation Date, as determined by the Calculation Agent using a volume-weighted method). Notwithstanding the foregoing, if (i) any Expiration Date is a Disrupted Day and (ii) the Calculation Agent determines that such Expiration Date shall be an Expiration Date for fewer than the Daily Number of Warrants, as described above, then the Settlement Price for the relevant Valuation Date shall be the volume-weighted average price per Share on such Valuation Date on the Exchange, as determined by the Calculation Agent based on such sources as it deems appropriate using a volume-weighted methodology, for the portion of such Valuation Date for which the Calculation Agent determines there is no Market Disruption Event.
Settlement Date(s):	As determined in reference to Section 9.4 of the Equity Definitions, subject to paragraph 9(j)(i) hereof.
Other Applicable Provisions:	The provisions of Sections 9.1(c), 9.8, 9.9, 9.11, 9.12 and 10.5 of the Equity Definitions will be applicable (except that the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by excluding any representations therein relating to restrictions, obligations, limitations or requirements under applicable securities laws as a result of the fact that Company is the Issuer of the Shares and except that all references in such provisions to "Physically-Settled" shall be read as references to "Net Share Settled"). "Net Share Settled" in relation to any Warrant means that Net Share Settlement is applicable to that Warrant.

3. Additional Terms applicable to the Transaction:

Adjustments applicable to the Warrants:

Method of Adjustment:	Calculation Agent Adjustment. For the avoidance of doubt, in making any adjustments under the Equity Definitions, the Calculation Agent may make adjustments, if any, to any one or more of the Strike Price, the Number of Warrants, the Daily Number of Warrants and the Warrant Entitlement. Notwithstanding the foregoing, any cash dividends or distributions on the Shares, whether or not extraordinary, shall be governed by paragraph 9(f) of this Confirmation in lieu of Article 10 or Section 11.2(c) of the Equity Definitions.

Extraordinary Events applicable to the Transaction:

New Shares:	Section 12.1(i) of the Equity Definitions is hereby amended by deleting the text in clause (i) in its entirety and replacing it with the phrase "publicly quoted, traded or listed on any of the New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or their respective successors)".
Consequence of Merger Events:	
Share-for-Share:	Modified Calculation Agent Adjustment
Share-for-Other:	Cancellation and Payment (Calculation Agent Determination)
Share-for-Combined:	Cancellation and Payment (Calculation Agent Determination); *provided* that Dealer may elect, in its commercially reasonable judgment, Component Adjustment (Calculation Agent Determination).
Consequence of Tender Offers:	
Tender Offer:	Applicable; *provided however* that if an event occurs that constitutes both a Tender Offer under Section 12.1(d) of the Equity Definitions and Additional Termination Event under paragraph 9(g)(iii)(C) of this Confirmation, Dealer may elect, in its commercially reasonable judgment, whether the provisions of Section 12.3 of the Equity Definitions or paragraph 9(g)(iii)(C) of this Confirmation will apply.
Share-for-Share:	Modified Calculation Agent Adjustment
Share-for-Other:	Modified Calculation Agent Adjustment
Share-for-Combined:	Modified Calculation Agent Adjustment
Nationalization, Insolvency or Delisting:	Cancellation and Payment (Calculation Agent Determination); *provided* that, for purposes of Section 12.6(a)(iii) of the Equity Definitions, it will 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), a Delisting shall not have occurred and such exchange or quotation system shall thereafter be deemed to be the Exchange.
Additional Disruption Events:	
Change in Law:	Applicable; *provided* that Section 12.9(a)(ii) of the Equity Definitions is hereby amended replacing the word "Shares" where it appears in clause (X) thereof with the words "Hedge Position".

Failure to Deliver:	Applicable
Insolvency Filing:	Applicable
Hedging Disruption:	Applicable; *provided* that Section 12.9(a)(v) of the Equity Definitions is hereby modified by inserting the following two phrases at the end of such Section: "The term "equity price risk" shall be deemed to include stock price and volatility risk. Any such transactions or assets referred to in phrases (A) or (B) above must be available on commercially reasonable pricing terms."
Increased Cost of Hedging:	Not Applicable
Loss of Stock Borrow:	Applicable
Maximum Stock Loan Rate:	200 basis points
Increased Cost of Stock Borrow:	Applicable
Initial Stock Loan Rate:	25 basis points, as adjusted by the Calculation Agent to reflect any subsequent Price Adjustment due to an Increased Cost of Stock Borrow.
Hedging Party:	Dealer or an affiliate of Dealer that is involved in the hedging of this Transaction for all applicable Additional Disruption Events. Section 13.2(b) of the Equity Definitions is hereby amended by adding the words "(or an Affiliate of such party)" following the words "by a party" in the third line thereof.
Determining Party:	Dealer for all applicable Extraordinary Events
Non-Reliance:	Applicable
Agreements and Acknowledgments Regarding Hedging Activities:	Applicable
Additional Acknowledgments:	Applicable

4. Calculation Agent: Dealer, whose judgments, determinations and calculations shall be made in good faith and in a commercially reasonable manner. Following any determination or calculation by the Calculation Agent hereunder, upon a request by Company, the Calculation Agent shall promptly (but in any event within three Scheduled Trading Days) provide to Company by e-mail to the e-mail address provided by Company 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 determination or calculation (including any assumptions used in making such determination or calculation), it being understood that the Calculation Agent shall not be obligated to disclose any proprietary models used by it for such determination or calculation.

5. Account Details:

(a) Account for payments to Company:	Capital One, N.A. New Orleans, LA ABA 065-000-090

	For credit to: Hornbeck Offshore Services, Inc. 103 Northpark Blvd., Suite 300 Covington, LA 70433 Account 812519859
Account for delivery of Shares to Company:	To be provided under separate cover by Company.
(b) Account for payments to Dealer:	Wells Fargo Bank, N.A. ABA 121-000-248 Internal Acct No. 01020304464228 A/C Name: WFB Equity Derivatives DTC Number: 2072 Agent ID: 52196 Institution ID: 52196
6. Offices:	
The Office of Company for the Transaction is:	Inapplicable, Company is not a Multibranch Party.
The Office of Dealer for the Transaction is:	Charlotte.
7. Notices: For purposes of this Confirmation:	
(a) Address for notices or communications to Company:	Hornbeck Offshore Services, Inc. 103 Northpark Boulevard, Suite 300 Covington, Louisiana, 70433 Attention: Sam Giberga, General Counsel Facsimile No.: (985) 727-2006
(b) Address for notices or communications to Dealer:	Wells Fargo Bank, National Association 375 Park Avenue New York, NY 10152 Attention: Derivatives Structuring Group Telephone: 212-214-6101 Facsimile: 212-214-5913 Trader's Contact Information: Mark Kohn or Head Trader Telephone: 212-214-6089 Facsimile: 212-214-8914

8. Representations, Warranties and Agreements of Company

(A) The Company hereby represents and warrants to, and agrees with, Dealer that:

(a) The Shares initially issuable upon exercise of the Warrant by the net share settlement method (the "**Warrant Shares**") have been reserved for issuance by all required corporate action of Company. The Warrant Shares have been duly authorized and, when delivered against payment therefor (which may include Net Share

Settlement in lieu of cash) and otherwise as contemplated by the terms of the Warrant following the exercise of the Warrant in accordance with the terms and conditions of the Warrant, will be validly issued, fully-paid and non-assessable, and the issuance of the Warrant Shares will not be subject to any preemptive or similar rights;

(b) Company is an "eligible contract participant" (as such term is defined in the Commodity Exchange Act, as amended (the "**CEA**"));

(c) Company is not, on the date hereof, in possession of any material non-public information with respect to Company;

(d) Without limiting the generality of Section 13.1 of the Equity Definitions, Company acknowledges that Dealer is not making any representations or warranties 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, 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 under FASB's Liabilities & Equity Project;

(e) Prior to or on the Trade Date, Company shall deliver to Dealer a resolution of Company's board of directors authorizing the Transaction;

(f) Company is not, and after giving effect to 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;

(g) On the Trade Date (A) the assets of Company at their fair valuation exceed the liabilities of Company, including contingent liabilities, (B) the capital of Company is adequate to conduct the business of Company and (C) Company has the ability to pay its debts and obligations as such debts mature and does not intend to, or does not believe that it will, incur debt beyond its ability to pay as such debts mature;

(h) Company understands that no obligations of Dealer to it hereunder will be entitled to the benefit of deposit insurance and that such obligations will not be guaranteed by any affiliate of Dealer or any governmental agency;

(i) During the period starting on the first Expiration Date and ending on the last Expiration Date (the "**Settlement Period**"), the Shares or securities that are convertible into, or exchangeable or exercisable for Shares, are not, and shall not be, subject to a "restricted period," as such term is defined in Regulation M ("**Regulation M**") under the Securities Exchange Act of 1934, as amended ("**Exchange Act**") and (B) Issuer shall not engage in any "distribution," as such term is defined in Regulation M, other than a distribution meeting the requirements of the exceptions set forth in sections 101(b)(10) and 102(b)(7) of Regulation M, until the second Exchange Business Day immediately following the Settlement Period;

(j) Prior to the Trade Date, the Company has not taken any action which is designed to or which has constituted or which might have been expected to cause or result in stabilization or manipulation of the price of any security of the Company in connection with the offering of the Convertible Notes;

(k) None of the Company or any of its subsidiaries is in violation of its certificate of incorporation or certificate of formation, or its bylaws or limited liability company agreement (or other organizational documents), or in default in the performance or observance of any material obligation, covenant or condition contained in any material indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which it is a party or by which it or any of its properties may be bound, other than such defaults that individually or in the aggregate would not have a Material Adverse Effect on this Transaction or Dealer's rights or obligations relating to this Transaction. "**Material Adverse Effect**" means any change in the capital stock, increase in long-term debt or any decreases in consolidated net current assets or stockholders' equity of the Company or any of its subsidiaries or any material adverse change, or any development involving a prospective material adverse change, in or affecting the general affairs, management, current or future consolidated financial position, stockholders' equity or results of operations of the Company and its subsidiaries taken as a whole;

(l) (A) Company is acting for its own account, and it has made its own independent decisions to enter into the Transaction and as to whether the Transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary, (B) Company is not relying on any communication (written or oral) of Dealer or any of its affiliates as investment advice or as a recommendation to enter into the Transaction (it being understood that information and explanations related to the terms and conditions of the Transaction shall not be considered investment advice or a recommendation to enter into the Transaction) and (C) no communication (written or oral) received from Dealer or any of its affiliates shall be deemed to be an assurance or guarantee as to the expected results of the Transaction;

(m) Company understands, agrees and acknowledges that Dealer has no obligation or intention to register the Transaction under the Securities Act of 1933, as amended (the "**Securities Act**"), any state securities law or other applicable federal securities law;

(n) Company shall use its reasonable best efforts to have the Warrant Shares duly listed, subject to notice of issuance, on the New York Stock Exchange;

(o) Company shall not take any action to decrease the number of Available Shares below the Maximum Amount (each as defined below);

(p) The assets used in the Transaction (1) are not assets of any "plan" (as such term is defined in Section 4975 of the United States 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;

(q) During the Settlement Period and on any other Exercise Date, neither Company nor any "affiliate" or "affiliated purchaser" (each as defined in Rule 10b-18 under the Exchange Act ("**Rule 10b-18**")) shall directly or indirectly (including, without limitation, by means of any cash-settled or other derivative instrument) purchase, offer to purchase, place any bid or limit order that would effect a purchase of, or commence any tender offer relating to, any Shares (or an equivalent interest, including a unit of beneficial interest in a trust or limited partnership or a depository share) or any security convertible into or exchangeable or exercisable for Shares, except through Dealer; and

(r) Company agrees that it (A) will not during the Settlement Period make, or permit to be made, any public announcement (as defined in Rule 165(f) under the Securities Act) of any Merger Transaction or potential Merger Transaction unless such public announcement is made prior to the opening or after the close of the regular trading session on the Exchange for the Shares; (B) shall promptly (but in any event prior to the next opening of the regular trading session on the Exchange) notify Dealer following any such announcement that such announcement has been made; and (C) shall promptly (but in any event prior to the next opening of the regular trading session on the Exchange) provide Dealer with written notice specifying (i) Company's average daily Rule 10b-18 Purchases (as defined in Rule 10b-18) during the three full calendar months immediately preceding the announcement date that were not effected through Dealer or its affiliates and (ii) the number of Shares purchased pursuant to the proviso in Rule 10b-18(b)(4) under the Exchange Act for the three full calendar months preceding the announcement date. Such written notice shall be deemed to be a certification by Company to Dealer that such information is true and correct. In addition, Company shall promptly notify Dealer of the earlier to occur of the completion of such transaction and the completion of the vote by target shareholders. "**Merger Transaction**" means any merger, acquisition or similar transaction involving a recapitalization as contemplated by Rule 10b-18(a)(13)(iv) under the Exchange Act.

(B) Each party makes to the other the representations and warranties set forth in Sections 3(a) through (f) of the Agreement with respect to the Agreement as supplemented by this Confirmation; *provided* that Dealer makes the representation and warranty set forth in Section 3(f) and Company makes the representation and warranty set forth in Section 3(e). In addition, each of Dealer and Company acknowledges that the offer and sale of the Transaction to it is intended to be exempt from registration under the Securities Act, by virtue of Section 4(2) thereof. Accordingly, Dealer represents and warrants to Company that (i) it has the financial ability to bear the economic risk of its investment in the Transaction and is able to bear a total loss of its investment and its

investments in and liabilities in respect of the Transaction, which it understands are not readily marketable, are not disproportionate to its net worth, and it is able to bear any loss in connection with the Transaction, including the loss of its entire investment in the Transaction, (ii) it is an "accredited investor" as that term is defined in Regulation D as promulgated under the Securities Act, (iii) it is entering into the Transaction for its own account without a view to the distribution or resale thereof, (iv) the assignment, transfer or other disposition of the Transaction has not been and will not be registered under the Securities Act and is restricted under the Securities Act and state securities laws, (v) its financial condition is such that it has no need for liquidity with respect to its investment in the Transaction and no need to dispose of any portion thereof to satisfy any existing or contemplated undertaking or indebtedness and is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of the Transaction.

9. Other Provisions:

(a) *Opinions*. Company shall deliver an opinion of counsel, dated as of the Trade Date, to Dealer with respect to the matters set forth in Section 3(a) of the Agreement and Section 8(A)(f) of this Confirmation; *provided* that such opinion of counsel may contain customary exceptions and qualifications, including, without limitation, exceptions and qualifications relating to indemnification provisions.

(b) *Repurchase Notices*. Company shall, on any day on which Company 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 Notice Percentage as determined on such day is (i) greater than 4.5% and (ii) greater by 0.5% than the Notice Percentage included in the immediately preceding Repurchase Notice (or, in the case of the first such Repurchase Notice, greater than the Notice Percentage as of the date hereof). The "**Notice Percentage**" as of any day is the fraction, expressed as a percentage, the numerator of which is the product of the Number of Warrants and the Warrant Entitlement and the denominator of which is the number of Shares outstanding on such day.

(c) *Regulation M*. Company is not on the date hereof engaged in a distribution, as such term is used in Regulation M under the Securities Exchange Act, of any securities of Company, other than a distribution meeting the requirements of the exception set forth in Rules 101(b)(10) and 102(b)(7) of Regulation M. Company shall not, until the second Scheduled Trading Day immediately following the Trade Date, engage in any such distribution.

(d) *No Manipulation*. Company is not entering into this 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 and Assignment*. Subject to applicable law, Dealer may transfer and assign all of its rights and obligations hereunder and under the Transaction and Agreement, in whole or in part, without the consent of Company (1) to any affiliate of Dealer of credit quality at least equivalent to that of Dealer as of the Trade Date or to any other affiliate of Dealer with respect to which Company shall have received a full guaranty of such affiliate's obligations from Dealer in form and substance reasonably satisfactory to Company or (2) any third party with a rating (or whose guarantor has a rating) for its long term, unsecured and unsubordinated indebtedness equal to the Required Rating, in each case, if (x) an Event of Default, Potential Event of Default or Termination Event will not occur as a result of such transfer or assignment and (y) as a result of such transfer or assignment, Company will not be required to pay the transferee on any payment date an amount under Section 2(d)(i)(4) of the Agreement, if at all applicable, greater than an amount that Company would have been required to pay to Dealer in the absence of such transfer or assignment. The Company may not transfer or assign any of its rights or obligations under the Transaction or the Agreement without the prior written consent of Dealer. "**Required Rating**" means a rating of A-or better by Standard & Poor's Ratings Services or its successor ("**S&P**"), or A3 or better by Moody's Investors Service, Inc. or its successor ("**Moody's**") or, if either S&P or Moody's ceases to rate such debt, at least an equivalent rating or better by a substitute rating agency mutually agreed by Counterparty and Dealer.

(f) *Dividends*. If at any time during the period from and including the Trade Date, to but excluding the final Expiration Date, an ex-dividend date for a cash dividend occurs with respect to the Shares (an "**Ex-Dividend Date**"), then the Calculation Agent will adjust the Strike Price and/or the Number of Warrants to preserve the fair value of the Transaction, after taking into account such dividend, of the Warrants representing the aggregate Daily Number of Warrants for all Expiration Dates occurring on or after such Ex-Dividend Date.

(g) *Additional Provisions*.

(i) *Amendments to the Equity Definitions*:

(A) Section 11.2(a) of the Equity Definitions is hereby amended by deleting the words "that may have a diluting or concentrative" and replacing them with the words "that may have a material".

(B) Section 11.2(c) of the Equity Definitions is hereby amended by (x) deleting the words "diluting or concentrative" and (y) deleting the phrase "(provided that no adjustments will be made to account solely for changes in volatility, expected dividends, stock loan rate or liquidity relative to the relevant Shares)" and replacing it with the phrase "(and, for the avoidance of doubt, adjustments may be made to account solely for changes in volatility, expected dividends, stock loan rate or liquidity relative to the relevant Shares)."

(C) Section 11.2(e)(vii) of the Equity Definitions is hereby amended by deleting the words "that may have a diluting or concentrative" and replacing them with the word "that is the result of a corporate event involving the Company and that may have a material"; and adding the phrase "or Warrants" at the end of the sentence.

(D) Section 12.9(b)(iv) of the Equity Definitions is hereby amended by:

(x) deleting (1) subsection (A) in its entirety, (2) the phrase "or (B)" following subsection (A) and (3) the phrase "in each case" in subsection (B); and

(y) deleting the phrase "neither the Non-Hedging Party nor the Lending Party lends Shares in the amount of the Hedging Shares or" in the penultimate sentence.

(ii) *Announcement Event*. If an Announcement Date occurs in respect of a Merger Event or Tender Offer (such occurrence, an "Announcement Event"), then on the earliest to occur of the Expiration Date, the date occurring a commercially reasonable period of time after the relevant Announcement Cessation Date, an Early Termination Date or other date of cancellation (the "Announcement Event Adjustment Date") in respect of each Warrant, the Calculation Agent will determine the cumulative economic effect on such Warrant of the Announcement Event and the Announcement Cessation Date, if any (without duplication in respect of any other adjustment or cancellation valuation made pursuant to the Equity Definitions, regardless of whether the Announcement Event actually results in a Merger Event or Tender Offer, and taking into account such factors as the Calculation Agent shall determine, including, without limitation, stock price movement, changes in volatility, expected dividends, stock loan rate or liquidity relevant to the Shares or the Transaction whether prior to or after the Announcement Event or for any period of time, including, without limitation, the period from the Announcement Event to the relevant Announcement Event Adjustment Date). If the Calculation Agent determines that such cumulative economic effect on any Warrant is material, then on the Announcement Event Adjustment Date for such Warrant, the Calculation Agent shall make such adjustment to the exercise, settlement, payment or any other terms of such Warrant as the Calculation Agent determines appropriate to account for such cumulative economic effect, which adjustment shall be effective immediately prior to the Announcement Event Adjustment Date.

"**Announcement Cessation Date**" means, in respect of an Announcement Event, (i) in the case of an Announcement Event relating to an intention to engage in a transaction that, if completed, would lead to a Merger Event, the date of the first public announcement by the Issuer, any potential counterparty to such transaction or any of their agents or affiliates of its withdrawal from, or the discontinuation of, such transaction, or (ii) in the case of an Announcement Event relating to an intention to purchase or otherwise obtain Shares that, if completed, would lead to a Tender Offer, the date of the first public announcement by

any potential offeror in respect of such Tender Offer or any of their agents or affiliates of its withdrawal from, or the discontinuation of, such purchase or other acquisition of Shares. If any such announcement is made after the actual closing time for the regular trading session of on the relevant Exchange, without regard to any after hours or any other trading outside of such regular trading session hours, the Announcement Cessation Date shall be deemed to be the next following Scheduled Trading Day; *provided* that, for the avoidance of doubt, the occurrence of an Announcement Cessation Date with respect to any transaction shall not preclude the occurrence of a later Announcement Date with respect to such transaction. For purposes hereof, the definition of "Announcement Date" in Section 12.1 of the Equity Definitions shall be amended by (i) replacing the word "leads to the" in the third and the fifth lines thereof with the words ", if completed, would lead to a"; (ii) replacing the words "voting shares" in the fifth line thereof with the word "Shares"; (iii) inserting the words "by any entity" after the word "announcement" in the second and the fourth lines thereof; (iv) replacing the words "a firm" with the word "any bona fide" in the second and fourth lines thereof; (v) inserting the words "or to explore the possibility of engaging in" after the words "engage in" in the second line thereto; and (vi) inserting the words "or to explore the possibility of purchasing or otherwise obtaining" after the word "obtain" in the fourth line thereto.

(iii) Notwithstanding anything to the contrary in this Confirmation, upon the occurrence of one of the following events, with respect to this Transaction, (1) Dealer shall have the right to designate such event an Additional Termination Event and designate an Early Termination Date pursuant to Section 6(b) of the Agreement, and (2) Company shall be deemed the sole Affected Party and the Transaction shall be deemed the sole Affected Transaction:

(A) the consummation of (i) any binding share exchange, consolidation or merger of Company pursuant to which the Shares will be converted into cash, securities or other property; or (ii) any sale, lease or other transfer in one transaction or a series of transactions of all of the consolidated assets of Company and its subsidiaries, taken as a whole, to any person other than one of Company's subsidiaries; *provided*, *however*, that a transaction in which the holders of more than 50% of all classes of common equity of Company 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 any direct or indirect parent thereof immediately after the consummation of such transaction shall not be an Additional Termination Event;

(B) There is a default by Company under any of its Public Indebtedness under which there may be outstanding in excess of $25 million, whether such Public Indebtedness now exists or shall hereafter be created, resulting in such Public Indebtedness becoming or being declared due and payable; "**Public Indebtedness**" shall mean any indebtedness of the Company for money borrowed under notes, bonds or similar instruments offered and sold by the Company in an offering registered with the Securities and Exchange Commission or pursuant to Rule 144A under the Securities Act;

(C) Any "person" or "group" within the meaning of Section 13(d) of the Exchange Act other than Company, any of its subsidiaries or its employee benefit plans, files a Schedule TO or any schedule, form or report under the Exchange Act disclosing that such person or group has become the direct or indirect ultimate "beneficial owner", as defined in Rule 13d-3 under the Exchange Act, of the common equity of Company representing more than 50% of the ordinary voting power of such common equity;

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

(E) the Shares (or other common stock or depositary shares or receipts in respect thereof) cease to be listed or quoted on any of the New York Stock Exchange, The NASDAQ Global Select Market, The NASDAQ Global Market or any other national securities exchange or automated quotation system (or any of their respective successors) for a period of 30 consecutive scheduled trading days;

(F) Dealer, despite using commercially reasonable efforts, is unable or reasonably determines based on the advice of counsel that it is illegal or inadvisable, to hedge its obligations pursuant to this Transaction in the public market without registration under the Securities Act or as a result of any legal, regulatory or self-regulatory requirements or related policies and procedures (whether or not such requirements, policies or procedures are imposed by law or have been voluntarily adopted by Dealer).

Notwithstanding any provision of paragraph 9(g)(iii)(A) or (C), however, an Additional Termination Event will not be deemed to have occurred if 90% of the consideration received or exchanged by common stockholders of Company (excluding cash payments for fractional shares and cash payments made pursuant to dissenters' appraisal rights), in connection with the transaction or transactions otherwise constituting the Additional Termination Event consists of shares of common stock or depositary shares or receipts in respect thereof traded on any of the New York Stock Exchange, The NASDAQ Global Select Market, The NASDAQ Global Market or any other national securities exchange or automated quotation system (or any of their respective successors) or which will be so traded when issued or exchanged in connection with such transaction or transactions ("**Publicly Traded Securities**") and as a result of such transaction or transactions the Convertible Notes (as defined in the Purchase Agreement) become convertible into cash, such Publicly Traded Securities or a combination of cash and such Publicly Traded Securities.

(h) *No Collateral or Setoff*. Notwithstanding any provision of the Agreement or any other agreement between the parties to the contrary, the obligations of Company hereunder are not secured by any collateral. In addition, obligations under this Transaction shall not be netted, recouped or set off (including pursuant to Section 6 of the Agreement) against any other obligations of the parties, whether arising under the Agreement, this Confirmation, under any other agreement between the parties hereto, by operation of law or otherwise, and no other obligations of the parties shall be netted, recouped or set off (including pursuant to Section 6 of the Agreement) against obligations under the Transaction, whether arising under the Agreement, this Confirmation, under any other agreement between the parties hereto, by operation of law or otherwise, and each party hereby waives any such right of setoff, netting or recoupment; provided that both parties agree that subparagraph (ii) of Section 2(c) of the Agreement shall apply to the Transaction.

(i) *Alternative Calculations and Payment on Early Termination and on Certain Extraordinary Events*. If, in respect of this Transaction, an amount is payable by Company to Dealer, (i) pursuant to Sections 12.2, 12.3, 12.6, 12.7 or 12.9 of the Equity Definitions (except in the event of an Insolvency, Nationalization, Tender Offer or Merger Event in which the consideration or proceeds to be paid to holders of shares consists solely of cash) or (ii) pursuant to Section 6(d)(ii) of the Agreement (except in the event of an Event of Default in which Company is the Defaulting Party or a Termination Event in which Company is the Affected Party, other than an Event of Default of the type described in (x) Section 5(a)(iii), (v), (vi), (vii) or (viii) of the Agreement or (y) a Termination Event of the type described in Section 5(b)(i), (ii), (iii), (iv), (v) or (vi) of the Agreement, in the case of both (x) and (y), resulting from an event or events outside Company's control) (a "**Payment Obligation**"), Company shall satisfy any such Payment Obligation by the Share Termination Alternative (as defined below), unless Company elects to satisfy any such Payment Obligation by delivering cash (in which case the provisions of Sections 12.2, 12.3, 12.6, 12.7 or 12.9 of the Equity Definitions or Section 6(d)(ii) of the Agreement, as the case may be, shall apply in lieu of the provisions of this paragraph 9(i)), by giving irrevocable telephonic notice to Dealer, confirmed in writing within one Scheduled Trading Day, no later than 12:00 p.m. New York local 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 where such notice shall include a representation and warranty from Company that it is not, as of the date of the telephonic notice and the date of such written notice, aware of any "material non-public information" (within the meaning of Section 10(b) of the Exchange Act and the rules promulgated thereunder) concerning itself or the Shares. Notwithstanding the foregoing, satisfaction of a Payment Obligation in the Share Termination Alternative as set forth in this clause shall only apply to this Transaction and, notwithstanding anything to the contrary in the Agreement, (1) separate amounts shall be calculated with respect to (a) the Transaction and (b) all other Transactions under the Agreement, and (2) such separate amounts shall be payable pursuant to Section 6(d)(ii) of the Agreement, subject to, in the case of clause (a), Company's right to deliver cash in satisfaction of any Payment Obligation hereunder.

Share Termination Alternative:	If applicable, Company shall deliver to Dealer the Share Termination Delivery Property on the date (the "Share Termination Payment Date") on which the Payment Obligation would otherwise be due pursuant to Section 12.7 or Section 12.9 of the Equity Definitions or pursuant to Section 6(d)(ii) of the Agreement, subject to paragraph (j)(i) below, in satisfaction, subject to paragraph (j)(ii) below, of the Payment Obligation in the manner reasonably requested by Dealer 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 amount of 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 on the date such Share Termination Delivery Units are to be delivered as Share Termination Delivery Property, as determined by the Calculation Agent in its discretion by commercially reasonable means. The Calculation Agent shall notify Company of such Share Termination Unit Price at the time of notification of the Payment Obligation. In the case of a Private Placement of Share Termination Delivery Units that are Restricted Shares (as defined below), as set forth in paragraph (j)(i) below, the Share Termination Unit Price shall be determined by the discounted price applicable to such Share Termination Delivery Units. In the case of a Registration Settlement of Share Termination Delivery Units that are Restricted Shares (as defined below) as set forth in paragraph (j)(ii) below, the Share Termination Unit Price shall be the Settlement Price on the Merger Date, the Announcement Date (in the case of a Nationalization, Insolvency or Delisting) or the Early Termination Date, as applicable.
Share Termination Delivery Unit:	In the case of a Termination Event, Event of Default or Delisting, one Share or, in the case of Nationalization, Insolvency, Tender Offer or Merger Event, a unit consisting of the number or amount of each type of 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, Tender Offer or Merger Event. If such Nationalization, Insolvency, Tender Offer or Merger Event involves a choice of consideration to be received by holders, such holder shall be deemed to have elected to receive the maximum possible amount of cash.
Failure to Deliver:	Inapplicable
Other applicable provisions:	If Share Termination Alternative is applicable, the provisions of Sections 9.1(c), 9.8, 9.9, 9.11, 9.12 and 10.5 (as modified above) of the Equity Definitions will be applicable, except that the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by excluding any representations therein relating to restrictions, obligations, limitations or requirements under applicable securities laws as a result of the fact that Company is the Issuer of the Shares or any portion of the Share Termination Delivery Units, and 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 this Transaction means that Share Termination Alternative is applicable to this Transaction.

(j) *Registration/Private Placement Procedures*. If, in the commercially reasonable judgment of Dealer based on the advice of counsel, following any delivery of Shares or Share Termination Delivery Property to Dealer hereunder, such Shares or Share Termination Delivery Property would be in the hands of Dealer subject to any applicable restrictions with respect to any registration or qualification requirement or prospectus delivery requirement for such Shares or Share Termination Delivery Property pursuant to any applicable federal or any applicable material restrictions pursuant to any applicable state securities law (including, without limitation, any such requirement arising under Section 5 of the Securities Act as a result of such Shares or Share Termination Delivery Property being "restricted securities", as such term is defined in Rule 144 under the Securities Act, or as a result of the sale of such Shares or Share Termination Delivery Property being subject to paragraph (c) of Rule 145 under the Securities Act) (such Shares or Share Termination Delivery Property, "**Restricted Shares**"), then delivery of such Restricted Shares shall be effected pursuant to either clause (i) or (ii) below at the election of Company, unless Dealer waives the need for registration/private placement procedures set forth in (i) and (ii) below. Notwithstanding the foregoing, solely in respect of any Daily Number of Warrants exercised or deemed exercised on any Expiration Date, Company shall, if applicable, elect, prior to the first Settlement Date for the first Expiration Date, a Private Placement Settlement or Registration Settlement for all deliveries of Restricted Shares for all such Expiration Dates which election shall be applicable to all Settlement Dates for such Warrants and the procedures in clause (i) or clause (ii) below shall apply for all such delivered Restricted Shares on an aggregate basis commencing after the final Settlement Date for such Warrants. The Calculation Agent shall make reasonable adjustments to settlement terms and provisions under this Confirmation to reflect a single Private Placement or Registration Settlement for such aggregate Restricted Shares delivered hereunder.

(i) If Company elects to settle the Transaction pursuant to this clause (i) (a "**Private Placement Settlement**"), then delivery of Restricted Shares by Company shall be effected in accordance with customary private placement procedures for private placements of equity offerings of substantially similar size reasonably acceptable to Dealer; *provided* that Company may not elect a Private Placement Settlement if, on the date of its election, it has taken, or caused to be taken, any action that would make unavailable either the exemption pursuant to Section 4(2) of the Securities Act for the sale by Company to Dealer (or any affiliate designated by Dealer) of the Restricted Shares or the exemption pursuant to Section 4(1) or Section 4(3) of the Securities Act for resales of the Restricted Shares by Dealer (or any such affiliate of Dealer). The Private Placement Settlement of such Restricted Shares shall include customary representations, covenants, blue sky and other governmental filings and/or registrations, indemnities to Dealer, due diligence rights (for Dealer or any designated buyer of the Restricted Shares by Dealer), opinions and certificates, and such other documentation as is customary for private placements of equity offerings of substantially similar size, all reasonably acceptable to Dealer. In the case of a Private Placement Settlement, Dealer shall determine the appropriate discount to the Share Termination Unit Price (in the case of settlement of Share Termination Delivery Units pursuant to paragraph (i) above) or any Settlement Price (in the case of settlement of Shares pursuant to paragraph 2 above) applicable to such Restricted Shares in a commercially reasonable manner to account for the lack of marketability and illiquidity of such Restricted Shares and appropriately adjust the number of such Restricted Shares to be delivered to Dealer hereunder; *provided* that in no event shall such number be greater than 2 times the Number of Warrants multiplied by the Warrant Entitlement (the "**Maximum Amount**"). Notwithstanding the Agreement or this Confirmation, the date of delivery of such Restricted Shares shall be the Exchange Business Day following notice by Dealer to Company, of such applicable discount and the number of Restricted Shares to be delivered pursuant to this clause (i). For the avoidance of doubt, delivery of Restricted Shares shall be due as set forth in the previous sentence and not be due on the Share Termination Payment Date (in the case of settlement of Share Termination Delivery Units pursuant to paragraph (i) above) or on the Settlement Date for such Restricted Shares (in the case of settlement in Shares pursuant to paragraph 2 above).

In the event Company shall not have delivered the full number of Restricted Shares otherwise applicable as a result of the proviso above relating to the Maximum Amount (such deficit, the "**Deficit Restricted Shares**"), Company shall be continually obligated to deliver, from time to time until the full number of Deficit Restricted Shares have been delivered pursuant to this paragraph, Restricted Shares when, and to the extent, that (i) Shares are repurchased, acquired or otherwise received by Company or any of its subsidiaries after the Trade Date (whether or not in exchange for cash, fair value or any other

consideration), (ii) Company authorized any unissued Shares reserved for issuance in respect of other transactions prior to such date which prior to the relevant date become no longer so reserved and (iii) Company additionally authorizes any unissued Shares that are not reserved for other transactions. At such time as there may be Deficit Restricted Shares, Company shall promptly notify Dealer of the occurrence of any of the foregoing events (including the number of Shares subject to clause (i), (ii) or (iii) and the corresponding number of Restricted Shares to be delivered) and promptly deliver such Restricted Shares thereafter.

(ii) If Company elects to settle the Transaction pursuant to this clause (ii) (a "**Registration Settlement**"), then Company shall file and use its reasonable best efforts to make effective under the Securities Act a registration statement or supplement or amend an outstanding registration statement in form and substance reasonably satisfactory to Dealer, to cover the resale of such Restricted Shares (and any Company Make-whole Shares) in accordance with customary resale registration procedures for registered secondary offerings of a substantially similar size, including covenants, conditions, representations, underwriting discounts (if applicable), commissions (if applicable), indemnities due diligence rights, opinions and certificates, and such other documentation as is customary for equity resale underwriting agreements for registered secondary offerings of a substantially similar size, all reasonably acceptable to Dealer. If Dealer, in its good faith and reasonable discretion, is not satisfied with such procedures and documentation, Private Placement Settlement shall apply. If Dealer is satisfied with such procedures and documentation, it shall sell the Restricted Shares pursuant to such registration statement during a period (the "**Resale Period**") commencing on the Exchange Business Day following delivery of such Restricted Shares (and any Company Make-whole Shares) (which, for the avoidance of doubt, shall be (x) any Settlement Date in the case of an exercise of Warrants prior to the first Expiration Date pursuant to paragraph 2 above, (y) the Share Termination Payment Date in case of settlement in Share Termination Delivery Units pursuant to paragraph (i) above or (z) the Settlement Date in respect of the final Expiration Date for all Daily Number of Warrants) and ending on the earliest of (i) the Exchange Business Day on which Dealer completes the sale of all Restricted Shares or, in the case of settlement of Share Termination Delivery Units, a sufficient number of Restricted Shares so that the realized net proceeds of such sales exceed the Payment Obligation (as defined above) and (ii) the date upon which all Restricted Shares have been sold or transferred pursuant to Rule 144 (or similar provisions then in force) or Rule 145(d)(1) or (2) (or any similar provision then in force) under the Securities Act.

(iii) (A) If (ii) above is applicable and the Net Share Settlement Amount or the Payment Obligation, as applicable, exceeds the realized net proceeds from such resale, or if (i) above is applicable and the Freely Tradable Value (as defined below) of the Net Share Settlement Amount or the Payment Obligation (in each case as adjusted pursuant to (i) above), as applicable, exceeds the realized net proceeds from such resale, Company shall transfer to Dealer by the open of the regular trading session on the Exchange on the Exchange Trading Day immediately following the last day of the Resale Period a number of Shares ("**Company Make-whole Shares**") in an amount that, based on the Settlement Price on the last day of the Resale Period (as if such day was the "Valuation Date" for purposes of computing such Settlement Price), has a dollar value equal to the amount of such excess (the "**Company Additional Amount**"), or if Company so elects, an amount in cash equal to the Company Additional Amount. The Resale Period shall continue to enable the sale of the Company Make-whole Shares. If Company elects to pay the Additional Amount in Shares, the requirements and provisions for Registration Settlement or Private Placement Settlement, as the case may be, shall apply. This provision shall be applied successively until the Additional Amount is equal to zero. In no event shall Company deliver a number of Restricted Shares greater than the Maximum Amount.

If (ii) above is applicable and the realized net proceeds from such resale (including the sale of any Company Make-whole Shares) exceed the Net Share Settlement Amount or the Payment Obligation, as applicable, or if (i) above is applicable and the realized net proceeds from such resale (including the sale of any Company Make-whole Shares) exceed the Freely Tradeable Value (as defined below) of the Net Share Settlement Amount or the Payment Obligation (in each case as adjusted pursuant to (i) above), as applicable, Dealer shall transfer to Company the amount of such excess (the "**Dealer Additional Amount**") in a number of Shares ("**Dealer Make-whole Shares**") that, based on the Settlement Price on the last day of the Resale Period (as if such day was the Valuation Date for purposes of computing such Settlement Price), has a value equal to the Dealer Additional Amount, or, at Company's option, in cash in

an amount equal to the Dealer Additional Amount. The transfer of the Dealer Additional Amount shall be made (x) if in cash, by the open of the regular trading session on the Exchange on the Exchange Trading Day immediately following the last day of the Resale Period, and (y) if in Shares, one Settlement Cycle following the date Dealer is able, using commercially reasonable efforts, to purchase Dealer Make-whole Shares. This provision shall be applied successively until the Dealer Additional Amount is equal to zero.

"**Freely Tradeable Value**" means the value of the number of Shares delivered to Dealer which such Shares would have if they were freely tradeable (without prospectus delivery) upon receipt by Dealer, as determined by the Calculation Agent by commercially reasonable means.

(iv) Without limiting the generality of the foregoing, Company agrees that any Restricted Shares delivered to Dealer, as purchaser of such Restricted Shares, (i) may be transferred by and among Dealer and its affiliates and Company shall effect such transfer without any further action by Dealer and (ii) after the minimum "holding period" within the meaning of Rule 144(d) under the Securities Act has elapsed after any Settlement Date for such Restricted Shares, Company shall promptly remove, or cause the transfer agent for such Restricted Shares to remove, any legends referring to any such restrictions or requirements from such Restricted Shares upon delivery by Dealer (or such affiliate of Dealer) to Company or such transfer agent of seller's and broker's representation letters customarily delivered by Dealer in connection with resales of restricted securities pursuant to Rule 144 under the Securities Act, without any further requirement for the delivery of any certificate, consent, agreement, opinion of counsel, notice or any other document, any transfer tax stamps or payment of any other amount or any other action by Dealer (or such affiliate of Dealer).

If the Private Placement Settlement or the Registration Settlement shall not be effected as set forth in clauses (i) or (ii), as applicable, then failure to effect such Private Placement Settlement or such Registration Settlement shall constitute an Event of Default with respect to which Company shall be the Defaulting Party.

(k) *Limit on Beneficial Ownership*. Except as provided below in this paragraph (k), notwithstanding any other provision to the contrary in this Confirmation, in no event shall Dealer be entitled to receive, or shall be deemed to receive, Shares to the extent that, immediately upon giving effect to such receipt of such Shares,

(i) the Option Equity Percentage (as defined below) exceeds 4.9%,

(ii) Dealer, Dealer Group (as defined below) or any person whose ownership position would be aggregated with that of Dealer or Dealer Group (Dealer, Dealer Group or any such person, a "**Dealer Person**") under any relevant state corporate law or other state, federal or local laws, regulations or regulatory orders applicable to ownership of Shares ("**Applicable Laws**"), owns, beneficially owns, constructively owns, controls, holds the power to vote or otherwise meets a relevant definition of ownership in excess of a number of Shares equal to (x) the number of Shares that, in the good faith determination of the relevant Dealer Person, would give rise to materially burdensome reporting or registration obligations or other requirements (including obtaining prior approval by a state or federal regulator) of a Dealer Person under Applicable Laws (including, without limitation, "interested stockholder" or "acquiring person" status under Section 203 of the Delaware General Corporation Law, but excluding any report or filing required pursuant to Section 13 of the Exchange Act and the rules promulgated thereunder) and with respect to which such requirements have not been met or the relevant approval has not been received *minus* (y) 1.0% of the number of Shares outstanding on the date of determination,

(iii) the Maritime Law Ownership Percentage (as defined below) of the Maritime Law Dealer Group (as defined below) would be greater than 4.9% of the outstanding Shares, unless Dealer has established to the reasonable satisfaction of the Company that it (or the person designated to take delivery) is a citizen of the United States for purposes of the U.S. coastwise trade under the Maritime Laws (as defined below),

(iv) such Shares would reasonably be anticipated by the Company to be "Excess Shares" ("**Excess Shares**") as defined in the Company's Second Restated Certificate of Incorporation (the "**Certificate**") or

(v) such Shares, in the good faith determination of the Company, would cause the Company to cease to be qualified under Maritime Laws (as defined below) or Applicable Laws to own and operate vessels in the coastwise trade of the United States (each of clause (i) through (iv) above and this clause (v), an "**Ownership Limitation**").

If any delivery owed to Dealer hereunder is not made, in whole or in part, as a result of an Ownership Limitation, the Company's obligation to make such delivery shall not be extinguished and the Company shall make such delivery as promptly as practicable after, but in no event later than three Exchange Business Days after, Dealer gives notice to the Company that such delivery would not result in any of such Ownership Limitations being breached. Such notice by Dealer will include details sufficient to support the position taken by Dealer in such notice.

The "**Option Equity Percentage**" as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the sum of (i) the number of Shares that Dealer and any of its affiliates subject to aggregation with Dealer, for purposes of the "beneficial ownership" test under Section 13 of the Exchange Act, and all persons who may form a "group" (within the meaning of Rule 13d-5(b)(1) under the Exchange Act) with Dealer ("**Dealer Group**") "beneficially owns" (within the meaning of Section 13 of the Exchange Act) on such day, other than any Shares so owned as a hedge of the Transaction, and (ii) the product of the Number of Warrants and the Warrant Entitlement and (B) the denominator of which is the number of Shares outstanding on such day. "**Maritime Law Ownership Percentage**" means the ownership, as construed under the Maritime Laws, of Shares by Dealer or any person whose ownership would be aggregated with that of Dealer or Dealer's parent entity under the Maritime Laws (collectively, the "**Maritime Law Dealer Group**"). "**Maritime Laws**" means, collectively and without duplication, Chapters 121 and 505 of Title 46 of the United States Code and any successor or replacement statute thereto, and the regulations promulgated under such Title or successor or replacement statute or, to the extent remaining in force, under any predecessor statute, in each case as amended or supplemented from time to time.

The Company represents and warrants that, assuming the accuracy of any factual information regarding Dealer that is provided by Dealer to the Company upon the Company's request, any Shares delivered by the Company to Dealer pursuant to the Transaction shall not be Excess Shares, and the issuance and delivery of such Shares shall have been approved by the board of directors of the Company. If Dealer designates any person to receive any Shares pursuant to Section 9(t), clauses (iii), (iv) and (v) of this Section 9(k) shall apply as if such person were Dealer. If the Company is unable to deliver any Shares to Dealer as a result of this Section 9(k), notwithstanding Company's continuing obligation to deliver such Shares as described herein, the Company may at any time following the Settlement Date, upon one Exchange Business Day's prior written notice to Dealer, elect to deliver cash in lieu of any or all such Shares, in which case the Shares for which cash delivery has been so elected shall be valued by the Calculation Agent in a commercially reasonable manner over such time period as the Calculation Agent reasonably determines appropriate in light of the liquidity of the Shares at such time and applicable law and related regulations, policies and procedures. The Company's right to elect cash pursuant to the foregoing sentence shall be subject to the Company giving representations, warranties and covenants customary for transactions under Rule 10b5-1 under the Exchange Act and satisfactory to Dealer. The Company shall promptly notify Dealer if at any time either (i) any purported transfer of any shares of any class or series of capital stock of the Company is void and ineffective pursuant to Section 2 of Article Twelve of the Certificate or (ii) any shares of any class or series of capital stock of the Company are "Excess Shares" pursuant to Section 3 of Article Twelve of the Certificate. The Company covenants that it shall provide prompt written notice to Dealer upon having actual knowledge that more than 10% of the aggregate Shares outstanding are owned by persons other than citizens of the United States for purposes of the U.S. coastwise trade under the Maritime Laws and upon becoming aware of each additional 5% thereafter.

The Company shall provide Dealer with a copy of any filings submitted to any regulatory authority relating to the Company's or the Company's stockholders' citizenship under the Maritime Laws so long as Dealer (or any assignee of Dealer) has agreed to keep any such filings and the information contained therein confidential on terms reasonably acceptable to the Company and Dealer. Dealer acknowledges that Dealer will not have any rights as a holder of the Company's common stock with respect to Shares, prior to the delivery thereof hereunder, that the Company is unable to deliver as a result of this Section 9(k). The Company acknowledges that, as a result of this Section 9(k), it will not treat Dealer (or any affiliate or designee of Dealer) as the owner, for any purpose (including, without limitation, for purposes of the Maritime Laws or Article Twelve of the Certificate), of Shares, prior to the delivery of such Shares hereunder, that the Company is unable to deliver as a result of this Section 9(k). For purposes of this Section 9(k), the term "Dealer" shall include any of the Dealer's permitted successors or assigns.

(l) *Share Deliveries*. Company acknowledges and agrees that, to the extent the holder of this Warrant is not then an affiliate, as such term is used in Rule 144 under the Securities Act, of Company and has not been such an affiliate of Company for 90 days (it being understood that Dealer will not be considered an affiliate of Company solely by reason of its receipt of or right to receive Shares pursuant to this Transaction), and otherwise satisfies all holding period and other requirements of Rule 144 of the Securities Act applicable to it, any delivery of Shares or Share Termination Delivery Property hereunder at any time after 6 months from the Trade Date (or 1 year from the Trade Date if, at such time, informational requirements of Rule 144(c) are not satisfied with respect to Company) shall be eligible for resale under Rule 144 of the Securities Act, and Company agrees to promptly remove, or cause the transfer agent for such Shares or Share Termination Delivery Property to remove, any legends referring to any restrictions on resale under the Securities Act from the certificates representing such Shares or Share Termination Delivery Property. Company further agrees and acknowledges that Dealer shall run a holding period under Rule 144 under the Securities Act with respect to the Warrants and/or any Shares or Share Termination Delivery Property delivered hereunder notwithstanding the existence of any other transaction or transactions between Company and Dealer relating to the Shares. Company further agrees that Shares or Share Termination Delivery Property delivered hereunder prior to the date that is 6 months from the Trade Date (or 1 year from the Trade Date, if, at such time, informational requirements of Rule 144(c) are not satisfied with respect to Company) may be freely transferred by and among Dealer and its affiliates, and Company shall effect such transfer without any further action by Dealer. Notwithstanding anything to the contrary herein, Company agrees that any delivery of Shares or Share Termination Delivery Property shall be effected by book-entry transfer through the facilities of DTC, or any successor depositary, if, at the time of delivery, the certificates representing such Shares or Share Termination Delivery Property would not contain any restrictive legend as described above. Notwithstanding anything to the contrary herein, to the extent the provisions of Rule 144 of the Securities Act or any successor rule are amended, or the applicable interpretation thereof by the Securities and Exchange Commission or any court changes after the Trade Date, including without limitation to lengthen or shorten the holding periods, the agreements of Company herein shall be deemed modified to the extent necessary, in the opinion of outside counsel of Company, to comply with Rule 144 of the Securities Act, including Rule 144, as in effect at the time of delivery of the relevant Shares or Share Termination Delivery Property.

(m) *Additional Termination Event*. If within the period commencing on the Trade Date and ending on the first anniversary of the Premium Payment Date, Dealer reasonably determines that it is advisable to terminate a portion of the Transaction so that Dealer's related hedging activities will comply with applicable securities laws, rules or regulations, an Additional Termination Event shall occur in respect of which (1) Company shall be the sole Affected Party and (2) the Transaction shall be the sole Affected Transaction.

(n) *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 this Transaction. Each party (i) certifies that no representative, agent or attorney of the other 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 this Transaction, as applicable, by, among other things, the mutual waivers and certifications provided herein.

(o) *Tax Disclosure*. Effective from the date of commencement of discussions concerning the Transaction, each party and each of their respective 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) relating to such tax treatment and tax structure.

(p) *Maximum Share Delivery*. Notwithstanding any other provision of this Confirmation or the Agreement, in no event will Company be required to deliver more than the lesser of (i) the Maximum Amount of Shares in the aggregate to Dealer in connection with this Transaction and (ii) 2,112,465 Shares, subject to the provisions regarding Deficit Restricted Shares.

(q) *Status of Claims in Bankruptcy*. Dealer acknowledges and agrees that this Confirmation is not intended to convey to Dealer rights with respect to the Transaction that are senior to the claims of common stockholders in any U.S. bankruptcy proceedings of Company; *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 Company 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.

(r) *Securities Contract*. Each of Dealer and Company agrees and acknowledges that Dealer is one or more of a "financial institution" and "financial participant" within the meaning of sections 101(22) and 101(22A) of Title 11 of the United States Code (the "**Bankruptcy Code**"). The parties further agree and acknowledge (A) that this Confirmation is 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 is a "settlement payment" (as such term is defined in Section 741(8) of the Bankruptcy Code) or a "transfer" within the meaning of section 546 of the Bankruptcy Code, and (B) that is the parties are entitled to the protections afforded by, among other sections, section 362(b)(6), 362(b)(27), 362(o), 546(e), 546(j), 548(d)(2), 555 and 561 of the Bankruptcy Code.

(s) *Right to Extend*. Dealer may postpone any Exercise Date, Settlement Date or any other date of valuation or delivery with respect to some or all of the relevant Warrants (in which case the Calculation Agent may make appropriate adjustments to the relevant number of Warrants being exercised), if Dealer determines, in its good faith and commercially reasonable judgment based on the advice of counsel, that such action is advisable to preserve Dealer's Hedging Activity hereunder in light of existing liquidity conditions to enable Dealer to effect purchases of Shares in connection with its Hedging Activity hereunder in a manner that would, if Dealer were the Company or an affiliated purchaser of the Company, be in compliance with applicable legal and regulatory requirements.

(t) *Method of Delivery*. Whenever delivery of funds or other assets is required hereunder by or to Company, such delivery shall be effected through Agent.

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 to or from Company, Dealer may designate any of its affiliates to purchase, sell, receive or deliver such Shares or other securities 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 Company to the extent of any such performance.

(u) *Regulatory Provisions.* The time of dealing for the Transaction will be confirmed by Dealer upon written request by Company.

(v) *Terms relating to the Agent*.

(i) The Agent is registered as a broker-dealer with the U.S. Securities and Exchange Commission and the Financial Industry Regulatory Authority (FINRA), is acting hereunder for and on behalf of Dealer solely in its capacity as agent for Dealer pursuant to instructions from Dealer, and is not and will not be acting as the Company's agent, broker, advisor or fiduciary in any respect under or in connection with the Transaction.

(ii) In addition to acting as Dealer's agent in executing this Transaction, the Agent is authorized from time to time to give written payment and/or delivery instructions to the Company directing it to make its payments and/or deliveries under this Transaction to an account of the Agent for remittance to Dealer (or its designee), and for that purpose any such payment or delivery by the Company to the Agent shall be treated as a payment or delivery to Dealer.

(iii) Except as otherwise provided herein, any and all notices, demands, or communications of any kind transmitted in writing by either Dealer or the Company under or in connection with this Transaction will be transmitted exclusively by such party to the other party through the Agent at the following address:

Wells Fargo Securities, LLC
201 South College Street, 6th Floor
Charlotte, NC 28288-0601
Facsimile No.: (704) 383-8425
Telephone No.: (704) 715-8086
Attention: Equity Derivatives

(iv) The Agent shall have no responsibility or liability to Dealer or the Company for or arising from (a) any failure by either Dealer or the Company to perform any of their respective obligations under or in connection with this Transaction, (b) the collection or enforcement of any such obligations, or (c) the exercise of any of the rights and remedies of either Dealer or the Company under or in connection with this Transaction. Each of Dealer and the Company agrees to proceed solely against the other to collect or enforce any such obligations, and the Agent shall have no liability in respect of this Transaction except for its gross negligence or willful misconduct in performing its duties as the agent of Dealer.

(v) Upon written request, the Agent will furnish to Dealer and the Company the date and time of the execution of this Transaction and a statement as to the source and amount of any remuneration received or to be received by the Agent in connection with this Transaction.

(w) *Additional ISDA Schedule Terms*.

(i) "**Specified Entity**" means in relation to each of Dealer and Company for purposes of Sections 5(a)(v), 5(a)(vi), 5(a)(vii) and 5(b)(v) of the Agreement, not applicable.

(ii) "**Specified Transaction**" will have the meaning specified in Section 14 of the Agreement.

(iii) The "Cross-Default" provisions of Section 5(a)(vi) of the Agreement shall not apply to either party.

(iv) **Automatic Early Termination**. The "Automatic Early Termination" provision of Section 6(a) of the Agreement will not apply to Dealer and will not apply to Company.

(v) "**Termination Currency**" means United States Dollars ("**USD**").

(vi) **Consent to Recording**. Each party (i) consents to the monitoring or recording, at any time and from time to time, by the other party of any and all communications between officers or employees of the parties, (ii) waives any further notice of such monitoring or recording, and (iii) agrees to notify (and, if required by law, obtain the consent of) its officers and employees with respect to such monitoring or recording. Any such recording may be submitted in evidence to any court or in any Proceeding for the purpose of establishing any matters pertinent to this Transaction.

(vii) **Severability**. In the event any one or more of the provisions contained in this Confirmation or the Agreement shall be held illegal, invalid or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby.

(viii) **Deduction or Withholding for Tax.** So long as Company is organized under the laws of the United States or any State thereof, the provisions of Section 2(d)(i)(4) of the Agreement shall not apply to the Transaction.

(ix) **Part 2(b) of the ISDA Schedule—Payee Representation**:

For the purpose of Section 3(f) of this Agreement, Company makes the following representation to Dealer:

Company is a corporation established under the laws of the State of Delaware and is a U.S. person (as that term is defined in Section 7701(a)(30) of the Code).

For the purpose of Section 3(f) of this Agreement, Dealer makes the following representation to Company:

Dealer is a national banking association organized or formed under the laws of the United States and is a United States resident for United States federal income tax purposes.

(x) **Part 3(a) of the ISDA Schedule—Tax Forms:**

Party Required to Deliver Document	Form/Document/Certificate	Date by which to be Delivered
Company	A complete and duly executed United States Internal Revenue Service Form W-9 (or successor thereto.)	(i) Upon execution and delivery of this Agreement; (ii) promptly upon reasonable demand by Dealer; and (iii) promptly upon learning that any such Form previously provided by Company has become obsolete or incorrect.
Dealer	A complete and duly executed United States Internal Revenue Service Form W-9 (or successor thereto).	(i) Upon execution and delivery of this Agreement; (ii) promptly upon reasonable demand by Company; and (iii) promptly upon learning that any such Form previously provided by Dealer has become obsolete or incorrect.

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.

THE SECURITIES REPRESENTED BY THE CONFIRMATION HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED, OR ANY OTHER UNITED STATES FEDERAL OR STATE SECURITIES LAWS; SUCH SECURITIES MAY NOT BE SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF APPROPRIATE REGISTRATION UNDER SUCH SECURITIES LAWS OR EXCEPT IN A TRANSACTION EXEMPT FROM OR NOT SUBJECT TO THE REGISTRATION REQUIREMENTS OF SUCH SECURITIES LAWS.

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing a copy of this Confirmation and returning it to us by facsimile at 212-214-5913 (Attention: Derivatives Structuring Group).

Very truly yours,

WELLS FARGO SECURITIES, LLC,
acting solely in its capacity as Agent
of Wells Fargo Bank, National Association

By: /s/ Cathleen Burke
Name: Cathleen Burke
Title:Managing Director

WELLS FARGO BANK, NATIONAL ASSOCIATION
By: Wells Fargo Securities, LLC,
acting solely in its capacity as its Agent

By: /s/ Cathleen Burke
Name: Cathleen Burke
Title: Managing Director

Accepted and confirmed as of the Trade Date:

HORNBECK OFFSHORE SERVICES, INC.

By: /s/ James O. Harp, Jr.
Name: James O. Harp, Jr.
Title: Executive Vice President and CFO

ANNEX A: Daily Number of Warrants

Expiration Date	Number of Warrants
Monday, December 02, 2019	36,215
Tuesday, December 03, 2019	36,215
Wednesday, December 04, 2019	36,215
Thursday, December 05, 2019	36,215
Friday, December 06, 2019	36,215
Monday, December 09, 2019	36,215
Tuesday, December 10, 2019	36,215
Wednesday, December 11, 2019	36,215
Thursday, December 12, 2019	36,215
Friday, December 13, 2019	36,215
Monday, December 16, 2019	36,215
Tuesday, December 17, 2019	36,215
Wednesday, December 18, 2019	36,215
Thursday, December 19, 2019	36,215
Friday, December 20, 2019	36,215
Monday, December 23, 2019	36,215
Tuesday, December 24, 2019	36,215
Thursday, December 26, 2019	36,215
Friday, December 27, 2019	36,215
Monday, December 30, 2019	36,215
Tuesday, December 31, 2019	36,215
Thursday, January 02, 2020	36,215
Friday, January 03, 2020	36,215
Monday, January 06, 2020	36,215
Tuesday, January 07, 2020	36,215
Wednesday, January 08, 2020	36,215
Thursday, January 09, 2020	36,215
Friday, January 10, 2020	36,215
Monday, January 13, 2020	36,215
Tuesday, January 14, 2020	36,215
Wednesday, January 15, 2020	36,215
Thursday, January 16, 2020	36,215
Friday, January 17, 2020	36,215
Tuesday, January 21, 2020	36,215
Wednesday, January 22, 2020	36,215
Thursday, January 23, 2020	36,215
Friday, January 24, 2020	36,215
Monday, January 27, 2020	36,215
Tuesday, January 28, 2020	36,215
Wednesday, January 29, 2020	36,215

Exhibit 4.11

Execution version

Barclays Bank PLC
5 The North Colonnade
Canary Wharf, London E14 4BB
Facsimile: +44(20) 77736461
Telephone: +44 (20) 777 36810

c/o Barclays Capital Inc.
as Agent for Barclays Bank PLC
745 Seventh Ave
New York, NY 10019
Telephone: +1 212 412 4000

August 8, 2012

To: Hornbeck Offshore Services, Inc.
103 Northpark Boulevard, Suite 300
Covington, Louisiana, 70433
Attention: Sam Giberga, General Counsel
Facsimile No.: (985) 727-2006

Re: **Additional Warrants**

The purpose of this letter agreement (this "**Confirmation**") is to confirm the terms and conditions of the Transaction entered into between Barclays Bank PLC ("**Dealer**"), through its agent Barclays Capital Inc. (the "**Agent**"), and Hornbeck Offshore Services, Inc. ("**Company**") on the Trade Date specified below (the "**Transaction**"). This Confirmation constitutes a "Confirmation" as referred to in the Agreement specified below. Dealer is regulated by the Financial Services Authority. Dealer is not a member of the Securities Investor Protection Corporation ("**SIPC**").

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.

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 Company as to the terms of the Transaction to which this Confirmation relates. This Confirmation shall supplement, form a part of, and be subject to an agreement in the form of the ISDA 2002 Master Agreement (the "**Agreement**") as if Dealer and Company had executed an agreement in such form (but without any Schedule except for (i) the election of the laws of the State of New York as the governing law, and (ii) the election of US Dollars ("**USD**") as the Termination Currency, and (iii) the other provisions set forth in paragraph 9(w) below) on the Trade Date. In the event of any inconsistency between provisions of that Agreement and this Confirmation, this Confirmation will prevail for the purpose of the Transaction to which this Confirmation relates. The parties hereby agree that no Transaction other than the Transaction to which this Confirmation relates shall be governed by the Agreement.

2. The Transaction is a Warrant Transaction, which shall be considered a Share Option Transaction for purposes of the Equity Definitions. The terms of the particular Transaction to which this Confirmation relates are as follows:

General Terms:	
Trade Date:	August 8, 2012
Effective Date:	August 13, 2012; *provided* that either Buyer or Seller may cancel all (but not less than all) the Warrants by notice to the other party prior to payment of the Premium on the Effective Date, in which case these Warrants shall never become effective and neither party shall have any obligation to the other party in respect of the Transaction.
Warrants:	Equity call warrants, each giving the holder the right to purchase one Share at the Strike Price, subject to the Settlement Terms set forth below. For the purposes of the Equity Definitions, each reference to a Warrant herein shall be deemed to be a reference to a Call Option.
Warrant Style:	European
Seller:	Company
Buyer:	Dealer
Shares:	The common stock of Company, par value USD 0.01 per Share (Exchange symbol “HOS”)
Number of Warrants:	For each Expiration Date, a number of Warrants set forth next to such an Expiration Date on Annex A hereto (the “**Daily Number of Warrants**”), subject to adjustment as provided herein.
Warrant Entitlement:	One Share per Warrant
Strike Price:	USD 68.5300. Notwithstanding anything to the contrary in the Agreement, this Confirmation or the Equity Definitions, in no event shall the Strike Price be subject to adjustment to the extent that, after giving effect to such adjustment, the Strike Price would be less than USD 39.16, except for any adjustment pursuant to the terms of this Confirmation and the Equity Definitions in connection with stock splits or similar changes to Company’s capitalization
Premium:	USD 1,929,480.00 (Premium per Warrant USD 8.6577).
Premium Payment Date:	The Effective Date.
Exchange:	New York Stock Exchange
Related Exchange(s):	All Exchanges
Procedures for Exercise:	
Expiration Time:	The Valuation Time
Expiration Date(s):	Each Scheduled Trading Day during the period from and including the First Expiration Date and to and including the

	39th Scheduled Trading Day following the First Expiration Date shall be an "Expiration Date" for a number of Warrants equal to the Daily Number of Warrants on such date; *provided* that, notwithstanding anything to the contrary in the Equity Definitions, if any such date is a Disrupted Day, the Calculation Agent may determine that such date is a Disrupted Day in full or a Disrupted Day in part. If the Calculation Agent determines such Disrupted Day is a Disrupted day in full, the Daily Number of Warrants for such day shall be reduced to zero. If the Calculation Agent Determines that such Disrupted Day is a Disrupted Day in part, the Calculation Agent shall make adjustments, if applicable, to the Daily Number of Warrants or shall reduce such Daily Number of Warrants to zero for such date. In either case, the Calculation Agent shall designate a Scheduled Trading Day or a number of Scheduled Trading Days as the Expiration Date(s) for the remaining Daily Number of Warrants or a portion thereof for the originally scheduled Expiration Date; and *provided further* that if such Expiration Date has not occurred pursuant to this clause as of the eighth Scheduled Trading Day following the last scheduled Expiration Date under this Transaction, the Calculation Agent shall have the right to declare such Scheduled Trading Day to be the final Expiration Date and the Calculation Agent shall determine its good faith estimate of the fair market value for the Shares as of the Valuation Time on that eighth Scheduled Trading Day or on any subsequent Scheduled Trading Day, as the Calculation Agent shall determine using commercially reasonable means. Any Scheduled Trading Day on which, as of the date hereof, the Exchange is scheduled to close prior to its normal close of trading shall be deemed not to be a Scheduled Trading Day; if a closure of the Exchange prior to its normal close of trading on any Scheduled Trading Day is scheduled (i) following the date hereof and (ii) on or prior to the Scheduled Trading Day that is at least one Scheduled Trading Day before such Scheduled Trading Day, then such Scheduled Trading Day shall be deemed to be a Disrupted Day in full. If a closure of the Exchange prior to its normal close of trading on any Scheduled Trading Day is scheduled on such Scheduled Trading Day, such Scheduled Trading Day shall be deemed to be a Disrupted Day in part.
First Expiration Date:	Monday, December 2, 2019 (or if such day is not a Scheduled Trading Day, the next following Scheduled Trading Day), subject to Market Disruption Event below.
Multiple Exercise:	Applicable
Minimum Number of Warrants:	1
Maximum Number of Warrants:	All Warrants remaining unexercised as of the remaining Exercise Date(s).
Automatic Exercise:	Applicable; and means that a number of Warrants (as adjusted pursuant to the terms hereof) for each Expiration Date equal to the Daily Number of Warrants (as adjusted pursuant to the terms hereof) for such Expiration Date will be deemed to be automatically exercised; *provided* that "In-the-Money" means

	that the Settlement Price for such Expiration Date exceeds the Strike Price for such Expiration Date; and *provided further* that all references in Section 3.4(b) of the Equity Definitions to "Physical Settlement" shall be read as references to "Net Share Settlement".
Market Disruption Event:	Section 6.3(a)(ii) of the Equity Definitions is hereby amended by replacing clause (ii) in its entirety with "(ii) an Exchange Disruption, or" and inserting immediately following clause (iii) the phrase "; in each case that the Calculation Agent determines is material."
Valuation:	
Valuation Time:	Scheduled Closing Time; *provided* that if the principal trading session is extended, the Calculation Agent shall determine the Valuation Time in its reasonable discretion.
Valuation Date:	Each Exercise Date.
Settlement Terms:	
Settlement Method Election:	Applicable; *provided* that the same Settlement Method shall apply to each Warrant under the Transaction; and *provided further* that references to "Physical Settlement" in Section 7.1 of the Equity Definitions shall be replaced with "Net Share Settlement"; and *provided further* that Company may elect Cash Settlement only if at the time of such election it provides to Dealer a written statement that the representations contained in paragraph 8(A)(c) below are true and correct as of and as if made on the date of such election.
Electing Party:	Company
Settlement Method Election Date:	No less than 10 Scheduled Trading Days prior to the First Expiration Date.
Default Settlement Method:	Net Share Settlement
Settlement Currency:	USD
Cash Settlement Payment Date:	Three (3) Currency Business Days after the Valuation Date.
Net Share Settlement:	If Net Share Settlement is applicable to the Transaction, on the relevant Settlement Date, Company shall deliver to Dealer the Share Delivery Quantity of Shares for such Settlement Date to the account specified herein free of payment through the Clearance System.
Share Delivery Quantity:	For any Settlement Date, a number of Shares, as calculated by the Calculation Agent, equal to the Net Share Settlement Amount for such Settlement Date divided by the Settlement Price on the Valuation Date in respect of such Settlement Date, rounded down to the nearest whole number plus any Fractional Share Amount.

Net Share Settlement Amount:	For any Settlement Date, an amount equal to the *product* of (i) the Number of Warrants exercised or deemed exercised on the relevant Exercise Date, (ii) the Strike Price Differential for such Exercise Date *and* (iii) the Warrant Entitlement.
Option Cash Settlement Amount	For any Cash Settlement Payment Date, an amount equal to the *product* of (i) the Number of Warrants exercised or deemed exercised on the relevant Exercise Date, (ii) the Strike Price Differential for such Exercise Date *and* (iii) the Warrant Entitlement.
Settlement Price:	For any Valuation Date, the per Share volume-weighted average price as displayed under the heading "Bloomberg VWAP" on Bloomberg page "HOS <EQUITY> AQR" (or any successor thereto) in respect of the period from the scheduled opening time of the Exchange to the Scheduled Closing Time on such Valuation Date (or if such volume-weighted average price is unavailable, the market value of one Share on such Valuation Date, as determined by the Calculation Agent using a volume-weighted method). Notwithstanding the foregoing, if (i) any Expiration Date is a Disrupted Day and (ii) the Calculation Agent determines that such Expiration Date shall be an Expiration Date for fewer than the Daily Number of Warrants, as described above, then the Settlement Price for the relevant Valuation Date shall be the volume-weighted average price per Share on such Valuation Date on the Exchange, as determined by the Calculation Agent based on such sources as it deems appropriate using a volume-weighted methodology, for the portion of such Valuation Date for which the Calculation Agent determines there is no Market Disruption Event.
Settlement Date(s):	As determined in reference to Section 9.4 of the Equity Definitions, subject to paragraph 9(j)(i) hereof.
Other Applicable Provisions:	The provisions of Sections 9.1(c), 9.8, 9.9, 9.11, 9.12 and 10.5 of the Equity Definitions will be applicable (except that the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by excluding any representations therein relating to restrictions, obligations, limitations or requirements under applicable securities laws as a result of the fact that Company is the Issuer of the Shares and except that all references in such provisions to "Physically-Settled" shall be read as references to "Net Share Settled"). "Net Share Settled" in relation to any Warrant means that Net Share Settlement is applicable to that Warrant.

3. Additional Terms applicable to the Transaction:

Adjustments applicable to the Warrants:	
Method of Adjustment:	Calculation Agent Adjustment. For the avoidance of doubt, in making any adjustments under the Equity Definitions, the Calculation Agent may make adjustments, if any, to any one or more of the Strike Price, the Number of Warrants, the Daily Number of Warrants and the Warrant Entitlement.

	Notwithstanding the foregoing, any cash dividends or distributions on the Shares, whether or not extraordinary, shall be governed by paragraph 9(f) of this Confirmation in lieu of Article 10 or Section 11.2(c) of the Equity Definitions.
Extraordinary Events applicable to the Transaction:	
New Shares:	Section 12.1(i) of the Equity Definitions is hereby amended by deleting the text in clause (i) in its entirety and replacing it with the phrase "publicly quoted, traded or listed on any of the New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or their respective successors)".
Consequence of Merger Events:	
Share-for-Share:	Modified Calculation Agent Adjustment
Share-for-Other:	Cancellation and Payment (Calculation Agent Determination)
Share-for-Combined:	Cancellation and Payment (Calculation Agent Determination); *provided* that Dealer may elect, in its commercially reasonable judgment, Component Adjustment (Calculation Agent Determination).
Consequence of Tender Offers:	
Tender Offer:	Applicable; *provided however* that if an event occurs that constitutes both a Tender Offer under Section 12.1(d) of the Equity Definitions and Additional Termination Event under paragraph 9(g)(iii)(C) of this Confirmation, Dealer may elect, in its commercially reasonable judgment, whether the provisions of Section 12.3 of the Equity Definitions or paragraph 9(g)(iii)(C) of this Confirmation will apply.
Share-for-Share:	Modified Calculation Agent Adjustment
Share-for-Other:	Modified Calculation Agent Adjustment
Share-for-Combined:	Modified Calculation Agent Adjustment
Nationalization, Insolvency or Delisting:	Cancellation and Payment (Calculation Agent Determination); *provided* that, for purposes of Section 12.6(a)(iii) of the Equity Definitions, it will 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), a Delisting shall not have occurred and such exchange or quotation system shall thereafter be deemed to be the Exchange.

Additional Disruption Events:	
Change in Law:	Applicable; *provided* that Section 12.9(a)(ii) of the Equity Definitions is hereby amended replacing the word “Shares” where it appears in clause (X) thereof with the words “Hedge Position”.
Failure to Deliver:	Applicable
Insolvency Filing:	Applicable
Hedging Disruption:	Applicable; *provided* that Section 12.9(a)(v) of the Equity Definitions is hereby modified by inserting the following two phrases at the end of such Section: “The term “equity price risk” shall be deemed to include stock price and volatility risk. Any such transactions or assets referred to in phrases (A) or (B) above must be available on commercially reasonable pricing terms.”
Increased Cost of Hedging:	Not Applicable
Loss of Stock Borrow:	Applicable
Maximum Stock Loan Rate:	200 basis points
Increased Cost of Stock Borrow:	Applicable
Initial Stock Loan Rate:	25 basis points, as adjusted by the Calculation Agent to reflect any subsequent Price Adjustment due to an Increased Cost of Stock Borrow.
Hedging Party:	Dealer or an affiliate of Dealer that is involved in the hedging of this Transaction for all applicable Additional Disruption Events. Section 13.2(b) of the Equity Definitions is hereby amended by adding the words “(or an Affiliate of such party)” following the words “by a party” in the third line thereof.
Determining Party:	Dealer for all applicable Extraordinary Events
Non-Reliance:	Applicable
Agreements and Acknowledgments Regarding Hedging Activities:	Applicable
Additional Acknowledgments:	Applicable

4. Calculation Agent: Dealer, whose judgments, determinations and calculations shall be made in good faith and in a commercially reasonable manner. Following any determination or calculation by the Calculation Agent hereunder, upon a request by Company, the Calculation Agent shall promptly (but in any event within three Scheduled Trading Days) provide to Company by e-mail to the e-mail address provided by Company 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 determination or calculation (including any assumptions used in making such determination or calculation), it being understood that the Calculation Agent shall not be obligated to disclose any proprietary models used by it for such determination or calculation.

5. Account Details:

(a) Account for payments to Company:	Capital One, N.A. New Orleans, LA ABA 065-000-090 For credit to: Hornbeck Offshore Services, Inc. 103 Northpark Blvd., Suite 300 Covington, LA 70433 Account 812519859
Account for delivery of Shares to Company:	To be provided under separate cover by Company.
(b) Account for payments to Dealer:	Bank: Barclays Bank plc NY ABA# 026 00 2574 BIC: BARCUS33 Acct: 50038524 Beneficiary: BARCGB33 Ref: Barclays Bank plc London Equity Derivatives

6. Offices:

The Office of Company for the Transaction is:	Inapplicable, Company is not a Multibranch Party.
The Office of Dealer for the Transaction is:	Inapplicable, Dealer is not a Multibranch Party.

7. Notices: For purposes of this Confirmation:

(a) Address for notices or communications to Company:	Hornbeck Offshore Services, Inc. 103 Northpark Boulevard, Suite 300 Covington, Louisiana, 70433 Attention: Sam Giberga, General Counsel Facsimile No.: (985) 727-2006
(b) Address for notices or communications to Dealer:	Barclays Capital, Inc. 745 Seventh Ave. New York, NY 10019 Attention: General Counsel Telephone: (+1) 212-412-4000 Facsimile: (+1) 212-412-7519 with a copy to: Barclays Capital Inc. 745 Seventh Ave. New York, NY 10019 Attn: Paul Robinson Telephone: (+1) 212-526-0111 Facsimile: (+1) 917-522-0458 and Barclays Bank PLC, 5 The North Colonnade Canary Wharf, London E14 4BB Facsimile: 44(20) 777 36461 Phone: 44(20) 777 36810

8. Representations, Warranties and Agreements of Company

(A) The Company hereby represents and warrants to, and agrees with, Dealer that:

(a) The Shares initially issuable upon exercise of the Warrant by the net share settlement method (the "**Warrant Shares**") have been reserved for issuance by all required corporate action of Company. The Warrant Shares have been duly authorized and, when delivered against payment therefor (which may include Net Share Settlement in lieu of cash) and otherwise as contemplated by the terms of the Warrant following the exercise of the Warrant in accordance with the terms and conditions of the Warrant, will be validly issued, fully-paid and non-assessable, and the issuance of the Warrant Shares will not be subject to any preemptive or similar rights;

(b) Company is an "eligible contract participant" (as such term is defined in the Commodity Exchange Act, as amended (the "**CEA**"));

(c) Company is not, on the date hereof, in possession of any material non-public information with respect to Company;

(d) Without limiting the generality of Section 13.1 of the Equity Definitions, Company acknowledges that Dealer is not making any representations or warranties 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, 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 under FASB's Liabilities & Equity Project;

(e) Prior to or on the Trade Date, Company shall deliver to Dealer a resolution of Company's board of directors authorizing the Transaction;

(f) Company is not, and after giving effect to 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;

(g) On the Trade Date (A) the assets of Company at their fair valuation exceed the liabilities of Company, including contingent liabilities, (B) the capital of Company is adequate to conduct the business of Company and (C) Company has the ability to pay its debts and obligations as such debts mature and does not intend to, or does not believe that it will, incur debt beyond its ability to pay as such debts mature;

(h) Company understands that no obligations of Dealer to it hereunder will be entitled to the benefit of deposit insurance and that such obligations will not be guaranteed by any affiliate of Dealer or any governmental agency;

(i) During the period starting on the first Expiration Date and ending on the last Expiration Date (the "**Settlement Period**"), the Shares or securities that are convertible into, or exchangeable or exercisable for Shares, are not, and shall not be, subject to a "restricted period," as such term is defined in Regulation M ("**Regulation M**") under the Securities Exchange Act of 1934, as amended ("**Exchange Act**") and (B) Issuer shall not engage in any "distribution," as such term is defined in Regulation M, other than a distribution meeting the requirements of the exceptions set forth in sections 101(b)(10) and 102(b)(7) of Regulation M, until the second Exchange Business Day immediately following the Settlement Period;

(j) Prior to the Trade Date, the Company has not taken any action which is designed to or which has constituted or which might have been expected to cause or result in stabilization or manipulation of the price of any security of the Company in connection with the offering of the Convertible Notes;

(k) None of the Company or any of its subsidiaries is in violation of its certificate of incorporation or certificate of formation, or its bylaws or limited liability company agreement (or other organizational documents), or in default in the performance or observance of any material obligation, covenant or condition contained in any material indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which it is a party or by which it or any of its properties may be bound, other than such defaults that individually or in the aggregate would not have a Material Adverse Effect on this Transaction or Dealer's rights or obligations relating to this Transaction. "**Material Adverse Effect**" means any change in the capital stock, increase in long-term debt or any decreases in consolidated net current assets or stockholders' equity of the Company or any of its subsidiaries or any material adverse change, or any development involving a prospective material adverse change, in or affecting the general affairs, management, current or future consolidated financial position, stockholders' equity or results of operations of the Company and its subsidiaries taken as a whole;

(l) (A) Company is acting for its own account, and it has made its own independent decisions to enter into the Transaction and as to whether the Transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary, (B) Company is not relying on any communication (written or oral) of Dealer or any of its affiliates as investment advice or as a recommendation to enter into the Transaction (it being understood that information and explanations related to the terms and conditions of the Transaction shall not be considered investment advice or a recommendation to enter into the Transaction) and (C) no communication (written or oral) received from Dealer or any of its affiliates shall be deemed to be an assurance or guarantee as to the expected results of the Transaction;

(m) Company understands, agrees and acknowledges that Dealer has no obligation or intention to register the Transaction under the Securities Act of 1933, as amended (the "**Securities Act**"), any state securities law or other applicable federal securities law;

(n) Company shall use its reasonable best efforts to have the Warrant Shares duly listed, subject to notice of issuance, on the New York Stock Exchange;

(o) Company shall not take any action to decrease the number of Available Shares below the Maximum Amount (each as defined below);

(p) The assets used in the Transaction (1) are not assets of any "plan" (as such term is defined in Section 4975 of the United States 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;

(q) During the Settlement Period and on any other Exercise Date, neither Company nor any "affiliate" or "affiliated purchaser" (each as defined in Rule 10b-18 under the Exchange Act ("**Rule 10b-18**")) shall directly or indirectly (including, without limitation, by means of any cash-settled or other derivative instrument) purchase, offer to purchase, place any bid or limit order that would effect a purchase of, or commence any tender offer relating to, any Shares (or an equivalent interest, including a unit of beneficial interest in a trust or limited partnership or a depository share) or any security convertible into or exchangeable or exercisable for Shares, except through Dealer; and

(r) Company agrees that it (A) will not during the Settlement Period make, or permit to be made, any public announcement (as defined in Rule 165(f) under the Securities Act) of any Merger Transaction or potential Merger Transaction unless such public announcement is made prior to the opening or after the close of the regular trading session on the Exchange for the Shares; (B) shall promptly (but in any event prior to the next opening of the regular trading session on the Exchange) notify Dealer following any such announcement that such announcement has been made; and (C) shall promptly (but in any event prior to the next opening of the regular trading session on the Exchange) provide Dealer with written notice specifying (i) Company's average daily Rule 10b-18 Purchases (as defined in Rule 10b-18) during the three full calendar months immediately preceding the announcement date that were not effected through Dealer or its affiliates and (ii) the number of Shares purchased pursuant to the proviso in Rule 10b-18(b)(4) under the Exchange Act for the three full calendar months preceding the announcement date. Such written notice shall be deemed to be a certification by Company to Dealer that such information is true and

correct. In addition, Company shall promptly notify Dealer of the earlier to occur of the completion of such transaction and the completion of the vote by target shareholders. "**Merger Transaction**" means any merger, acquisition or similar transaction involving a recapitalization as contemplated by Rule 10b-18(a)(13)(iv) under the Exchange Act.

(B) Each party makes to the other the representations and warranties set forth in Sections 3(a) through (f) of the Agreement with respect to the Agreement as supplemented by this Confirmation; *provided* that Dealer makes the representation and warranty set forth in Section 3(f) and Company makes the representation and warranty set forth in Section 3(e). In addition, each of Dealer and Company acknowledges that the offer and sale of the Transaction to it is intended to be exempt from registration under the Securities Act, by virtue of Section 4(2) thereof. Accordingly, Dealer represents and warrants to Company that (i) it has the financial ability to bear the economic risk of its investment in the Transaction and is able to bear a total loss of its investment and its investments in and liabilities in respect of the Transaction, which it understands are not readily marketable, are not disproportionate to its net worth, and it is able to bear any loss in connection with the Transaction, including the loss of its entire investment in the Transaction, (ii) it is an "accredited investor" as that term is defined in Regulation D as promulgated under the Securities Act, (iii) it is entering into the Transaction for its own account without a view to the distribution or resale thereof, (iv) the assignment, transfer or other disposition of the Transaction has not been and will not be registered under the Securities Act and is restricted under the Securities Act and state securities laws, (v) its financial condition is such that it has no need for liquidity with respect to its investment in the Transaction and no need to dispose of any portion thereof to satisfy any existing or contemplated undertaking or indebtedness and is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of the Transaction.

9. Other Provisions:

(a) *Opinions*. Company shall deliver an opinion of counsel, dated as of the Trade Date, to Dealer with respect to the matters set forth in Section 3(a) of the Agreement and Section 8(A)(f) of this Confirmation; *provided* that such opinion of counsel may contain customary exceptions and qualifications, including, without limitation, exceptions and qualifications relating to indemnification provisions.

(b) *Repurchase Notices*. Company shall, on any day on which Company 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 Notice Percentage as determined on such day is (i) greater than 4.5% and (ii) greater by 0.5% than the Notice Percentage included in the immediately preceding Repurchase Notice (or, in the case of the first such Repurchase Notice, greater than the Notice Percentage as of the date hereof). The "**Notice Percentage**" as of any day is the fraction, expressed as a percentage, the numerator of which is the product of the Number of Warrants and the Warrant Entitlement and the denominator of which is the number of Shares outstanding on such day.

(c) *Regulation M*. Company is not on the date hereof engaged in a distribution, as such term is used in Regulation M under the Securities Exchange Act, of any securities of Company, other than a distribution meeting the requirements of the exception set forth in Rules 101(b)(10) and 102(b)(7) of Regulation M. Company shall not, until the second Scheduled Trading Day immediately following the Trade Date, engage in any such distribution.

(d) *No Manipulation*. Company is not entering into this 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 and Assignment*. Subject to applicable law, Dealer may transfer and assign all of its rights and obligations hereunder and under the Transaction and Agreement, in whole or in part, without the consent of Company (1) to any affiliate of Dealer of credit quality at least equivalent to that of Dealer as of the Trade Date or to any other affiliate of Dealer with respect to which Company shall have received a full guaranty of such affiliate's obligations from Dealer in form and substance reasonably satisfactory to Company or (2) any third party with a rating (or whose guarantor has a rating) for its long term, unsecured and unsubordinated indebtedness equal to the Required Rating, in each case, if (x) an Event of Default, Potential Event of Default or Termination Event will not occur as a result of such transfer or assignment and (y) as a result of such transfer or assignment, Company will

not be required to pay the transferee on any payment date an amount under Section 2(d)(i)(4) of the Agreement, if at all applicable, greater than an amount that Company would have been required to pay to Dealer in the absence of such transfer or assignment. The Company may not transfer or assign any of its rights or obligations under the Transaction or the Agreement without the prior written consent of Dealer. "**Required Rating**" means a rating of A-or better by Standard & Poor's Ratings Services or its successor ("**S&P**"), or A3 or better by Moody's Investors Service, Inc. or its successor ("**Moody's**") or, if either S&P or Moody's ceases to rate such debt, at least an equivalent rating or better by a substitute rating agency mutually agreed by Counterparty and Dealer.

(f) *Dividends*. If at any time during the period from and including the Trade Date, to but excluding the final Expiration Date, an ex-dividend date for a cash dividend occurs with respect to the Shares (an "**Ex-Dividend Date**"), then the Calculation Agent will adjust the Strike Price and/or the Number of Warrants to preserve the fair value of the Transaction, after taking into account such dividend, of the Warrants representing the aggregate Daily Number of Warrants for all Expiration Dates occurring on or after such Ex-Dividend Date.

(g) *Additional Provisions*.

(i) *Amendments to the Equity Definitions*:

(A) Section 11.2(a) of the Equity Definitions is hereby amended by deleting the words "that may have a diluting or concentrative" and replacing them with the words "that may have a material".

(B) Section 11.2(c) of the Equity Definitions is hereby amended by (x) deleting the words "diluting or concentrative" and (y) deleting the phrase "(provided that no adjustments will be made to account solely for changes in volatility, expected dividends, stock loan rate or liquidity relative to the relevant Shares)" and replacing it with the phrase "(and, for the avoidance of doubt, adjustments may be made to account solely for changes in volatility, expected dividends, stock loan rate or liquidity relative to the relevant Shares)."

(C) Section 11.2(e)(vii) of the Equity Definitions is hereby amended by deleting the words "that may have a diluting or concentrative" and replacing them with the word "that is the result of a corporate event involving the Company and that may have a material"; and adding the phrase "or Warrants" at the end of the sentence.

(D) Section 12.9(b)(iv) of the Equity Definitions is hereby amended by:

(x) deleting (1) subsection (A) in its entirety, (2) the phrase "or (B)" following subsection (A) and (3) the phrase "in each case" in subsection (B); and

(y) deleting the phrase "neither the Non-Hedging Party nor the Lending Party lends Shares in the amount of the Hedging Shares or" in the penultimate sentence.

(ii) *Announcement Event*. If an Announcement Date occurs in respect of a Merger Event or Tender Offer (such occurrence, an "Announcement Event"), then on the earliest to occur of the Expiration Date, the date occurring a commercially reasonable period of time after the relevant Announcement Cessation Date, an Early Termination Date or other date of cancellation (the "Announcement Event Adjustment Date") in respect of each Warrant, the Calculation Agent will determine the cumulative economic effect on such Warrant of the Announcement Event and the Announcement Cessation Date, if any (without duplication in respect of any other adjustment or cancellation valuation made pursuant to the Equity Definitions, regardless of whether the Announcement Event actually results in a Merger Event or Tender Offer, and taking into account such factors as the Calculation Agent shall determine, including, without limitation, stock price movement, changes in volatility, expected dividends, stock loan rate or liquidity relevant to the Shares or the Transaction whether prior to or after the Announcement Event or for any period of time, including, without limitation, the period from the Announcement Event to the relevant Announcement Event Adjustment Date). If the Calculation Agent determines that such cumulative economic effect on any Warrant is material, then on the Announcement Event Adjustment Date for such

Warrant, the Calculation Agent shall make such adjustment to the exercise, settlement, payment or any other terms of such Warrant as the Calculation Agent determines appropriate to account for such cumulative economic effect, which adjustment shall be effective immediately prior to the Announcement Event Adjustment Date.

"**Announcement Cessation Date**" means, in respect of an Announcement Event, (i) in the case of an Announcement Event relating to an intention to engage in a transaction that, if completed, would lead to a Merger Event, the date of the first public announcement by the Issuer, any potential counterparty to such transaction or any of their agents or affiliates of its withdrawal from, or the discontinuation of, such transaction, or (ii) in the case of an Announcement Event relating to an intention to purchase or otherwise obtain Shares that, if completed, would lead to a Tender Offer, the date of the first public announcement by any potential offeror in respect of such Tender Offer or any of their agents or affiliates of its withdrawal from, or the discontinuation of, such purchase or other acquisition of Shares. If any such announcement is made after the actual closing time for the regular trading session of on the relevant Exchange, without regard to any after hours or any other trading outside of such regular trading session hours, the Announcement Cessation Date shall be deemed to be the next following Scheduled Trading Day; *provided* that, for the avoidance of doubt, the occurrence of an Announcement Cessation Date with respect to any transaction shall not preclude the occurrence of a later Announcement Date with respect to such transaction. For purposes hereof, the definition of "Announcement Date" in Section 12.1 of the Equity Definitions shall be amended by (i) replacing the word "leads to the" in the third and the fifth lines thereof with the words ", if completed, would lead to a"; (ii) replacing the words "voting shares" in the fifth line thereof with the word "Shares"; (iii) inserting the words "by any entity" after the word "announcement" in the second and the fourth lines thereof; (iv) replacing the words "a firm" with the word "any bona fide" in the second and fourth lines thereof; (v) inserting the words "or to explore the possibility of engaging in" after the words "engage in" in the second line thereto; and (vi) inserting the words "or to explore the possibility of purchasing or otherwise obtaining" after the word "obtain" in the fourth line thereto.

(iii) Notwithstanding anything to the contrary in this Confirmation, upon the occurrence of one of the following events, with respect to this Transaction, (1) Dealer shall have the right to designate such event an Additional Termination Event and designate an Early Termination Date pursuant to Section 6(b) of the Agreement, and (2) Company shall be deemed the sole Affected Party and the Transaction shall be deemed the sole Affected Transaction:

(A) the consummation of (i) any binding share exchange, consolidation or merger of Company pursuant to which the Shares will be converted into cash, securities or other property; or (ii) any sale, lease or other transfer in one transaction or a series of transactions of all of the consolidated assets of Company and its subsidiaries, taken as a whole, to any person other than one of Company's subsidiaries; *provided*, *however*, that a transaction in which the holders of more than 50% of all classes of common equity of Company 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 any direct or indirect parent thereof immediately after the consummation of such transaction shall not be an Additional Termination Event;

(B) There is a default by Company under any of its Public Indebtedness under which there may be outstanding in excess of $25 million, whether such Public Indebtedness now exists or shall hereafter be created, resulting in such Public Indebtedness becoming or being declared due and payable; "**Public Indebtedness**" shall mean any indebtedness of the Company for money borrowed under notes, bonds or similar instruments offered and sold by the Company in an offering registered with the Securities and Exchange Commission or pursuant to Rule 144A under the Securities Act;

(C) Any "person" or "group" within the meaning of Section 13(d) of the Exchange Act other than Company, any of its subsidiaries or its employee benefit plans, files a Schedule TO or any schedule, form or report under the Exchange Act disclosing that such person or group has become the direct or indirect ultimate "beneficial owner", as defined in Rule 13d-3 under the Exchange Act, of the common equity of Company representing more than 50% of the ordinary voting power of such common equity;

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

(E) the Shares (or other common stock or depositary shares or receipts in respect thereof) cease to be listed or quoted on any of the New York Stock Exchange, The NASDAQ Global Select Market, The NASDAQ Global Market or any other national securities exchange or automated quotation system (or any of their respective successors) for a period of 30 consecutive scheduled trading days;

(F) Dealer, despite using commercially reasonable efforts, is unable or reasonably determines based on the advice of counsel that it is illegal or inadvisable, to hedge its obligations pursuant to this Transaction in the public market without registration under the Securities Act or as a result of any legal, regulatory or self-regulatory requirements or related policies and procedures (whether or not such requirements, policies or procedures are imposed by law or have been voluntarily adopted by Dealer).

Notwithstanding any provision of paragraph 9(g)(iii)(A) or (C), however, an Additional Termination Event will not be deemed to have occurred if 90% of the consideration received or exchanged by common stockholders of Company (excluding cash payments for fractional shares and cash payments made pursuant to dissenters' appraisal rights), in connection with the transaction or transactions otherwise constituting the Additional Termination Event consists of shares of common stock or depositary shares or receipts in respect thereof traded on any of the New York Stock Exchange, The NASDAQ Global Select Market, The NASDAQ Global Market or any other national securities exchange or automated quotation system (or any of their respective successors) or which will be so traded when issued or exchanged in connection with such transaction or transactions ("**Publicly Traded Securities**") and as a result of such transaction or transactions the Convertible Notes (as defined in the Purchase Agreement) become convertible into cash, such Publicly Traded Securities or a combination of cash and such Publicly Traded Securities.

(h) *No Collateral or Setoff*. Notwithstanding any provision of the Agreement or any other agreement between the parties to the contrary, the obligations of Company hereunder are not secured by any collateral. In addition, obligations under this Transaction shall not be netted, recouped or set off (including pursuant to Section 6 of the Agreement) against any other obligations of the parties, whether arising under the Agreement, this Confirmation, under any other agreement between the parties hereto, by operation of law or otherwise, and no other obligations of the parties shall be netted, recouped or set off (including pursuant to Section 6 of the Agreement) against obligations under the Transaction, whether arising under the Agreement, this Confirmation, under any other agreement between the parties hereto, by operation of law or otherwise, and each party hereby waives any such right of setoff, netting or recoupment; provided that both parties agree that subparagraph (ii) of Section 2(c) of the Agreement shall apply to the Transaction.

(i) *Alternative Calculations and Payment on Early Termination and on Certain Extraordinary Events*. If, in respect of this Transaction, an amount is payable by Company to Dealer, (i) pursuant to Sections 12.2, 12.3, 12.6, 12.7 or 12.9 of the Equity Definitions (except in the event of an Insolvency, Nationalization, Tender Offer or Merger Event in which the consideration or proceeds to be paid to holders of shares consists solely of cash) or (ii) pursuant to Section 6(d)(ii) of the Agreement (except in the event of an Event of Default in which Company is the Defaulting Party or a Termination Event in which Company is the Affected Party, other than an Event of Default of the type described in (x) Section 5(a)(iii), (v), (vi), (vii) or (viii) of the Agreement or (y) a Termination Event of the type described in Section 5(b)(i), (ii), (iii), (iv), (v) or (vi) of the Agreement, in the case of both (x) and (y), resulting from an event or events outside Company's control) (a "**Payment Obligation**"), Company shall satisfy any such Payment Obligation by the Share Termination Alternative (as defined below), unless Company elects to satisfy any such Payment Obligation by delivering cash (in which case the provisions of Sections 12.2, 12.3, 12.6, 12.7 or 12.9 of the Equity Definitions or Section 6(d)(ii) of the Agreement, as the case may be, shall apply in lieu of the provisions of this paragraph 9(i)), by giving irrevocable telephonic notice to Dealer, confirmed in writing within one Scheduled Trading Day, no later than 12:00 p.m. New York local 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 where such notice shall include a representation and warranty from Company that it is

not, as of the date of the telephonic notice and the date of such written notice, aware of any "material non-public information" (within the meaning of Section 10(b) of the Exchange Act and the rules promulgated thereunder) concerning itself or the Shares. Notwithstanding the foregoing, satisfaction of a Payment Obligation in the Share Termination Alternative as set forth in this clause shall only apply to this Transaction and, notwithstanding anything to the contrary in the Agreement, (1) separate amounts shall be calculated with respect to (a) the Transaction and (b) all other Transactions under the Agreement, and (2) such separate amounts shall be payable pursuant to Section 6(d)(ii) of the Agreement, subject to, in the case of clause (a), Company's right to deliver cash in satisfaction of any Payment Obligation hereunder.

Share Termination Alternative:	If applicable, Company shall deliver to Dealer the Share Termination Delivery Property on the date (the "**Share Termination Payment Date**") on which the Payment Obligation would otherwise be due pursuant to Section 12.7 or Section 12.9 of the Equity Definitions or pursuant to Section 6(d)(ii) of the Agreement, subject to paragraph (j)(i) below, in satisfaction, subject to paragraph (j)(ii) below, of the Payment Obligation in the manner reasonably requested by Dealer 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 amount of 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 on the date such Share Termination Delivery Units are to be delivered as Share Termination Delivery Property, as determined by the Calculation Agent in its discretion by commercially reasonable means. The Calculation Agent shall notify Company of such Share Termination Unit Price at the time of notification of the Payment Obligation. In the case of a Private Placement of Share Termination Delivery Units that are Restricted Shares (as defined below), as set forth in paragraph (j)(i) below, the Share Termination Unit Price shall be determined by the discounted price applicable to such Share Termination Delivery Units. In the case of a Registration Settlement of Share Termination Delivery Units that are Restricted Shares (as defined below) as set forth in paragraph (j)(ii) below, the Share Termination Unit Price shall be the Settlement Price on the Merger Date, the Announcement Date (in the case of a Nationalization, Insolvency or Delisting) or the Early Termination Date, as applicable.
Share Termination Delivery Unit:	In the case of a Termination Event, Event of Default or Delisting, one Share or, in the case of Nationalization, Insolvency, Tender Offer or Merger Event, a unit consisting of the number or amount of each type of 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, Tender Offer or Merger Event. If such Nationalization, Insolvency, Tender Offer or Merger Event involves a choice of consideration to be received by holders, such holder shall be deemed to have elected to receive the maximum possible amount of cash.
Failure to Deliver:	Inapplicable
Other applicable provisions:	If Share Termination Alternative is applicable, the provisions of Sections 9.1(c), 9.8, 9.9, 9.11, 9.12 and 10.5 (as modified above) of the Equity Definitions will be applicable, except that the Representation and Agreement

contained in Section 9.11 of the Equity Definitions shall be modified by excluding any representations therein relating to restrictions, obligations, limitations or requirements under applicable securities laws as a result of the fact that Company is the Issuer of the Shares or any portion of the Share Termination Delivery Units, and 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 this Transaction means that Share Termination Alternative is applicable to this Transaction.

(j) *Registration/Private Placement Procedures*. If, in the commercially reasonable judgment of Dealer based on the advice of counsel, following any delivery of Shares or Share Termination Delivery Property to Dealer hereunder, such Shares or Share Termination Delivery Property would be in the hands of Dealer subject to any applicable restrictions with respect to any registration or qualification requirement or prospectus delivery requirement for such Shares or Share Termination Delivery Property pursuant to any applicable federal or any applicable material restrictions pursuant to any applicable state securities law (including, without limitation, any such requirement arising under Section 5 of the Securities Act as a result of such Shares or Share Termination Delivery Property being "restricted securities", as such term is defined in Rule 144 under the Securities Act, or as a result of the sale of such Shares or Share Termination Delivery Property being subject to paragraph (c) of Rule 145 under the Securities Act) (such Shares or Share Termination Delivery Property, "**Restricted Shares**"), then delivery of such Restricted Shares shall be effected pursuant to either clause (i) or (ii) below at the election of Company, unless Dealer waives the need for registration/private placement procedures set forth in (i) and (ii) below. Notwithstanding the foregoing, solely in respect of any Daily Number of Warrants exercised or deemed exercised on any Expiration Date, Company shall, if applicable, elect, prior to the first Settlement Date for the first Expiration Date, a Private Placement Settlement or Registration Settlement for all deliveries of Restricted Shares for all such Expiration Dates which election shall be applicable to all Settlement Dates for such Warrants and the procedures in clause (i) or clause (ii) below shall apply for all such delivered Restricted Shares on an aggregate basis commencing after the final Settlement Date for such Warrants. The Calculation Agent shall make reasonable adjustments to settlement terms and provisions under this Confirmation to reflect a single Private Placement or Registration Settlement for such aggregate Restricted Shares delivered hereunder.

(i) If Company elects to settle the Transaction pursuant to this clause (i) (a "**Private Placement Settlement**"), then delivery of Restricted Shares by Company shall be effected in accordance with customary private placement procedures for private placements of equity offerings of substantially similar size reasonably acceptable to Dealer; *provided* that Company may not elect a Private Placement Settlement if, on the date of its election, it has taken, or caused to be taken, any action that would make unavailable either the exemption pursuant to Section 4(2) of the Securities Act for the sale by Company to Dealer (or any affiliate designated by Dealer) of the Restricted Shares or the exemption pursuant to Section 4(1) or Section 4(3) of the Securities Act for resales of the Restricted Shares by Dealer (or any such affiliate of Dealer). The Private Placement Settlement of such Restricted Shares shall include customary representations, covenants, blue sky and other governmental filings and/or registrations, indemnities to Dealer, due diligence rights (for Dealer or any designated buyer of the Restricted Shares by Dealer), opinions and certificates, and such other documentation as is customary for private placements of equity offerings of substantially similar size, all reasonably acceptable to Dealer. In the case of a Private Placement Settlement, Dealer shall determine the appropriate discount to the Share Termination Unit Price (in the case of settlement of Share Termination Delivery Units pursuant to paragraph (i) above) or any Settlement Price (in the case of settlement of Shares pursuant to paragraph 2 above) applicable to such Restricted Shares in a commercially reasonable manner to account for the lack of marketability and illiquidity of such Restricted Shares and appropriately adjust the number of such Restricted Shares to be delivered to Dealer hereunder; *provided* that in no event shall such number be greater than 2 times the Number of Warrants multiplied by the Warrant Entitlement (the "**Maximum Amount**"). Notwithstanding the Agreement or this Confirmation, the date of delivery of such Restricted Shares shall be the Exchange Business Day following notice by Dealer to Company, of such applicable discount and the number of Restricted Shares to be delivered pursuant to this clause (i). For the avoidance of doubt, delivery of Restricted Shares shall be due as set forth in the previous sentence and not be due on the Share Termination Payment Date (in the case of settlement of Share Termination Delivery Units pursuant to paragraph (i) above) or on the Settlement Date for such Restricted Shares (in the case of settlement in Shares pursuant to paragraph 2 above).

In the event Company shall not have delivered the full number of Restricted Shares otherwise applicable as a result of the proviso above relating to the Maximum Amount (such deficit, the "**Deficit Restricted Shares**"), Company shall be continually obligated to deliver, from time to time until the full number of Deficit Restricted Shares have been delivered pursuant to this paragraph, Restricted Shares when, and to the extent, that (i) Shares are repurchased, acquired or otherwise received by Company or any of its subsidiaries after the Trade Date (whether or not in exchange for cash, fair value or any other consideration), (ii) Company authorized any unissued Shares reserved for issuance in respect of other transactions prior to such date which prior to the relevant date become no longer so reserved and (iii) Company additionally authorizes any unissued Shares that are not reserved for other transactions. At such time as there may be Deficit Restricted Shares, Company shall promptly notify Dealer of the occurrence of any of the foregoing events (including the number of Shares subject to clause (i), (ii) or (iii) and the corresponding number of Restricted Shares to be delivered) and promptly deliver such Restricted Shares thereafter.

(ii) If Company elects to settle the Transaction pursuant to this clause (ii) (a "**Registration Settlement**"), then Company shall file and use its reasonable best efforts to make effective under the Securities Act a registration statement or supplement or amend an outstanding registration statement in form and substance reasonably satisfactory to Dealer, to cover the resale of such Restricted Shares (and any Company Make-whole Shares) in accordance with customary resale registration procedures for registered secondary offerings of a substantially similar size, including covenants, conditions, representations, underwriting discounts (if applicable), commissions (if applicable), indemnities due diligence rights, opinions and certificates, and such other documentation as is customary for equity resale underwriting agreements for registered secondary offerings of a substantially similar size, all reasonably acceptable to Dealer. If Dealer, in its good faith and reasonable discretion, is not satisfied with such procedures and documentation, Private Placement Settlement shall apply. If Dealer is satisfied with such procedures and documentation, it shall sell the Restricted Shares pursuant to such registration statement during a period (the "**Resale Period**") commencing on the Exchange Business Day following delivery of such Restricted Shares (and any Company Make-whole Shares) (which, for the avoidance of doubt, shall be (x) any Settlement Date in the case of an exercise of Warrants prior to the first Expiration Date pursuant to paragraph 2 above, (y) the Share Termination Payment Date in case of settlement in Share Termination Delivery Units pursuant to paragraph (i) above or (z) the Settlement Date in respect of the final Expiration Date for all Daily Number of Warrants) and ending on the earliest of (i) the Exchange Business Day on which Dealer completes the sale of all Restricted Shares or, in the case of settlement of Share Termination Delivery Units, a sufficient number of Restricted Shares so that the realized net proceeds of such sales exceed the Payment Obligation (as defined above) and (ii) the date upon which all Restricted Shares have been sold or transferred pursuant to Rule 144 (or similar provisions then in force) or Rule 145(d)(1) or (2) (or any similar provision then in force) under the Securities Act.

(iii) (A) If (ii) above is applicable and the Net Share Settlement Amount or the Payment Obligation, as applicable, exceeds the realized net proceeds from such resale, or if (i) above is applicable and the Freely Tradable Value (as defined below) of the Net Share Settlement Amount or the Payment Obligation (in each case as adjusted pursuant to (i) above), as applicable, exceeds the realized net proceeds from such resale, Company shall transfer to Dealer by the open of the regular trading session on the Exchange on the Exchange Trading Day immediately following the last day of the Resale Period a number of Shares ("**Company Make-whole Shares**") in an amount that, based on the Settlement Price on the last day of the Resale Period (as if such day was the "Valuation Date" for purposes of computing such Settlement Price), has a dollar value equal to the amount of such excess (the "**Company Additional Amount**"), or if Company so elects, an amount in cash equal to the Company Additional Amount. The Resale Period shall continue to enable the sale of the Company Make-whole Shares. If Company elects to pay the Additional Amount in Shares, the requirements and provisions for Registration Settlement or Private Placement Settlement, as the case may be, shall apply. This provision shall be applied successively until the Additional Amount is equal to zero. In no event shall Company deliver a number of Restricted Shares greater than the Maximum Amount.

If (ii) above is applicable and the realized net proceeds from such resale (including the sale of any Company Make-whole Shares) exceed the Net Share Settlement Amount or the Payment Obligation, as applicable, or if (i) above is applicable and the realized net proceeds from such resale (including the sale of any Company Make-whole Shares) exceed the Freely Tradeable Value (as defined below) of the Net Share Settlement Amount or the Payment Obligation (in each case as adjusted pursuant to (i) above), as applicable, Dealer shall transfer to Company the amount of such excess (the "**Dealer Additional Amount**") in a number of Shares ("**Dealer Make-whole Shares**") that, based on the Settlement Price on the last day of the Resale Period (as if such day was the Valuation Date for purposes of computing such Settlement Price), has a value equal to the Dealer Additional Amount, or, at Company's option, in cash in an amount equal to the Dealer Additional Amount. The transfer of the Dealer Additional Amount shall be made (x) if in cash, by the open of the regular trading session on the Exchange on the Exchange Trading Day immediately following the last day of the Resale Period, and (y) if in Shares, one Settlement Cycle following the date Dealer is able, using commercially reasonable efforts, to purchase Dealer Make-whole Shares. This provision shall be applied successively until the Dealer Additional Amount is equal to zero.

"**Freely Tradeable Value**" means the value of the number of Shares delivered to Dealer which such Shares would have if they were freely tradeable (without prospectus delivery) upon receipt by Dealer, as determined by the Calculation Agent by commercially reasonable means.

(iv) Without limiting the generality of the foregoing, Company agrees that any Restricted Shares delivered to Dealer, as purchaser of such Restricted Shares, (i) may be transferred by and among Dealer and its affiliates and Company shall effect such transfer without any further action by Dealer and (ii) after the minimum "holding period" within the meaning of Rule 144(d) under the Securities Act has elapsed after any Settlement Date for such Restricted Shares, Company shall promptly remove, or cause the transfer agent for such Restricted Shares to remove, any legends referring to any such restrictions or requirements from such Restricted Shares upon delivery by Dealer (or such affiliate of Dealer) to Company or such transfer agent of seller's and broker's representation letters customarily delivered by Dealer in connection with resales of restricted securities pursuant to Rule 144 under the Securities Act, without any further requirement for the delivery of any certificate, consent, agreement, opinion of counsel, notice or any other document, any transfer tax stamps or payment of any other amount or any other action by Dealer (or such affiliate of Dealer).

If the Private Placement Settlement or the Registration Settlement shall not be effected as set forth in clauses (i) or (ii), as applicable, then failure to effect such Private Placement Settlement or such Registration Settlement shall constitute an Event of Default with respect to which Company shall be the Defaulting Party.

(k) *Limit on Beneficial Ownership*. Except as provided below in this paragraph (k), notwithstanding any other provision to the contrary in this Confirmation, in no event shall Dealer be entitled to receive, or shall be deemed to receive, Shares to the extent that, immediately upon giving effect to such receipt of such Shares,

(i) the Option Equity Percentage (as defined below) exceeds 4.9%,

(ii) Dealer, Dealer Group (as defined below) or any person whose ownership position would be aggregated with that of Dealer or Dealer Group (Dealer, Dealer Group or any such person, a "**Dealer Person**") under any relevant state corporate law or other state, federal or local laws, regulations or regulatory orders applicable to ownership of Shares ("**Applicable Laws**"), owns, beneficially owns, constructively owns, controls, holds the power to vote or otherwise meets a relevant definition of ownership in excess of a number of Shares equal to (x) the number of Shares that, in the good faith determination of the relevant Dealer Person, would give rise to materially burdensome reporting or registration obligations or other requirements (including obtaining prior approval by a state or federal regulator) of a Dealer Person under Applicable Laws (including, without limitation, "interested stockholder" or "acquiring person" status under Section 203 of the Delaware General Corporation Law, but excluding any report or filing required pursuant to Section 13 of the Exchange Act and the rules promulgated thereunder) and with respect to which such requirements have not been met or the relevant approval has not been received *minus* (y) 1.0% of the number of Shares outstanding on the date of determination,

(iii) the Maritime Law Ownership Percentage (as defined below) of the Maritime Law Dealer Group (as defined below) would be greater than 4.9% of the outstanding Shares, unless Dealer has established to the reasonable satisfaction of the Company that it (or the person designated to take delivery) is a citizen of the United States for purposes of the U.S. coastwise trade under the Maritime Laws (as defined below),

(iv) such Shares would reasonably be anticipated by the Company to be "Excess Shares" ("**Excess Shares**") as defined in the Company's Second Restated Certificate of Incorporation (the "**Certificate**") or

(v) such Shares, in the good faith determination of the Company, would cause the Company to cease to be qualified under Maritime Laws (as defined below) or Applicable Laws to own and operate vessels in the coastwise trade of the United States (each of clause (i) through (iv) above and this clause (v), an "**Ownership Limitation**").

If any delivery owed to Dealer hereunder is not made, in whole or in part, as a result of an Ownership Limitation, the Company's obligation to make such delivery shall not be extinguished and the Company shall make such delivery as promptly as practicable after, but in no event later than three Exchange Business Days after, Dealer gives notice to the Company that such delivery would not result in any of such Ownership Limitations being breached. Such notice by Dealer will include details sufficient to support the position taken by Dealer in such notice.

The "**Option Equity Percentage**" as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the sum of (i) the number of Shares that Dealer and any of its affiliates subject to aggregation with Dealer, for purposes of the "beneficial ownership" test under Section 13 of the Exchange Act, and all persons who may form a "group" (within the meaning of Rule 13d-5(b)(1) under the Exchange Act) with Dealer ("**Dealer Group**") "beneficially owns" (within the meaning of Section 13 of the Exchange Act) on such day, other than any Shares so owned as a hedge of the Transaction, and (ii) the product of the Number of Warrants and the Warrant Entitlement and (B) the denominator of which is the number of Shares outstanding on such day. "**Maritime Law Ownership Percentage**" means the ownership, as construed under the Maritime Laws, of Shares by Dealer or any person whose ownership would be aggregated with that of Dealer or Dealer's parent entity under the Maritime Laws (collectively, the "**Maritime Law Dealer Group**"). "**Maritime Laws**" means, collectively and without duplication, Chapters 121 and 505 of Title 46 of the United States Code and any successor or replacement statute thereto, and the regulations promulgated under such Title or successor or replacement statute or, to the extent remaining in force, under any predecessor statute, in each case as amended or supplemented from time to time.

The Company represents and warrants that, assuming the accuracy of any factual information regarding Dealer that is provided by Dealer to the Company upon the Company's request, any Shares delivered by the Company to Dealer pursuant to the Transaction shall not be Excess Shares, and the issuance and delivery of such Shares shall have been approved by the board of directors of the Company. If Dealer designates any person to receive any Shares pursuant to Section 9(t), clauses (iii), (iv) and (v) of this Section 9(k) shall apply as if such person were Dealer. If the Company is unable to deliver any Shares to Dealer as a result of this Section 9(k), notwithstanding Company's continuing obligation to deliver such Shares as described herein, the Company may at any time following the Settlement Date, upon one Exchange Business Day's prior written notice to Dealer, elect to deliver cash in lieu of any or all such Shares, in which case the Shares for which cash delivery has been so elected shall be valued by the Calculation Agent in a commercially reasonable manner over such time period as the Calculation Agent reasonably determines appropriate in light of the liquidity of the Shares at such time and applicable law and related regulations, policies and procedures. The Company's right to elect cash pursuant to the foregoing sentence shall be subject to the Company giving representations, warranties and covenants customary for transactions under Rule 10b5-1 under the Exchange Act and satisfactory to Dealer. The Company shall promptly notify Dealer if at any time either (i) any purported transfer of any shares of any class or series of capital stock of the Company is void and ineffective pursuant to Section 2 of Article Twelve of the Certificate or (ii) any shares of any class or series of capital stock of the Company are "Excess Shares" pursuant to Section 3 of Article Twelve of the Certificate. The Company covenants that it shall provide prompt written notice to Dealer upon having actual knowledge that more than 10% of the aggregate Shares outstanding are owned by persons other than citizens of the United States for purposes of the U.S. coastwise trade under the Maritime Laws and upon becoming aware of each additional 5% thereafter.

The Company shall provide Dealer with a copy of any filings submitted to any regulatory authority relating to the Company's or the Company's stockholders' citizenship under the Maritime Laws so long as Dealer (or any assignee of Dealer) has agreed to keep any such filings and the information contained therein confidential on terms reasonably acceptable to the Company and Dealer. Dealer acknowledges that Dealer will not have any rights as a holder of the Company's common stock with respect to Shares, prior to the delivery thereof hereunder, that the Company is unable to deliver as a result of this Section 9(k). The Company acknowledges that, as a result of this Section 9(k), it will not treat Dealer (or any affiliate or designee of Dealer) as the owner, for any purpose (including, without limitation, for purposes of the Maritime Laws or Article Twelve of the Certificate), of Shares, prior to the delivery of such Shares hereunder, that the Company is unable to deliver as a result of this Section 9(k). For purposes of this Section 9(k), the term "Dealer" shall include any of the Dealer's permitted successors or assigns.

(l) *Share Deliveries*. Company acknowledges and agrees that, to the extent the holder of this Warrant is not then an affiliate, as such term is used in Rule 144 under the Securities Act, of Company and has not been such an affiliate of Company for 90 days (it being understood that Dealer will not be considered an affiliate of Company solely by reason of its receipt of or right to receive Shares pursuant to this Transaction), and otherwise satisfies all holding period and other requirements of Rule 144 of the Securities Act applicable to it, any delivery of Shares or Share Termination Delivery Property hereunder at any time after 6 months from the Trade Date (or 1 year from the Trade Date if, at such time, informational requirements of Rule 144(c) are not satisfied with respect to Company) shall be eligible for resale under Rule 144 of the Securities Act, and Company agrees to promptly remove, or cause the transfer agent for such Shares or Share Termination Delivery Property to remove, any legends referring to any restrictions on resale under the Securities Act from the certificates representing such Shares or Share Termination Delivery Property. Company further agrees and acknowledges that Dealer shall run a holding period under Rule 144 under the Securities Act with respect to the Warrants and/or any Shares or Share Termination Delivery Property delivered hereunder notwithstanding the existence of any other transaction or transactions between Company and Dealer relating to the Shares. Company further agrees that Shares or Share Termination Delivery Property delivered hereunder prior to the date that is 6 months from the Trade Date (or 1 year from the Trade Date, if, at such time, informational requirements of Rule 144(c) are not satisfied with respect to Company) may be freely transferred by and among Dealer and its affiliates, and Company shall effect such transfer without any further action by Dealer. Notwithstanding anything to the contrary herein, Company agrees that any delivery of Shares or Share Termination Delivery Property shall be effected by book-entry transfer through the facilities of DTC, or any successor depositary, if, at the time of delivery, the certificates representing such Shares or Share Termination Delivery Property would not contain any restrictive legend as described above. Notwithstanding anything to the contrary herein, to the extent the provisions of Rule 144 of the Securities Act or any successor rule are amended, or the applicable interpretation thereof by the Securities and Exchange Commission or any court changes after the Trade Date, including without limitation to lengthen or shorten the holding periods, the agreements of Company herein shall be deemed modified to the extent necessary, in the opinion of outside counsel of Company, to comply with Rule 144 of the Securities Act, including Rule 144, as in effect at the time of delivery of the relevant Shares or Share Termination Delivery Property.

(m) *Additional Termination Event*. If within the period commencing on the Trade Date and ending on the first anniversary of the Premium Payment Date, Dealer reasonably determines that it is advisable to terminate a portion of the Transaction so that Dealer's related hedging activities will comply with applicable securities laws, rules or regulations, an Additional Termination Event shall occur in respect of which (1) Company shall be the sole Affected Party and (2) the Transaction shall be the sole Affected Transaction.

(n) *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 this Transaction. Each party (i) certifies that no representative, agent or attorney of the other 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 this Transaction, as applicable, by, among other things, the mutual waivers and certifications provided herein.

(o) *Tax Disclosure*. Effective from the date of commencement of discussions concerning the Transaction, each party and each of their respective 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) relating to such tax treatment and tax structure.

(p) *Maximum Share Delivery*. Notwithstanding any other provision of this Confirmation or the Agreement, in no event will Company be required to deliver more than the lesser of (i) the Maximum Amount of Shares in the aggregate to Dealer in connection with this Transaction and (ii) when aggregated with any Shares deliverable to Dealer under the Base Warrant Confirmation dated August 7, 2012 between the parties hereto, 2,112,465 Shares, subject to the provisions regarding Deficit Restricted Shares.

(q) *Status of Claims in Bankruptcy*. Dealer acknowledges and agrees that this Confirmation is not intended to convey to Dealer rights with respect to the Transaction that are senior to the claims of common stockholders in any U.S. bankruptcy proceedings of Company; *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 Company 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.

(r) *Securities Contract*. Each of Dealer and Company agrees and acknowledges that Dealer is one or more of a "financial institution" and "financial participant" within the meaning of sections 101(22) and 101(22A) of Title 11 of the United States Code (the "**Bankruptcy Code**"). The parties further agree and acknowledge (A) that this Confirmation is 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 is a "settlement payment" (as such term is defined in Section 741(8) of the Bankruptcy Code) or a "transfer" within the meaning of section 546 of the Bankruptcy Code, and (B) that is the parties are entitled to the protections afforded by, among other sections, section 362(b)(6), 362(b)(27), 362(o), 546(e), 546(j), 548(d)(2), 555 and 561 of the Bankruptcy Code.

(s) *Right to Extend*. Dealer may postpone any Exercise Date, Settlement Date or any other date of valuation or delivery with respect to some or all of the relevant Warrants (in which case the Calculation Agent may make appropriate adjustments to the relevant number of Warrants being exercised), if Dealer determines, in its good faith and commercially reasonable judgment based on the advice of counsel, that such action is advisable to preserve Dealer's Hedging Activity hereunder in light of existing liquidity conditions to enable Dealer to effect purchases of Shares in connection with its Hedging Activity hereunder in a manner that would, if Dealer were the Company or an affiliated purchaser of the Company, be in compliance with applicable legal and regulatory requirements.

(t) *Method of Delivery*. Whenever delivery of funds or other assets is required hereunder by or to Company, such delivery shall be effected through Agent.

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 to or from Company, Dealer may designate any of its affiliates to purchase, sell, receive or deliver such Shares or other securities 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 Company to the extent of any such performance.

(u) *Regulatory Provisions*. The time of dealing for the Transaction will be confirmed by Dealer upon written request by Company. The Agent will furnish to Company upon written request a statement as to the source and amount of any remuneration received or to be received by the Agent in connection with the Transaction.

(v) *Role of Agent*. Each of Dealer and Company acknowledges to and agrees with the other party hereto and to and with the Agent that (i) the Agent is acting as agent for Dealer under the Transaction pursuant to instructions from such party, (ii) the Agent is not a principal or party to the Transaction, and may transfer its rights and obligations with respect to the Transaction, (iii) the Agent shall have no responsibility, obligation or liability, by way of issuance, guaranty, endorsement or otherwise in any manner with respect to the performance of either party under the Transaction, (iv) Dealer and the Agent have not given, and Company is not relying (for purposes of making any investment decision or otherwise) upon, any statements, opinions or representations (whether written or oral) of Dealer or the Agent, other than the representations expressly set forth in this Confirmation or the Agreement, and (v) each party agrees to proceed solely against the other party, and not the Agent, to collect or recover any money or securities owed to it in connection with the Transaction. Each party hereto acknowledges and agrees that the Agent is an intended third party beneficiary hereunder. Company acknowledges that the Agent is an affiliate of Dealer. Dealer will be acting for its own account in respect of this Confirmation and the Transaction contemplated hereunder. Dealer appoints Agent as Dealer's Process Agent for purposes of Section 13(c) of the Agreement.

(w) *Additional ISDA Schedule Terms*.

(i) "**Specified Entity**" means in relation to each of Dealer and Company for purposes of Sections 5(a)(v), 5(a)(vi), 5(a)(vii) and 5(b)(v) of the Agreement, not applicable.

(ii) "Specified Transaction" will have the meaning specified in Section 14 of the Agreement.

(iii) The "Cross-Default" provisions of Section 5(a)(vi) of the Agreement shall not apply to either party.

(iv) **Automatic Early Termination**. The "Automatic Early Termination" provision of Section 6(a) of the Agreement will not apply to Dealer and will not apply to Company.

(v) "**Termination Currency**" means United States Dollars ("**USD**").

(vi) **Consent to Recording**. Each party (i) consents to the monitoring or recording, at any time and from time to time, by the other party of any and all communications between officers or employees of the parties, (ii) waives any further notice of such monitoring or recording, and (iii) agrees to notify (and, if required by law, obtain the consent of) its officers and employees with respect to such monitoring or recording. Any such recording may be submitted in evidence to any court or in any Proceeding for the purpose of establishing any matters pertinent to this Transaction.

(vii) **Severability**. In the event any one or more of the provisions contained in this Confirmation or the Agreement shall be held illegal, invalid or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby.

(viii) **Deduction or Withholding for Tax.** So long as Company is organized under the laws of the United States or any State thereof, the provisions of Section 2(d)(i)(4) of the Agreement shall not apply to the Transaction.

(ix) **Part 2(b) of the ISDA Schedule—Payee Representation**:

For the purpose of Section 3(f) of this Agreement, Company makes the following representation to Dealer:

Company is a corporation established under the laws of the State of Delaware and is a U.S. person (as that term is defined in Section 7701(a)(30) of the Code).

For the purpose of Section 3(f) of this Agreement, Dealer makes the following representation to Company:

(A) Each payment received or to be received by it in connection with this Agreement is effectively connected with its conduct of a trade or business within the United States; and

(B) It is a "foreign person" (as that term is used in Section 1.6041-4(a)(4) of the United States Treasury Regulations) for United States federal income tax purposes.

(x) **Part 3(a) of the ISDA Schedule—Tax Forms:**

Party Required to Deliver Document	Form/Document/Certificate	Date by which to be Delivered
Company	A complete and duly executed United States Internal Revenue Service Form W-9 (or successor thereto.)	(i) Upon execution and delivery of this Agreement; (ii) promptly upon reasonable demand by Dealer; and (iii) promptly upon learning that any such Form previously provided by Company has become obsolete or incorrect.
Dealer	A complete and duly executed United States Internal Revenue Service Form W-8ECI (or successor thereto).	(i) Upon execution and delivery of this Agreement; (ii) promptly upon reasonable demand by Company; and (iii) promptly upon learning that any such Form previously provided by Dealer has become obsolete or incorrect.

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.

THE SECURITIES REPRESENTED BY THE CONFIRMATION HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED, OR ANY OTHER UNITED STATES FEDERAL OR STATE SECURITIES LAWS; SUCH SECURITIES MAY NOT BE SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF APPROPRIATE REGISTRATION UNDER SUCH SECURITIES LAWS OR EXCEPT IN A TRANSACTION EXEMPT FROM OR NOT SUBJECT TO THE REGISTRATION REQUIREMENTS OF SUCH SECURITIES LAWS.

Company 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 a facsimile of the fully-executed Confirmation to Dealer at (+1) 917-522-0458. Originals shall be provided for your execution upon your request.

Very truly yours,

BARCLAYS CAPITAL INC.
acting solely as Agent in connection with this Transaction

By: /s/ David A. Brown
Name: David A. Brown
Title: Managing Director

Accepted and confirmed as of the Trade Date:

HORNBECK OFFSHORE SERVICES, INC.

By: /s/ James O. Harp, Jr.
Name: James O. Harp, Jr.
Title: Executive Vice President and CFO

ANNEX A: Daily Number of Warrants

Expiration Date	Number of Warrants
Monday, December 02, 2019	5,571
Tuesday, December 03, 2019	5,571
Wednesday, December 04, 2019	5,571
Thursday, December 05, 2019	5,571
Friday, December 06, 2019	5,571
Monday, December 09, 2019	5,571
Tuesday, December 10, 2019	5,571
Wednesday, December 11, 2019	5,571
Thursday, December 12, 2019	5,571
Friday, December 13, 2019	5,571
Monday, December 16, 2019	5,571
Tuesday, December 17, 2019	5,571
Wednesday, December 18, 2019	5,571
Thursday, December 19, 2019	5,571
Friday, December 20, 2019	5,571
Monday, December 23, 2019	5,571
Tuesday, December 24, 2019	5,571
Thursday, December 26, 2019	5,571
Friday, December 27, 2019	5,571
Monday, December 30, 2019	5,571
Tuesday, December 31, 2019	5,571
Thursday, January 02, 2020	5,571
Friday, January 03, 2020	5,571
Monday, January 06, 2020	5,571
Tuesday, January 07, 2020	5,571
Wednesday, January 08, 2020	5,571
Thursday, January 09, 2020	5,571
Friday, January 10, 2020	5,571
Monday, January 13, 2020	5,571
Tuesday, January 14, 2020	5,571
Wednesday, January 15, 2020	5,571
Thursday, January 16, 2020	5,571
Friday, January 17, 2020	5,571
Tuesday, January 21, 2020	5,571
Wednesday, January 22, 2020	5,571
Thursday, January 23, 2020	5,571
Friday, January 24, 2020	5,571
Monday, January 27, 2020	5,571
Tuesday, January 28, 2020	5,571
Wednesday, January 29, 2020	5,593

Exhibit 4.12

J.P.Morgan

Execution version

JPMorgan Chase Bank, National Association
London Branch
P.O. Box 161
60 Victoria Embankment
London EC4Y 0JP
England

August 8, 2012

To: Hornbeck Offshore Services, Inc.
103 Northpark Boulevard, Suite 300
Covington, Louisiana, 70433
Attention: Sam Giberga, General Counsel
Facsimile No.: (985) 727-2006

Re: **Additional Warrants**

The purpose of this letter agreement (this "**Confirmation**") is to confirm the terms and conditions of the Transaction entered into between JPMorgan Chase Bank, National Association, London Branch ("**Dealer**") and Hornbeck Offshore Services, Inc. ("**Company**") on the Trade Date specified below (the "**Transaction**"). This Confirmation constitutes a "Confirmation" as referred to in the Agreement specified below.

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.

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 Company as to the terms of the Transaction to which this Confirmation relates. This Confirmation shall supplement, form a part of, and be subject to an agreement in the form of the ISDA 2002 Master Agreement (the "**Agreement**") as if Dealer and Company had executed an agreement in such form (but without any Schedule except for (i) the election of the laws of the State of New York as the governing law, and (ii) the election of US Dollars ("**USD**") as the Termination Currency, and (iii) the other provisions set forth in paragraph 9(v) below) on the Trade Date. In the event of any inconsistency between provisions of that Agreement and this Confirmation, this Confirmation will prevail for the purpose of the Transaction to which this Confirmation relates. The parties hereby agree that no Transaction other than the Transaction to which this Confirmation relates shall be governed by the Agreement.

2. The Transaction is a Warrant Transaction, which shall be considered a Share Option Transaction for purposes of the Equity Definitions. The terms of the particular Transaction to which this Confirmation relates are as follows:

General Terms:	
Trade Date:	August 8, 2012
Effective Date:	August 13, 2012; *provided* that either Buyer or Seller may cancel all (but not less than all) the Warrants by notice to the other party prior to payment of the Premium on the Effective Date, in which case these Warrants shall never become effective and neither party shall have any obligation to the other party in respect of the Transaction.
Warrants:	Equity call warrants, each giving the holder the right to purchase one Share at the Strike Price, subject to the Settlement Terms set forth below. For the purposes of the Equity Definitions, each reference to a Warrant herein shall be deemed to be a reference to a Call Option.
Warrant Style:	European
Seller:	Company
Buyer:	Dealer
Shares:	The common stock of Company, par value USD 0.01 per Share (Exchange symbol “HOS”)
Number of Warrants:	For each Expiration Date, a number of Warrants set forth next to such an Expiration Date on Annex A hereto (the “**Daily Number of Warrants**”), subject to adjustment as provided herein.
Warrant Entitlement:	One Share per Warrant
Strike Price:	USD 68.5300. Notwithstanding anything to the contrary in the Agreement, this Confirmation or the Equity Definitions, in no event shall the Strike Price be subject to adjustment to the extent that, after giving effect to such adjustment, the Strike Price would be less than USD 39.16, except for any adjustment pursuant to the terms of this Confirmation and the Equity Definitions in connection with stock splits or similar changes to Company’s capitalization
Premium:	USD 2,572,640.00 (Premium per Warrant USD 8.6577).
Premium Payment Date:	The Effective Date.
Exchange:	New York Stock Exchange
Related Exchange(s):	All Exchanges
Procedures for Exercise:	
Expiration Time:	The Valuation Time
Expiration Date(s):	Each Scheduled Trading Day during the period from and including the First Expiration Date and to and including the 39th Scheduled Trading Day following the First Expiration Date

shall be an “Expiration Date” for a number of Warrants equal to the Daily Number of Warrants on such date; *provided* that, notwithstanding anything to the contrary in the Equity Definitions, if any such date is a Disrupted Day, the Calculation Agent may determine that such date is a Disrupted Day in full or a Disrupted Day in part. If the Calculation Agent determines such Disrupted Day is a Disrupted day in full, the Daily Number of Warrants for such day shall be reduced to zero. If the Calculation Agent Determines that such Disrupted Day is a Disrupted Day in part, the Calculation Agent shall make adjustments, if applicable, to the Daily Number of Warrants or shall reduce such Daily Number of Warrants to zero for such date. In either case, the Calculation Agent shall designate a Scheduled Trading Day or a number of Scheduled Trading Days as the Expiration Date(s) for the remaining Daily Number of Warrants or a portion thereof for the originally scheduled Expiration Date; and *provided further* that if such Expiration Date has not occurred pursuant to this clause as of the eighth Scheduled Trading Day following the last scheduled Expiration Date under this Transaction, the Calculation Agent shall have the right to declare such Scheduled Trading Day to be the final Expiration Date and the Calculation Agent shall determine its good faith estimate of the fair market value for the Shares as of the Valuation Time on that eighth Scheduled Trading Day or on any subsequent Scheduled Trading Day, as the Calculation Agent shall determine using commercially reasonable means. Any Scheduled Trading Day on which, as of the date hereof, the Exchange is scheduled to close prior to its normal close of trading shall be deemed not to be a Scheduled Trading Day; if a closure of the Exchange prior to its normal close of trading on any Scheduled Trading Day is scheduled (i) following the date hereof and (ii) on or prior to the Scheduled Trading Day that is at least one Scheduled Trading Day before such Scheduled Trading Day, then such Scheduled Trading Day shall be deemed to be a Disrupted Day in full. If a closure of the Exchange prior to its normal close of trading on any Scheduled Trading Day is scheduled on such Scheduled Trading Day, such Scheduled Trading Day shall be deemed to be a Disrupted Day in part.

First Expiration Date: Monday, December 2, 2019 (or if such day is not a Scheduled Trading Day, the next following Scheduled Trading Day), subject to Market Disruption Event below.

Multiple Exercise: Applicable

Minimum Number of Warrants: 1

Maximum Number of Warrants: All Warrants remaining unexercised as of the remaining Exercise Date(s).

Automatic Exercise: Applicable; and means that a number of Warrants (as adjusted pursuant to the terms hereof) for each Expiration Date equal to the Daily Number of Warrants (as adjusted pursuant to the terms hereof) for such Expiration Date will be deemed to be automatically exercised; *provided* that “In-the-Money” means that the Settlement Price for such Expiration Date exceeds the

	Strike Price for such Expiration Date; and *provided further* that all references in Section 3.4(b) of the Equity Definitions to "Physical Settlement" shall be read as references to "Net Share Settlement".
Market Disruption Event:	Section 6.3(a)(ii) of the Equity Definitions is hereby amended by replacing clause (ii) in its entirety with "(ii) an Exchange Disruption, or" and inserting immediately following clause (iii) the phrase "; in each case that the Calculation Agent determines is material."
Valuation:	
Valuation Time:	Scheduled Closing Time; *provided* that if the principal trading session is extended, the Calculation Agent shall determine the Valuation Time in its reasonable discretion.
Valuation Date:	Each Exercise Date.
Settlement Terms:	
Settlement Method Election:	Applicable; *provided* that the same Settlement Method shall apply to each Warrant under the Transaction; and *provided further* that references to "Physical Settlement" in Section 7.1 of the Equity Definitions shall be replaced with "Net Share Settlement"; and *provided further* that Company may elect Cash Settlement only if at the time of such election it provides to Dealer a written statement that the representations contained in paragraph 8(A)(c) below are true and correct as of and as if made on the date of such election.
Electing Party:	Company
Settlement Method Election Date:	No less than 10 Scheduled Trading Days prior to the First Expiration Date.
Default Settlement Method:	Net Share Settlement
Settlement Currency:	USD
Cash Settlement Payment Date:	Three (3) Currency Business Days after the Valuation Date.
Net Share Settlement:	If Net Share Settlement is applicable to the Transaction, on the relevant Settlement Date, Company shall deliver to Dealer the Share Delivery Quantity of Shares for such Settlement Date to the account specified herein free of payment through the Clearance System.
Share Delivery Quantity:	For any Settlement Date, a number of Shares, as calculated by the Calculation Agent, equal to the Net Share Settlement Amount for such Settlement Date divided by the Settlement Price on the Valuation Date in respect of such Settlement Date, rounded down to the nearest whole number plus any Fractional Share Amount.
Net Share Settlement Amount:	For any Settlement Date, an amount equal to the *product* of (i) the Number of Warrants exercised or deemed exercised on the relevant Exercise Date, (ii) the Strike Price Differential for such Exercise Date *and* (iii) the Warrant Entitlement.

Option Cash Settlement Amount	For any Cash Settlement Payment Date, an amount equal to the *product* of (i) the Number of Warrants exercised or deemed exercised on the relevant Exercise Date, (ii) the Strike Price Differential for such Exercise Date *and* (iii) the Warrant Entitlement.
Settlement Price:	For any Valuation Date, the per Share volume-weighted average price as displayed under the heading "Bloomberg VWAP" on Bloomberg page "HOS <EQUITY> AQR" (or any successor thereto) in respect of the period from the scheduled opening time of the Exchange to the Scheduled Closing Time on such Valuation Date (or if such volume-weighted average price is unavailable, the market value of one Share on such Valuation Date, as determined by the Calculation Agent using a volume-weighted method). Notwithstanding the foregoing, if (i) any Expiration Date is a Disrupted Day and (ii) the Calculation Agent determines that such Expiration Date shall be an Expiration Date for fewer than the Daily Number of Warrants, as described above, then the Settlement Price for the relevant Valuation Date shall be the volume-weighted average price per Share on such Valuation Date on the Exchange, as determined by the Calculation Agent based on such sources as it deems appropriate using a volume-weighted methodology, for the portion of such Valuation Date for which the Calculation Agent determines there is no Market Disruption Event.
Settlement Date(s):	As determined in reference to Section 9.4 of the Equity Definitions, subject to paragraph 9(j)(i) hereof.
Other Applicable Provisions:	The provisions of Sections 9.1(c), 9.8, 9.9, 9.11, 9.12 and 10.5 of the Equity Definitions will be applicable (except that the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by excluding any representations therein relating to restrictions, obligations, limitations or requirements under applicable securities laws as a result of the fact that Company is the Issuer of the Shares and except that all references in such provisions to "Physically-Settled" shall be read as references to "Net Share Settled"). "Net Share Settled" in relation to any Warrant means that Net Share Settlement is applicable to that Warrant.

3. Additional Terms applicable to the Transaction:

Adjustments applicable to the Warrants:

Method of Adjustment:	Calculation Agent Adjustment. For the avoidance of doubt, in making any adjustments under the Equity Definitions, the Calculation Agent may make adjustments, if any, to any one or more of the Strike Price, the Number of Warrants, the Daily Number of Warrants and the Warrant Entitlement. Notwithstanding the foregoing, any cash dividends or distributions on the Shares, whether or not extraordinary, shall be governed by paragraph 9(f) of this Confirmation in lieu of Article 10 or Section 11.2(c) of the Equity Definitions.

Extraordinary Events applicable to the Transaction:

New Shares:	Section 12.1(i) of the Equity Definitions is hereby amended by deleting the text in clause (i) in its entirety and replacing it with the phrase "publicly quoted, traded or listed on any of the New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or their respective successors)".
Consequence of Merger Events:	
Share-for-Share:	Modified Calculation Agent Adjustment
Share-for-Other:	Cancellation and Payment (Calculation Agent Determination)
Share-for-Combined:	Cancellation and Payment (Calculation Agent Determination); *provided* that Dealer may elect, in its commercially reasonable judgment, Component Adjustment (Calculation Agent Determination).
Consequence of Tender Offers:	
Tender Offer:	Applicable; *provided however* that if an event occurs that constitutes both a Tender Offer under Section 12.1(d) of the Equity Definitions and Additional Termination Event under paragraph 9(g)(iii)(C) of this Confirmation, Dealer may elect, in its commercially reasonable judgment, whether the provisions of Section 12.3 of the Equity Definitions or paragraph 9(g)(iii)(C) of this Confirmation will apply.
Share-for-Share:	Modified Calculation Agent Adjustment
Share-for-Other:	Modified Calculation Agent Adjustment
Share-for-Combined:	Modified Calculation Agent Adjustment
Nationalization, Insolvency or Delisting:	Cancellation and Payment (Calculation Agent Determination); *provided* that, for purposes of Section 12.6(a)(iii) of the Equity Definitions, it will 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), a Delisting shall not have occurred and such exchange or quotation system shall thereafter be deemed to be the Exchange.
Additional Disruption Events:	
Change in Law:	Applicable; *provided* that Section 12.9(a)(ii) of the Equity Definitions is hereby amended replacing the word "Shares" where it appears in clause (X) thereof with the words "Hedge Position".

Failure to Deliver:	Applicable
Insolvency Filing:	Applicable
Hedging Disruption:	Applicable; *provided* that Section 12.9(a)(v) of the Equity Definitions is hereby modified by inserting the following two phrases at the end of such Section: "The term "equity price risk" shall be deemed to include stock price and volatility risk. Any such transactions or assets referred to in phrases (A) or (B) above must be available on commercially reasonable pricing terms."
Increased Cost of Hedging:	Not Applicable
Loss of Stock Borrow:	Applicable
Maximum Stock Loan Rate:	200 basis points
Increased Cost of Stock Borrow:	Applicable
Initial Stock Loan Rate:	25 basis points, as adjusted by the Calculation Agent to reflect any subsequent Price Adjustment due to an Increased Cost of Stock Borrow.
Hedging Party:	Dealer or an affiliate of Dealer that is involved in the hedging of this Transaction for all applicable Additional Disruption Events. Section 13.2(b) of the Equity Definitions is hereby amended by adding the words "(or an Affiliate of such party)" following the words "by a party" in the third line thereof.
Determining Party:	Dealer for all applicable Extraordinary Events
Non-Reliance:	Applicable
Agreements and Acknowledgments Regarding Hedging Activities:	Applicable
Additional Acknowledgments:	Applicable

4. Calculation Agent: Dealer, whose judgments, determinations and calculations shall be made in good faith and in a commercially reasonable manner. Following any determination or calculation by the Calculation Agent hereunder, upon a request by Company, the Calculation Agent shall promptly (but in any event within three Scheduled Trading Days) provide to Company by e-mail to the e-mail address provided by Company 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 determination or calculation (including any assumptions used in making such determination or calculation), it being understood that the Calculation Agent shall not be obligated to disclose any proprietary models used by it for such determination or calculation.

5. Account Details:

(a) Account for payments to Company:	Capital One, N.A. New Orleans, LA ABA 065-000-090

For credit to:

Hornbeck Offshore Services, Inc.
103 Northpark Blvd., Suite 300
Covington, LA 70433
Account 812519859

Account for delivery of Shares to Company: To be provided under separate cover by Company.

(b) Account for payments to Dealer: Bank: JPMorgan Chase Bank, N.A.
ABA#: 021000021
Acct No.: 099997979
Beneficiary: JPMorgan Chase Bank, N.A. New York
Ref: Derivatives

Account for delivery of Shares to Dealer: DTC 0060

6. Offices:

The Office of Company for the Transaction is: Inapplicable, Company is not a Multibranch Party.

The Office of Dealer for the Transaction is:

London

JPMorgan Chase Bank, National Association
London Branch
P.O. Box 161
60 Victoria Embankment
London EC4Y 0JP
England

7. Notices: For purposes of this Confirmation:

(a) Address for notices or communications to Company: Hornbeck Offshore Services, Inc.
103 Northpark Boulevard, Suite 300
Covington, Louisiana, 70433
Attention: Sam Giberga, General Counsel
Facsimile No.: (985) 727-2006

(b) Address for notices or communications to Dealer:

EDG Marketing Support
Email: EDG_OTC_HEDGING_MS@jpmorgan.com
Fax: 1-866-886-4506

With a copy to:

Jason M. Wood
Managing Director
Equity-Linked & Derivative Capital Markets
560 Mission St.
San Francisco CA
Telephone No: 415-315-8783
Facsimile No: 415-226-0616
Email: jason.m.wood@jpmorgan.com

8. Representations, Warranties and Agreements of Company

(A) The Company hereby represents and warrants to, and agrees with, Dealer that:

(a) The Shares initially issuable upon exercise of the Warrant by the net share settlement method (the "**Warrant Shares**") have been reserved for issuance by all required corporate action of Company. The Warrant Shares have been duly authorized and, when delivered against payment therefor (which may include Net Share Settlement in lieu of cash) and otherwise as contemplated by the terms of the Warrant following the exercise of the Warrant in accordance with the terms and conditions of the Warrant, will be validly issued, fully-paid and non-assessable, and the issuance of the Warrant Shares will not be subject to any preemptive or similar rights;

(b) Company is an "eligible contract participant" (as such term is defined in the Commodity Exchange Act, as amended (the "**CEA**"));

(c) Company is not, on the date hereof, in possession of any material non-public information with respect to Company;

(d) Without limiting the generality of Section 13.1 of the Equity Definitions, Company acknowledges that Dealer is not making any representations or warranties 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, 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 under FASB's Liabilities & Equity Project;

(e) Prior to or on the Trade Date, Company shall deliver to Dealer a resolution of Company's board of directors authorizing the Transaction;

(f) Company is not, and after giving effect to 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;

(g) On the Trade Date (A) the assets of Company at their fair valuation exceed the liabilities of Company, including contingent liabilities, (B) the capital of Company is adequate to conduct the business of Company and (C) Company has the ability to pay its debts and obligations as such debts mature and does not intend to, or does not believe that it will, incur debt beyond its ability to pay as such debts mature;

(h) Company understands that no obligations of Dealer to it hereunder will be entitled to the benefit of deposit insurance and that such obligations will not be guaranteed by any affiliate of Dealer or any governmental agency;

(i) During the period starting on the first Expiration Date and ending on the last Expiration Date (the "**Settlement Period**"), the Shares or securities that are convertible into, or exchangeable or exercisable for Shares, are not, and shall not be, subject to a "restricted period," as such term is defined in Regulation M ("**Regulation M**") under the Securities Exchange Act of 1934, as amended ("**Exchange Act**") and (B) Issuer shall not engage in any "distribution," as such term is defined in Regulation M, other than a distribution meeting the requirements of the exceptions set forth in sections 101(b)(10) and 102(b)(7) of Regulation M, until the second Exchange Business Day immediately following the Settlement Period;

(j) Prior to the Trade Date, the Company has not taken any action which is designed to or which has constituted or which might have been expected to cause or result in stabilization or manipulation of the price of any security of the Company in connection with the offering of the Convertible Notes;

(k) None of the Company or any of its subsidiaries is in violation of its certificate of incorporation or certificate of formation, or its bylaws or limited liability company agreement (or other organizational documents), or in default in the performance or observance of any material obligation, covenant or condition contained in any material indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which it is a party or by which it or any of its properties may be bound, other than such defaults that individually or in the aggregate would not have a Material Adverse Effect on this Transaction or Dealer's rights or obligations relating to

this Transaction. "**Material Adverse Effect**" means any change in the capital stock, increase in long-term debt or any decreases in consolidated net current assets or stockholders' equity of the Company or any of its subsidiaries or any material adverse change, or any development involving a prospective material adverse change, in or affecting the general affairs, management, current or future consolidated financial position, stockholders' equity or results of operations of the Company and its subsidiaries taken as a whole;

(l) (A) Company is acting for its own account, and it has made its own independent decisions to enter into the Transaction and as to whether the Transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary, (B) Company is not relying on any communication (written or oral) of Dealer or any of its affiliates as investment advice or as a recommendation to enter into the Transaction (it being understood that information and explanations related to the terms and conditions of the Transaction shall not be considered investment advice or a recommendation to enter into the Transaction) and (C) no communication (written or oral) received from Dealer or any of its affiliates shall be deemed to be an assurance or guarantee as to the expected results of the Transaction;

(m) Company understands, agrees and acknowledges that Dealer has no obligation or intention to register the Transaction under the Securities Act of 1933, as amended (the "**Securities Act**"), any state securities law or other applicable federal securities law;

(n) Company shall use its reasonable best efforts to have the Warrant Shares duly listed, subject to notice of issuance, on the New York Stock Exchange;

(o) Company shall not take any action to decrease the number of Available Shares below the Maximum Amount (each as defined below);

(p) The assets used in the Transaction (1) are not assets of any "plan" (as such term is defined in Section 4975 of the United States 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;

(q) During the Settlement Period and on any other Exercise Date, neither Company nor any "affiliate" or "affiliated purchaser" (each as defined in Rule 10b-18 under the Exchange Act ("**Rule 10b-18**")) shall directly or indirectly (including, without limitation, by means of any cash-settled or other derivative instrument) purchase, offer to purchase, place any bid or limit order that would effect a purchase of, or commence any tender offer relating to, any Shares (or an equivalent interest, including a unit of beneficial interest in a trust or limited partnership or a depository share) or any security convertible into or exchangeable or exercisable for Shares, except through Dealer; and

(r) Company agrees that it (A) will not during the Settlement Period make, or permit to be made, any public announcement (as defined in Rule 165(f) under the Securities Act) of any Merger Transaction or potential Merger Transaction unless such public announcement is made prior to the opening or after the close of the regular trading session on the Exchange for the Shares; (B) shall promptly (but in any event prior to the next opening of the regular trading session on the Exchange) notify Dealer following any such announcement that such announcement has been made; and (C) shall promptly (but in any event prior to the next opening of the regular trading session on the Exchange) provide Dealer with written notice specifying (i) Company's average daily Rule 10b-18 Purchases (as defined in Rule 10b-18) during the three full calendar months immediately preceding the announcement date that were not effected through Dealer or its affiliates and (ii) the number of Shares purchased pursuant to the proviso in Rule 10b-18(b)(4) under the Exchange Act for the three full calendar months preceding the announcement date. Such written notice shall be deemed to be a certification by Company to Dealer that such information is true and correct. In addition, Company shall promptly notify Dealer of the earlier to occur of the completion of such transaction and the completion of the vote by target shareholders. "**Merger Transaction**" means any merger, acquisition or similar transaction involving a recapitalization as contemplated by Rule 10b-18(a)(13)(iv) under the Exchange Act.

(s) The Company (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 $50 million as of the date hereof.

(B) Each party makes to the other the representations and warranties set forth in Sections 3(a) through (f) of the Agreement with respect to the Agreement as supplemented by this Confirmation; *provided* that Dealer makes the representation and warranty set forth in Section 3(f) and Company makes the representation and warranty set forth in Section 3(e). In addition, each of Dealer and Company acknowledges that the offer and sale of the Transaction to it is intended to be exempt from registration under the Securities Act, by virtue of Section 4(2) thereof. Accordingly, Dealer represents and warrants to Company that (i) it has the financial ability to bear the economic risk of its investment in the Transaction and is able to bear a total loss of its investment and its investments in and liabilities in respect of the Transaction, which it understands are not readily marketable, are not disproportionate to its net worth, and it is able to bear any loss in connection with the Transaction, including the loss of its entire investment in the Transaction, (ii) it is an "accredited investor" as that term is defined in Regulation D as promulgated under the Securities Act, (iii) it is entering into the Transaction for its own account without a view to the distribution or resale thereof, (iv) the assignment, transfer or other disposition of the Transaction has not been and will not be registered under the Securities Act and is restricted under the Securities Act and state securities laws, (v) its financial condition is such that it has no need for liquidity with respect to its investment in the Transaction and no need to dispose of any portion thereof to satisfy any existing or contemplated undertaking or indebtedness and is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of the Transaction.

9. Other Provisions:

(a) *Opinions*. Company shall deliver an opinion of counsel, dated as of the Trade Date, to Dealer with respect to the matters set forth in Section 3(a) of the Agreement and Section 8(A)(f) of this Confirmation; *provided* that such opinion of counsel may contain customary exceptions and qualifications, including, without limitation, exceptions and qualifications relating to indemnification provisions.

(b) *Repurchase Notices*. Company shall, on any day on which Company 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 Notice Percentage as determined on such day is (i) greater than 4.5% and (ii) greater by 0.5% than the Notice Percentage included in the immediately preceding Repurchase Notice (or, in the case of the first such Repurchase Notice, greater than the Notice Percentage as of the date hereof). The "**Notice Percentage**" as of any day is the fraction, expressed as a percentage, the numerator of which is the product of the Number of Warrants and the Warrant Entitlement and the denominator of which is the number of Shares outstanding on such day.

(c) *Regulation M*. Company is not on the date hereof engaged in a distribution, as such term is used in Regulation M under the Securities Exchange Act, of any securities of Company, other than a distribution meeting the requirements of the exception set forth in Rules 101(b)(10) and 102(b)(7) of Regulation M. Company shall not, until the second Scheduled Trading Day immediately following the Trade Date, engage in any such distribution.

(d) *No Manipulation*. Company is not entering into this 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 and Assignment*. Subject to applicable law, Dealer may transfer and assign all of its rights and obligations hereunder and under the Transaction and Agreement, in whole or in part, without the consent of Company (1) to any affiliate of Dealer of credit quality at least equivalent to that of Dealer as of the Trade Date or to any other affiliate of Dealer with respect to which Company shall have received a full guaranty of such affiliate's obligations from Dealer in form and substance reasonably satisfactory to Company or (2) any third party with a rating (or whose guarantor has a rating) for its long term, unsecured and unsubordinated indebtedness equal to the Required Rating, in each case, if (x) an Event of Default, Potential Event of Default or Termination Event will not occur as a result of such transfer or assignment and (y) as a result of such transfer or assignment, Company will not be required to pay the transferee on any payment date an amount under Section 2(d)(i)(4) of the Agreement, if at all applicable, greater than an amount that Company would have been required to pay to Dealer in the absence of such transfer or assignment. The Company may not transfer or assign any of its rights or obligations under the

Transaction or the Agreement without the prior written consent of Dealer. "**Required Rating**" means a rating of A-or better by Standard & Poor's Ratings Services or its successor ("**S&P**"), or A3 or better by Moody's Investors Service, Inc. or its successor ("**Moody's**") or, if either S&P or Moody's ceases to rate such debt, at least an equivalent rating or better by a substitute rating agency mutually agreed by Counterparty and Dealer.

(f) *Dividends*. If at any time during the period from and including the Trade Date, to but excluding the final Expiration Date, an ex-dividend date for a cash dividend occurs with respect to the Shares (an "**Ex-Dividend Date**"), then the Calculation Agent will adjust the Strike Price and/or the Number of Warrants to preserve the fair value of the Transaction, after taking into account such dividend, of the Warrants representing the aggregate Daily Number of Warrants for all Expiration Dates occurring on or after such Ex-Dividend Date.

(g) *Additional Provisions*.

(i) *Amendments to the Equity Definitions*:

(A) Section 11.2(a) of the Equity Definitions is hereby amended by deleting the words "that may have a diluting or concentrative" and replacing them with the words "that may have a material".

(B) Section 11.2(c) of the Equity Definitions is hereby amended by (x) deleting the words "diluting or concentrative" and (y) deleting the phrase "(provided that no adjustments will be made to account solely for changes in volatility, expected dividends, stock loan rate or liquidity relative to the relevant Shares)" and replacing it with the phrase "(and, for the avoidance of doubt, adjustments may be made to account solely for changes in volatility, expected dividends, stock loan rate or liquidity relative to the relevant Shares)."

(C) Section 11.2(e)(vii) of the Equity Definitions is hereby amended by deleting the words "that may have a diluting or concentrative" and replacing them with the word "that is the result of a corporate event involving the Company and that may have a material"; and adding the phrase "or Warrants" at the end of the sentence.

(D) Section 12.9(b)(iv) of the Equity Definitions is hereby amended by:

(x) deleting (1) subsection (A) in its entirety, (2) the phrase "or (B)" following subsection (A) and (3) the phrase "in each case" in subsection (B); and

(y) deleting the phrase "neither the Non-Hedging Party nor the Lending Party lends Shares in the amount of the Hedging Shares or" in the penultimate sentence.

(ii) *Announcement Event*. If an Announcement Date occurs in respect of a Merger Event or Tender Offer (such occurrence, an "Announcement Event"), then on the earliest to occur of the Expiration Date, the date occurring a commercially reasonable period of time after the relevant Announcement Cessation Date, an Early Termination Date or other date of cancellation (the "Announcement Event Adjustment Date") in respect of each Warrant, the Calculation Agent will determine the cumulative economic effect on such Warrant of the Announcement Event and the Announcement Cessation Date, if any (without duplication in respect of any other adjustment or cancellation valuation made pursuant to the Equity Definitions, regardless of whether the Announcement Event actually results in a Merger Event or Tender Offer, and taking into account such factors as the Calculation Agent shall determine, including, without limitation, stock price movement, changes in volatility, expected dividends, stock loan rate or liquidity relevant to the Shares or the Transaction whether prior to or after the Announcement Event or for any period of time, including, without limitation, the period from the Announcement Event to the relevant Announcement Event Adjustment Date). If the Calculation Agent determines that such cumulative economic effect on any Warrant is material, then on the Announcement Event Adjustment Date for such Warrant, the Calculation Agent shall make such adjustment to the exercise, settlement, payment or any other terms of such Warrant as the Calculation Agent determines appropriate to account for such cumulative economic effect, which adjustment shall be effective immediately prior to the Announcement Event Adjustment Date.

"**Announcement Cessation Date**" means, in respect of an Announcement Event, (i) in the case of an Announcement Event relating to an intention to engage in a transaction that, if completed, would lead to a Merger Event, the date of the first public announcement by the Issuer, any potential counterparty to such transaction or any of their agents or affiliates of its withdrawal from, or the discontinuation of, such transaction, or (ii) in the case of an Announcement Event relating to an intention to purchase or otherwise obtain Shares that, if completed, would lead to a Tender Offer, the date of the first public announcement by any potential offeror in respect of such Tender Offer or any of their agents or affiliates of its withdrawal from, or the discontinuation of, such purchase or other acquisition of Shares. If any such announcement is made after the actual closing time for the regular trading session of on the relevant Exchange, without regard to any after hours or any other trading outside of such regular trading session hours, the Announcement Cessation Date shall be deemed to be the next following Scheduled Trading Day; *provided* that, for the avoidance of doubt, the occurrence of an Announcement Cessation Date with respect to any transaction shall not preclude the occurrence of a later Announcement Date with respect to such transaction. For purposes hereof, the definition of "Announcement Date" in Section 12.1 of the Equity Definitions shall be amended by (i) replacing the word "leads to the" in the third and the fifth lines thereof with the words ", if completed, would lead to a"; (ii) replacing the words "voting shares" in the fifth line thereof with the word "Shares"; (iii) inserting the words "by any entity" after the word "announcement" in the second and the fourth lines thereof; (iv) replacing the words "a firm" with the word "any bona fide" in the second and fourth lines thereof; (v) inserting the words "or to explore the possibility of engaging in" after the words "engage in" in the second line thereto; and (vi) inserting the words "or to explore the possibility of purchasing or otherwise obtaining" after the word "obtain" in the fourth line thereto.

(iii) Notwithstanding anything to the contrary in this Confirmation, upon the occurrence of one of the following events, with respect to this Transaction, (1) Dealer shall have the right to designate such event an Additional Termination Event and designate an Early Termination Date pursuant to Section 6(b) of the Agreement, and (2) Company shall be deemed the sole Affected Party and the Transaction shall be deemed the sole Affected Transaction:

(A) the consummation of (i) any binding share exchange, consolidation or merger of Company pursuant to which the Shares will be converted into cash, securities or other property; or (ii) any sale, lease or other transfer in one transaction or a series of transactions of all of the consolidated assets of Company and its subsidiaries, taken as a whole, to any person other than one of Company's subsidiaries; *provided*, *however*, that a transaction in which the holders of more than 50% of all classes of common equity of Company 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 any direct or indirect parent thereof immediately after the consummation of such transaction shall not be an Additional Termination Event;

(B) There is a default by Company under any of its Public Indebtedness under which there may be outstanding in excess of $25 million, whether such Public Indebtedness now exists or shall hereafter be created, resulting in such Public Indebtedness becoming or being declared due and payable; "**Public Indebtedness**" shall mean any indebtedness of the Company for money borrowed under notes, bonds or similar instruments offered and sold by the Company in an offering registered with the Securities and Exchange Commission or pursuant to Rule 144A under the Securities Act;

(C) Any "person" or "group" within the meaning of Section 13(d) of the Exchange Act other than Company, any of its subsidiaries or its employee benefit plans, files a Schedule TO or any schedule, form or report under the Exchange Act disclosing that such person or group has become the direct or indirect ultimate "beneficial owner", as defined in Rule 13d-3 under the Exchange Act, of the common equity of Company representing more than 50% of the ordinary voting power of such common equity;

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

(E) the Shares (or other common stock or depositary shares or receipts in respect thereof) cease to be listed or quoted on any of the New York Stock Exchange, The NASDAQ Global Select Market, The NASDAQ Global Market or any other national securities exchange or automated quotation system (or any of their respective successors) for a period of 30 consecutive scheduled trading days;

(F) Dealer, despite using commercially reasonable efforts, is unable or reasonably determines based on the advice of counsel that it is illegal or inadvisable, to hedge its obligations pursuant to this Transaction in the public market without registration under the Securities Act or as a result of any legal, regulatory or self-regulatory requirements or related policies and procedures (whether or not such requirements, policies or procedures are imposed by law or have been voluntarily adopted by Dealer).

Notwithstanding any provision of paragraph 9(g)(iii)(A) or (C), however, an Additional Termination Event will not be deemed to have occurred if 90% of the consideration received or exchanged by common stockholders of Company (excluding cash payments for fractional shares and cash payments made pursuant to dissenters' appraisal rights), in connection with the transaction or transactions otherwise constituting the Additional Termination Event consists of shares of common stock or depositary shares or receipts in respect thereof traded on any of the New York Stock Exchange, The NASDAQ Global Select Market, The NASDAQ Global Market or any other national securities exchange or automated quotation system (or any of their respective successors) or which will be so traded when issued or exchanged in connection with such transaction or transactions ("**Publicly Traded Securities**") and as a result of such transaction or transactions the Convertible Notes (as defined in the Purchase Agreement) become convertible into cash, such Publicly Traded Securities or a combination of cash and such Publicly Traded Securities.

(h) *No Collateral or Setoff*. Notwithstanding any provision of the Agreement or any other agreement between the parties to the contrary, the obligations of Company hereunder are not secured by any collateral. In addition, obligations under this Transaction shall not be netted, recouped or set off (including pursuant to Section 6 of the Agreement) against any other obligations of the parties, whether arising under the Agreement, this Confirmation, under any other agreement between the parties hereto, by operation of law or otherwise, and no other obligations of the parties shall be netted, recouped or set off (including pursuant to Section 6 of the Agreement) against obligations under the Transaction, whether arising under the Agreement, this Confirmation, under any other agreement between the parties hereto, by operation of law or otherwise, and each party hereby waives any such right of setoff, netting or recoupment; provided that both parties agree that subparagraph (ii) of Section 2(c) of the Agreement shall apply to the Transaction.

(i) *Alternative Calculations and Payment on Early Termination and on Certain Extraordinary Events*. If, in respect of this Transaction, an amount is payable by Company to Dealer, (i) pursuant to Sections 12.2, 12.3, 12.6, 12.7 or 12.9 of the Equity Definitions (except in the event of an Insolvency, Nationalization, Tender Offer or Merger Event in which the consideration or proceeds to be paid to holders of shares consists solely of cash) or (ii) pursuant to Section 6(d)(ii) of the Agreement (except in the event of an Event of Default in which Company is the Defaulting Party or a Termination Event in which Company is the Affected Party, other than an Event of Default of the type described in (x) Section 5(a)(iii), (v), (vi), (vii) or (viii) of the Agreement or (y) a Termination Event of the type described in Section 5(b)(i), (ii), (iii), (iv), (v) or (vi) of the Agreement, in the case of both (x) and (y), resulting from an event or events outside Company's control) (a "**Payment Obligation**"), Company shall satisfy any such Payment Obligation by the Share Termination Alternative (as defined below), unless Company elects to satisfy any such Payment Obligation by delivering cash (in which case the provisions of Sections 12.2, 12.3, 12.6, 12.7 or 12.9 of the Equity Definitions or Section 6(d)(ii) of the Agreement, as the case may be, shall apply in lieu of the provisions of this paragraph 9(i)), by giving irrevocable telephonic notice to Dealer, confirmed in writing within one Scheduled Trading Day, no later than 12:00 p.m. New York local 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 where such notice shall include a representation and warranty from Company that it is not, as of the date of the telephonic notice and the date of such written notice, aware of any "material non-public information" (within the meaning of Section 10(b) of the Exchange Act and the rules promulgated thereunder) concerning itself or the Shares. Notwithstanding the foregoing, satisfaction of a Payment Obligation in the Share

Termination Alternative as set forth in this clause shall only apply to this Transaction and, notwithstanding anything to the contrary in the Agreement, (1) separate amounts shall be calculated with respect to (a) the Transaction and (b) all other Transactions under the Agreement, and (2) such separate amounts shall be payable pursuant to Section 6(d)(ii) of the Agreement, subject to, in the case of clause (a), Company's right to deliver cash in satisfaction of any Payment Obligation hereunder.

Share Termination Alternative:	If applicable, Company shall deliver to Dealer the Share Termination Delivery Property on the date (the "**Share Termination Payment Date**") on which the Payment Obligation would otherwise be due pursuant to Section 12.7 or Section 12.9 of the Equity Definitions or pursuant to Section 6(d)(ii) of the Agreement, subject to paragraph (j)(i) below, in satisfaction, subject to paragraph (j)(ii) below, of the Payment Obligation in the manner reasonably requested by Dealer 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 amount of 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 on the date such Share Termination Delivery Units are to be delivered as Share Termination Delivery Property, as determined by the Calculation Agent in its discretion by commercially reasonable means. The Calculation Agent shall notify Company of such Share Termination Unit Price at the time of notification of the Payment Obligation. In the case of a Private Placement of Share Termination Delivery Units that are Restricted Shares (as defined below), as set forth in paragraph (j)(i) below, the Share Termination Unit Price shall be determined by the discounted price applicable to such Share Termination Delivery Units. In the case of a Registration Settlement of Share Termination Delivery Units that are Restricted Shares (as defined below) as set forth in paragraph (j)(ii) below, the Share Termination Unit Price shall be the Settlement Price on the Merger Date, the Announcement Date (in the case of a Nationalization, Insolvency or Delisting) or the Early Termination Date, as applicable.
Share Termination Delivery Unit:	In the case of a Termination Event, Event of Default or Delisting, one Share or, in the case of Nationalization, Insolvency, Tender Offer or Merger Event, a unit consisting of the number or amount of each type of 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, Tender Offer or Merger Event. If such Nationalization, Insolvency, Tender Offer or Merger Event involves a choice of consideration to be received by holders, such holder shall be deemed to have elected to receive the maximum possible amount of cash.
Failure to Deliver:	Inapplicable
Other applicable provisions:	If Share Termination Alternative is applicable, the provisions of Sections 9.1(c), 9.8, 9.9, 9.11, 9.12 and 10.5 (as modified above) of the Equity Definitions will be applicable, except that the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by excluding any representations therein relating to restrictions, obligations, limitations or requirements under applicable securities laws as a result of the fact that Company is the Issuer of the Shares or any portion of the Share

Termination Delivery Units, and 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 this Transaction means that Share Termination Alternative is applicable to this Transaction.

(j) *Registration/Private Placement Procedures*. If, in the commercially reasonable judgment of Dealer based on the advice of counsel, following any delivery of Shares or Share Termination Delivery Property to Dealer hereunder, such Shares or Share Termination Delivery Property would be in the hands of Dealer subject to any applicable restrictions with respect to any registration or qualification requirement or prospectus delivery requirement for such Shares or Share Termination Delivery Property pursuant to any applicable federal or any applicable material restrictions pursuant to any applicable state securities law (including, without limitation, any such requirement arising under Section 5 of the Securities Act as a result of such Shares or Share Termination Delivery Property being "restricted securities", as such term is defined in Rule 144 under the Securities Act, or as a result of the sale of such Shares or Share Termination Delivery Property being subject to paragraph (c) of Rule 145 under the Securities Act) (such Shares or Share Termination Delivery Property, "**Restricted Shares**"), then delivery of such Restricted Shares shall be effected pursuant to either clause (i) or (ii) below at the election of Company, unless Dealer waives the need for registration/private placement procedures set forth in (i) and (ii) below. Notwithstanding the foregoing, solely in respect of any Daily Number of Warrants exercised or deemed exercised on any Expiration Date, Company shall, if applicable, elect, prior to the first Settlement Date for the first Expiration Date, a Private Placement Settlement or Registration Settlement for all deliveries of Restricted Shares for all such Expiration Dates which election shall be applicable to all Settlement Dates for such Warrants and the procedures in clause (i) or clause (ii) below shall apply for all such delivered Restricted Shares on an aggregate basis commencing after the final Settlement Date for such Warrants. The Calculation Agent shall make reasonable adjustments to settlement terms and provisions under this Confirmation to reflect a single Private Placement or Registration Settlement for such aggregate Restricted Shares delivered hereunder.

(i) If Company elects to settle the Transaction pursuant to this clause (i) (a "**Private Placement Settlement**"), then delivery of Restricted Shares by Company shall be effected in accordance with customary private placement procedures for private placements of equity offerings of substantially similar size reasonably acceptable to Dealer; *provided* that Company may not elect a Private Placement Settlement if, on the date of its election, it has taken, or caused to be taken, any action that would make unavailable either the exemption pursuant to Section 4(2) of the Securities Act for the sale by Company to Dealer (or any affiliate designated by Dealer) of the Restricted Shares or the exemption pursuant to Section 4(1) or Section 4(3) of the Securities Act for resales of the Restricted Shares by Dealer (or any such affiliate of Dealer). The Private Placement Settlement of such Restricted Shares shall include customary representations, covenants, blue sky and other governmental filings and/or registrations, indemnities to Dealer, due diligence rights (for Dealer or any designated buyer of the Restricted Shares by Dealer), opinions and certificates, and such other documentation as is customary for private placements of equity offerings of substantially similar size, all reasonably acceptable to Dealer. In the case of a Private Placement Settlement, Dealer shall determine the appropriate discount to the Share Termination Unit Price (in the case of settlement of Share Termination Delivery Units pursuant to paragraph (i) above) or any Settlement Price (in the case of settlement of Shares pursuant to paragraph 2 above) applicable to such Restricted Shares in a commercially reasonable manner to account for the lack of marketability and illiquidity of such Restricted Shares and appropriately adjust the number of such Restricted Shares to be delivered to Dealer hereunder; *provided* that in no event shall such number be greater than 2 times the Number of Warrants multiplied by the Warrant Entitlement (the "**Maximum Amount**"). Notwithstanding the Agreement or this Confirmation, the date of delivery of such Restricted Shares shall be the Exchange Business Day following notice by Dealer to Company, of such applicable discount and the number of Restricted Shares to be delivered pursuant to this clause (i). For the avoidance of doubt, delivery of Restricted Shares shall be due as set forth in the previous sentence and not be due on the Share Termination Payment Date (in the case of settlement of Share Termination Delivery Units pursuant to paragraph (i) above) or on the Settlement Date for such Restricted Shares (in the case of settlement in Shares pursuant to paragraph 2 above).

In the event Company shall not have delivered the full number of Restricted Shares otherwise applicable as a result of the proviso above relating to the Maximum Amount (such deficit, the "**Deficit Restricted Shares**"), Company shall be continually obligated to deliver, from time to time until the full number of Deficit Restricted Shares have been delivered pursuant to this paragraph, Restricted Shares when, and to the extent, that (i) Shares are repurchased, acquired or otherwise received by Company or any of its subsidiaries after the Trade Date (whether or not in exchange for cash, fair value or any other consideration), (ii) Company authorized any unissued Shares reserved for issuance in respect of other transactions prior to such date which prior to the relevant date become no longer so reserved and (iii) Company additionally authorizes any unissued Shares that are not reserved for other transactions. At such time as there may be Deficit Restricted Shares, Company shall promptly notify Dealer of the occurrence of any of the foregoing events (including the number of Shares subject to clause (i), (ii) or (iii) and the corresponding number of Restricted Shares to be delivered) and promptly deliver such Restricted Shares thereafter.

(ii) If Company elects to settle the Transaction pursuant to this clause (ii) (a "**Registration Settlement**"), then Company shall file and use its reasonable best efforts to make effective under the Securities Act a registration statement or supplement or amend an outstanding registration statement in form and substance reasonably satisfactory to Dealer, to cover the resale of such Restricted Shares (and any Company Make-whole Shares) in accordance with customary resale registration procedures for registered secondary offerings of a substantially similar size, including covenants, conditions, representations, underwriting discounts (if applicable), commissions (if applicable), indemnities due diligence rights, opinions and certificates, and such other documentation as is customary for equity resale underwriting agreements for registered secondary offerings of a substantially similar size, all reasonably acceptable to Dealer. If Dealer, in its good faith and reasonable discretion, is not satisfied with such procedures and documentation, Private Placement Settlement shall apply. If Dealer is satisfied with such procedures and documentation, it shall sell the Restricted Shares pursuant to such registration statement during a period (the "**Resale Period**") commencing on the Exchange Business Day following delivery of such Restricted Shares (and any Company Make-whole Shares) (which, for the avoidance of doubt, shall be (x) any Settlement Date in the case of an exercise of Warrants prior to the first Expiration Date pursuant to paragraph 2 above, (y) the Share Termination Payment Date in case of settlement in Share Termination Delivery Units pursuant to paragraph (i) above or (z) the Settlement Date in respect of the final Expiration Date for all Daily Number of Warrants) and ending on the earliest of (i) the Exchange Business Day on which Dealer completes the sale of all Restricted Shares or, in the case of settlement of Share Termination Delivery Units, a sufficient number of Restricted Shares so that the realized net proceeds of such sales exceed the Payment Obligation (as defined above) and (ii) the date upon which all Restricted Shares have been sold or transferred pursuant to Rule 144 (or similar provisions then in force) or Rule 145(d)(1) or (2) (or any similar provision then in force) under the Securities Act.

(iii) (A) If (ii) above is applicable and the Net Share Settlement Amount or the Payment Obligation, as applicable, exceeds the realized net proceeds from such resale, or if (i) above is applicable and the Freely Tradable Value (as defined below) of the Net Share Settlement Amount or the Payment Obligation (in each case as adjusted pursuant to (i) above), as applicable, exceeds the realized net proceeds from such resale, Company shall transfer to Dealer by the open of the regular trading session on the Exchange on the Exchange Trading Day immediately following the last day of the Resale Period a number of Shares ("**Company Make-whole Shares**") in an amount that, based on the Settlement Price on the last day of the Resale Period (as if such day was the "Valuation Date" for purposes of computing such Settlement Price), has a dollar value equal to the amount of such excess (the "**Company Additional Amount**"), or if Company so elects, an amount in cash equal to the Company Additional Amount. The Resale Period shall continue to enable the sale of the Company Make-whole Shares. If Company elects to pay the Additional Amount in Shares, the requirements and provisions for Registration Settlement or Private Placement Settlement, as the case may be, shall apply. This provision shall be applied successively until the Additional Amount is equal to zero. In no event shall Company deliver a number of Restricted Shares greater than the Maximum Amount.

If (ii) above is applicable and the realized net proceeds from such resale (including the sale of any Company Make-whole Shares) exceed the Net Share Settlement Amount or the Payment Obligation, as applicable, or if (i) above is applicable and the realized net proceeds from such resale (including the sale of

any Company Make-whole Shares) exceed the Freely Tradeable Value (as defined below) of the Net Share Settlement Amount or the Payment Obligation (in each case as adjusted pursuant to (i) above), as applicable, Dealer shall transfer to Company the amount of such excess (the "**Dealer Additional Amount**") in a number of Shares ("**Dealer Make-whole Shares**") that, based on the Settlement Price on the last day of the Resale Period (as if such day was the Valuation Date for purposes of computing such Settlement Price), has a value equal to the Dealer Additional Amount, or, at Company's option, in cash in an amount equal to the Dealer Additional Amount. The transfer of the Dealer Additional Amount shall be made (x) if in cash, by the open of the regular trading session on the Exchange on the Exchange Trading Day immediately following the last day of the Resale Period, and (y) if in Shares, one Settlement Cycle following the date Dealer is able, using commercially reasonable efforts, to purchase Dealer Make-whole Shares. This provision shall be applied successively until the Dealer Additional Amount is equal to zero.

"**Freely Tradeable Value**" means the value of the number of Shares delivered to Dealer which such Shares would have if they were freely tradeable (without prospectus delivery) upon receipt by Dealer, as determined by the Calculation Agent by commercially reasonable means.

(iv) Without limiting the generality of the foregoing, Company agrees that any Restricted Shares delivered to Dealer, as purchaser of such Restricted Shares, (i) may be transferred by and among Dealer and its affiliates and Company shall effect such transfer without any further action by Dealer and (ii) after the minimum "holding period" within the meaning of Rule 144(d) under the Securities Act has elapsed after any Settlement Date for such Restricted Shares, Company shall promptly remove, or cause the transfer agent for such Restricted Shares to remove, any legends referring to any such restrictions or requirements from such Restricted Shares upon delivery by Dealer (or such affiliate of Dealer) to Company or such transfer agent of seller's and broker's representation letters customarily delivered by Dealer in connection with resales of restricted securities pursuant to Rule 144 under the Securities Act, without any further requirement for the delivery of any certificate, consent, agreement, opinion of counsel, notice or any other document, any transfer tax stamps or payment of any other amount or any other action by Dealer (or such affiliate of Dealer).

If the Private Placement Settlement or the Registration Settlement shall not be effected as set forth in clauses (i) or (ii), as applicable, then failure to effect such Private Placement Settlement or such Registration Settlement shall constitute an Event of Default with respect to which Company shall be the Defaulting Party.

(k) *Limit on Beneficial Ownership*. Except as provided below in this paragraph (k), notwithstanding any other provision to the contrary in this Confirmation, in no event shall Dealer be entitled to receive, or shall be deemed to receive, Shares to the extent that, immediately upon giving effect to such receipt of such Shares,

(i) the Option Equity Percentage (as defined below) exceeds 4.9%,

(ii) Dealer, Dealer Group (as defined below) or any person whose ownership position would be aggregated with that of Dealer or Dealer Group (Dealer, Dealer Group or any such person, a "**Dealer Person**") under any relevant state corporate law or other state, federal or local laws, regulations or regulatory orders applicable to ownership of Shares ("**Applicable Laws**"), owns, beneficially owns, constructively owns, controls, holds the power to vote or otherwise meets a relevant definition of ownership in excess of a number of Shares equal to (x) the number of Shares that, in the good faith determination of the relevant Dealer Person, would give rise to materially burdensome reporting or registration obligations or other requirements (including obtaining prior approval by a state or federal regulator) of a Dealer Person under Applicable Laws (including, without limitation, "interested stockholder" or "acquiring person" status under Section 203 of the Delaware General Corporation Law, but excluding any report or filing required pursuant to Section 13 of the Exchange Act and the rules promulgated thereunder) and with respect to which such requirements have not been met or the relevant approval has not been received *minus* (y) 1.0% of the number of Shares outstanding on the date of determination,

(iii) the Maritime Law Ownership Percentage (as defined below) of the Maritime Law Dealer Group (as defined below) would be greater than 4.9% of the outstanding Shares, unless Dealer has established to the reasonable satisfaction of the Company that it (or the person designated to take delivery) is a citizen of the United States for purposes of the U.S. coastwise trade under the Maritime Laws (as defined below),

(iv) such Shares would reasonably be anticipated by the Company to be "Excess Shares" ("**Excess Shares**") as defined in the Company's Second Restated Certificate of Incorporation (the "**Certificate**") or

(v) such Shares, in the good faith determination of the Company, would cause the Company to cease to be qualified under Maritime Laws (as defined below) or Applicable Laws to own and operate vessels in the coastwise trade of the United States (each of clause (i) through (iv) above and this clause (v), an "**Ownership Limitation**").

If any delivery owed to Dealer hereunder is not made, in whole or in part, as a result of an Ownership Limitation, the Company's obligation to make such delivery shall not be extinguished and the Company shall make such delivery as promptly as practicable after, but in no event later than three Exchange Business Days after, Dealer gives notice to the Company that such delivery would not result in any of such Ownership Limitations being breached. Such notice by Dealer will include details sufficient to support the position taken by Dealer in such notice.

The "**Option Equity Percentage**" as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the sum of (i) the number of Shares that Dealer and any of its affiliates subject to aggregation with Dealer, for purposes of the "beneficial ownership" test under Section 13 of the Exchange Act, and all persons who may form a "group" (within the meaning of Rule 13d-5(b)(1) under the Exchange Act) with Dealer ("**Dealer Group**") "beneficially owns" (within the meaning of Section 13 of the Exchange Act) on such day, other than any Shares so owned as a hedge of the Transaction, and (ii) the product of the Number of Warrants and the Warrant Entitlement and (B) the denominator of which is the number of Shares outstanding on such day. "**Maritime Law Ownership Percentage**" means the ownership, as construed under the Maritime Laws, of Shares by Dealer or any person whose ownership would be aggregated with that of Dealer or Dealer's parent entity under the Maritime Laws (collectively, the "**Maritime Law Dealer Group**"). "**Maritime Laws**" means, collectively and without duplication, Chapters 121 and 505 of Title 46 of the United States Code and any successor or replacement statute thereto, and the regulations promulgated under such Title or successor or replacement statute or, to the extent remaining in force, under any predecessor statute, in each case as amended or supplemented from time to time.

The Company represents and warrants that, assuming the accuracy of any factual information regarding Dealer that is provided by Dealer to the Company upon the Company's request, any Shares delivered by the Company to Dealer pursuant to the Transaction shall not be Excess Shares, and the issuance and delivery of such Shares shall have been approved by the board of directors of the Company. If Dealer designates any person to receive any Shares pursuant to Section 9(t), clauses (iii), (iv) and (v) of this Section 9(k) shall apply as if such person were Dealer. If the Company is unable to deliver any Shares to Dealer as a result of this Section 9(k), notwithstanding Company's continuing obligation to deliver such Shares as described herein, the Company may at any time following the Settlement Date, upon one Exchange Business Day's prior written notice to Dealer, elect to deliver cash in lieu of any or all such Shares, in which case the Shares for which cash delivery has been so elected shall be valued by the Calculation Agent in a commercially reasonable manner over such time period as the Calculation Agent reasonably determines appropriate in light of the liquidity of the Shares at such time and applicable law and related regulations, policies and procedures. The Company's right to elect cash pursuant to the foregoing sentence shall be subject to the Company giving representations, warranties and covenants customary for transactions under Rule 10b5-1 under the Exchange Act and satisfactory to Dealer. The Company shall promptly notify Dealer if at any time either (i) any purported transfer of any shares of any class or series of capital stock of the Company is void and ineffective pursuant to Section 2 of Article Twelve of the Certificate or (ii) any shares of any class or series of capital stock of the Company are "Excess Shares" pursuant to Section 3 of Article Twelve of the Certificate. The Company covenants that it shall provide prompt written notice to Dealer upon having actual knowledge that more than 10% of the aggregate Shares outstanding are owned by persons other than citizens of the United States for purposes of the U.S. coastwise trade under the Maritime Laws and upon becoming aware of each additional 5% thereafter.

The Company shall provide Dealer with a copy of any filings submitted to any regulatory authority relating to the Company's or the Company's stockholders' citizenship under the Maritime Laws so long as Dealer (or any assignee of Dealer) has agreed to keep any such filings and the information contained therein confidential on terms reasonably acceptable to the Company and Dealer. Dealer acknowledges that Dealer will not have any rights as a

holder of the Company's common stock with respect to Shares, prior to the delivery thereof hereunder, that the Company is unable to deliver as a result of this Section 9(k). The Company acknowledges that, as a result of this Section 9(k), it will not treat Dealer (or any affiliate or designee of Dealer) as the owner, for any purpose (including, without limitation, for purposes of the Maritime Laws or Article Twelve of the Certificate), of Shares, prior to the delivery of such Shares hereunder, that the Company is unable to deliver as a result of this Section 9(k). For purposes of this Section 9(k), the term "Dealer" shall include any of the Dealer's permitted successors or assigns.

(l) *Share Deliveries*. Company acknowledges and agrees that, to the extent the holder of this Warrant is not then an affiliate, as such term is used in Rule 144 under the Securities Act, of Company and has not been such an affiliate of Company for 90 days (it being understood that Dealer will not be considered an affiliate of Company solely by reason of its receipt of or right to receive Shares pursuant to this Transaction), and otherwise satisfies all holding period and other requirements of Rule 144 of the Securities Act applicable to it, any delivery of Shares or Share Termination Delivery Property hereunder at any time after 6 months from the Trade Date (or 1 year from the Trade Date if, at such time, informational requirements of Rule 144(c) are not satisfied with respect to Company) shall be eligible for resale under Rule 144 of the Securities Act, and Company agrees to promptly remove, or cause the transfer agent for such Shares or Share Termination Delivery Property to remove, any legends referring to any restrictions on resale under the Securities Act from the certificates representing such Shares or Share Termination Delivery Property. Company further agrees and acknowledges that Dealer shall run a holding period under Rule 144 under the Securities Act with respect to the Warrants and/or any Shares or Share Termination Delivery Property delivered hereunder notwithstanding the existence of any other transaction or transactions between Company and Dealer relating to the Shares. Company further agrees that Shares or Share Termination Delivery Property delivered hereunder prior to the date that is 6 months from the Trade Date (or 1 year from the Trade Date, if, at such time, informational requirements of Rule 144(c) are not satisfied with respect to Company) may be freely transferred by and among Dealer and its affiliates, and Company shall effect such transfer without any further action by Dealer. Notwithstanding anything to the contrary herein, Company agrees that any delivery of Shares or Share Termination Delivery Property shall be effected by book-entry transfer through the facilities of DTC, or any successor depositary, if, at the time of delivery, the certificates representing such Shares or Share Termination Delivery Property would not contain any restrictive legend as described above. Notwithstanding anything to the contrary herein, to the extent the provisions of Rule 144 of the Securities Act or any successor rule are amended, or the applicable interpretation thereof by the Securities and Exchange Commission or any court changes after the Trade Date, including without limitation to lengthen or shorten the holding periods, the agreements of Company herein shall be deemed modified to the extent necessary, in the opinion of outside counsel of Company, to comply with Rule 144 of the Securities Act, including Rule 144, as in effect at the time of delivery of the relevant Shares or Share Termination Delivery Property.

(m) *Additional Termination Events*. (i) If within the period commencing on the Trade Date and ending on the first anniversary of the Premium Payment Date, Dealer reasonably determines that it is advisable to terminate a portion of the Transaction so that Dealer's related hedging activities will comply with applicable securities laws, rules or regulations, an Additional Termination Event shall occur in respect of which (1) Company shall be the sole Affected Party and (2) the Transaction shall be the sole Affected Transaction, and (ii) the Warrant Equity Percentage exceeds 15.9%. The "**Warrant 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 Warrants and the Warrant Entitlement and (2) the aggregate number of Shares underlying any other warrants purchased by Dealer from Company, and (B) the denominator of which is the number of Shares outstanding.

(n) *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 this Transaction. Each party (i) certifies that no representative, agent or attorney of the other 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 this Transaction, as applicable, by, among other things, the mutual waivers and certifications provided herein.

(o) *Tax Disclosure*. Effective from the date of commencement of discussions concerning the Transaction, each party and each of their respective 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) relating to such tax treatment and tax structure.

(p) *Maximum Share Delivery*. Notwithstanding any other provision of this Confirmation or the Agreement, in no event will Company be required to deliver more than the lesser of (i) the Maximum Amount of Shares in the aggregate to Dealer in connection with this Transaction and (ii) when aggregated with any Shares deliverable to Dealer under the Base Warrant Confirmation dated August 7, 2012 between the parties hereto, 2,816,620 Shares, subject to the provisions regarding Deficit Restricted Shares.

(q) *Status of Claims in Bankruptcy*. Dealer acknowledges and agrees that this Confirmation is not intended to convey to Dealer rights with respect to the Transaction that are senior to the claims of common stockholders in any U.S. bankruptcy proceedings of Company; *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 Company 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.

(r) *Securities Contract*. Each of Dealer and Company agrees and acknowledges that Dealer is one or more of a "financial institution" and "financial participant" within the meaning of sections 101(22) and 101(22A) of Title 11 of the United States Code (the "**Bankruptcy Code**"). The parties further agree and acknowledge (A) that this Confirmation is 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 is a "settlement payment" (as such term is defined in Section 741(8) of the Bankruptcy Code) or a "transfer" within the meaning of section 546 of the Bankruptcy Code, and (B) that is the parties are entitled to the protections afforded by, among other sections, section 362(b)(6), 362(b)(27), 362(o), 546(e), 546(j), 548(d)(2), 555 and 561 of the Bankruptcy Code.

(s) *Right to Extend*. Dealer may postpone any Exercise Date, Settlement Date or any other date of valuation or delivery with respect to some or all of the relevant Warrants (in which case the Calculation Agent may make appropriate adjustments to the relevant number of Warrants being exercised), if Dealer determines, in its good faith and commercially reasonable judgment based on the advice of counsel, that such action is advisable to preserve Dealer's Hedging Activity hereunder in light of existing liquidity conditions to enable Dealer to effect purchases of Shares in connection with its Hedging Activity hereunder in a manner that would, if Dealer were the Company or an affiliated purchaser of the Company, be in compliance with applicable legal and regulatory requirements.

(t) *Method of Delivery.* 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 Company, Dealer may designate any of its affiliates to purchase, sell, receive or deliver such Shares or other securities, or to 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 Company to the extent of any such performance.

(u) *Role of Agent*. Each party agrees and acknowledges that (i) J.P. Morgan Securities LLC, an affiliate of JPMorgan ("**JPMS**"), has acted solely as agent and not as principal with respect to the Transaction and (ii) JPMS has no obligation or liability, by way of guaranty, endorsement or otherwise, in any manner in respect of the Transaction (including, if applicable, in respect of the settlement thereof). Each party agrees it will look solely to the other party (or any guarantor in respect thereof) for performance of such other party's obligations under the Transaction.

(v) *Additional ISDA Schedule Terms*.

(i) "**Specified Entity**" means in relation to each of Dealer and Company for purposes of Sections 5(a)(v), 5(a)(vi), 5(a)(vii) and 5(b)(v) of the Agreement, not applicable.

(ii) "**Specified Transaction**" will have the meaning specified in Section 14 of the Agreement.

(iii) The "Cross-Default" provisions of Section 5(a)(vi) of the Agreement shall not apply to either party.

(iv) **Automatic Early Termination**. The "Automatic Early Termination" provision of Section 6(a) of the Agreement will not apply to Dealer and will not apply to Company.

(v) "**Termination Currency**" means United States Dollars ("**USD**").

(vi) **Consent to Recording**. Each party (i) consents to the monitoring or recording, at any time and from time to time, by the other party of any and all communications between officers or employees of the parties, (ii) waives any further notice of such monitoring or recording, and (iii) agrees to notify (and, if required by law, obtain the consent of) its officers and employees with respect to such monitoring or recording. Any such recording may be submitted in evidence to any court or in any Proceeding for the purpose of establishing any matters pertinent to this Transaction.

(vii) **Severability**. In the event any one or more of the provisions contained in this Confirmation or the Agreement shall be held illegal, invalid or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby.

(viii) **Deduction or Withholding for Tax.** So long as Company is organized under the laws of the United States or any State thereof, the provisions of Section 2(d)(i)(4) of the Agreement shall not apply to the Transaction.

(ix) **Part 2(b) of the ISDA Schedule—Payee Representation**:

For the purpose of Section 3(f) of this Agreement, Company makes the following representation to Dealer:

Company is a corporation established under the laws of the State of Delaware and is a U.S. person (as that term is defined in Section 7701(a)(30) of the Code).

For the purpose of Section 3(f) of this Agreement, Dealer makes the following representation to Company:

Dealer is a national banking association organized or formed under the laws of the United States and is a United States resident for federal income tax purposes.

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.

THE SECURITIES REPRESENTED BY THE CONFIRMATION HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED, OR ANY OTHER UNITED STATES FEDERAL OR STATE SECURITIES LAWS; SUCH SECURITIES MAY NOT BE SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF APPROPRIATE REGISTRATION UNDER SUCH SECURITIES LAWS OR EXCEPT IN A TRANSACTION EXEMPT FROM OR NOT SUBJECT TO THE REGISTRATION REQUIREMENTS OF SUCH SECURITIES LAWS.

Please confirm that the foregoing correctly sets forth the terms of the Transaction by signing in the space provided below and returning to Dealer a facsimile of the fully-executed Confirmation to Dealer at 1-866-886-4506 (Attention: EDG Marketing Support). Originals shall be provided for your execution upon your request.

Very truly yours,

J.P. MORGAN SECURITIES LLC,
as agent for JPMorgan Chase Bank, National Association

By: /s/ Jason Wood
Name: Jason Wood
Title: Managing Director

Accepted and confirmed as of the Trade Date:

HORNBECK OFFSHORE SERVICES, INC.

By: /s/ James O. Harp, Jr.
Name: James O. Harp, Jr.
Title: Executive Vice President and CFO

ANNEX A: Daily Number of Warrants

Expiration Date	Number of Warrants
Monday, December 02, 2019	7,428
Tuesday, December 03, 2019	7,428
Wednesday, December 04, 2019	7,428
Thursday, December 05, 2019	7,428
Friday, December 06, 2019	7,428
Monday, December 09, 2019	7,428
Tuesday, December 10, 2019	7,428
Wednesday, December 11, 2019	7,428
Thursday, December 12, 2019	7,428
Friday, December 13, 2019	7,428
Monday, December 16, 2019	7,428
Tuesday, December 17, 2019	7,428
Wednesday, December 18, 2019	7,428
Thursday, December 19, 2019	7,428
Friday, December 20, 2019	7,428
Monday, December 23, 2019	7,428
Tuesday, December 24, 2019	7,428
Thursday, December 26, 2019	7,428
Friday, December 27, 2019	7,428
Monday, December 30, 2019	7,428
Tuesday, December 31, 2019	7,428
Thursday, January 02, 2020	7,428
Friday, January 03, 2020	7,428
Monday, January 06, 2020	7,428
Tuesday, January 07, 2020	7,428
Wednesday, January 08, 2020	7,428
Thursday, January 09, 2020	7,428
Friday, January 10, 2020	7,428
Monday, January 13, 2020	7,428
Tuesday, January 14, 2020	7,428
Wednesday, January 15, 2020	7,428
Thursday, January 16, 2020	7,428
Friday, January 17, 2020	7,428
Tuesday, January 21, 2020	7,428
Wednesday, January 22, 2020	7,428
Thursday, January 23, 2020	7,428
Friday, January 24, 2020	7,428
Monday, January 27, 2020	7,428
Tuesday, January 28, 2020	7,428
Wednesday, January 29, 2020	7,457

Exhibit 4.13

Execution version

Wells Fargo Securities, LLC
as agent of Wells Fargo Bank, NA
375 Park Avenue
New York, NY 10152
Facsimile: (212) 214-5913
Telephone: (212) 214-6101

August 8, 2012

To: Hornbeck Offshore Services, Inc.
103 Northpark Boulevard, Suite 300
Covington, Louisiana, 70433
Attention: Sam Giberga, General Counsel
Facsimile No.: (985) 727-2006

Re: **Additional Warrants**

The purpose of this letter agreement (this "**Confirmation**") is to confirm the terms and conditions of the Transaction entered into between Wells Fargo Bank, National Association ("**Dealer**"), through its agent Wells Fargo Securities, LLC (the "**Agent**"), and Hornbeck Offshore Services, Inc. ("**Company**") on the Trade Date specified below (the "**Transaction**"). This Confirmation constitutes a "Confirmation" as referred to in the Agreement specified below.

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.

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 Company as to the terms of the Transaction to which this Confirmation relates. This Confirmation shall supplement, form a part of, and be subject to an agreement in the form of the ISDA 2002 Master Agreement (the "**Agreement**") as if Dealer and Company had executed an agreement in such form (but without any Schedule except for (i) the election of the laws of the State of New York as the governing law, and (ii) the election of US Dollars ("**USD**") as the Termination Currency, and (iii) the other provisions set forth in paragraph 9(w) below) on the Trade Date. In the event of any inconsistency between provisions of that Agreement and this Confirmation, this Confirmation will prevail for the purpose of the Transaction to which this Confirmation relates. The parties hereby agree that no Transaction other than the Transaction to which this Confirmation relates shall be governed by the Agreement.

2. The Transaction is a Warrant Transaction, which shall be considered a Share Option Transaction for purposes of the Equity Definitions. The terms of the particular Transaction to which this Confirmation relates are as follows:

General Terms:

Trade Date:	August 8, 2012
Effective Date:	August 13, 2012; *provided* that either Buyer or Seller may cancel all (but not less than all) the Warrants by notice to the

	other party prior to payment of the Premium on the Effective Date, in which case these Warrants shall never become effective and neither party shall have any obligation to the other party in respect of the Transaction.
Warrants:	Equity call warrants, each giving the holder the right to purchase one Share at the Strike Price, subject to the Settlement Terms set forth below. For the purposes of the Equity Definitions, each reference to a Warrant herein shall be deemed to be a reference to a Call Option.
Warrant Style:	European
Seller:	Company
Buyer:	Dealer
Shares:	The common stock of Company, par value USD 0.01 per Share (Exchange symbol “HOS”)
Number of Warrants:	For each Expiration Date, a number of Warrants set forth next to such an Expiration Date on Annex A hereto (the “**Daily Number of Warrants**”), subject to adjustment as provided herein.
Warrant Entitlement:	One Share per Warrant
Strike Price:	USD 68.5300. Notwithstanding anything to the contrary in the Agreement, this Confirmation or the Equity Definitions, in no event shall the Strike Price be subject to adjustment to the extent that, after giving effect to such adjustment, the Strike Price would be less than USD 39.16, except for any adjustment pursuant to the terms of this Confirmation and the Equity Definitions in connection with stock splits or similar changes to Company’s capitalization
Premium:	USD 1,929,480.00 (Premium per Warrant USD 8.6578).
Premium Payment Date:	The Effective Date.
Exchange:	New York Stock Exchange
Related Exchange(s):	All Exchanges
Procedures for Exercise:	
Expiration Time:	The Valuation Time
Expiration Date(s):	Each Scheduled Trading Day during the period from and including the First Expiration Date and to and including the 39th Scheduled Trading Day following the First Expiration Date shall be an “Expiration Date” for a number of Warrants equal to the Daily Number of Warrants on such date; *provided* that, notwithstanding anything to the contrary in the Equity Definitions, if any such date is a Disrupted Day, the Calculation Agent may determine that such date is a Disrupted

	Day in full or a Disrupted Day in part. If the Calculation Agent determines such Disrupted Day is a Disrupted day in full, the Daily Number of Warrants for such day shall be reduced to zero. If the Calculation Agent Determines that such Disrupted Day is a Disrupted Day in part, the Calculation Agent shall make adjustments, if applicable, to the Daily Number of Warrants or shall reduce such Daily Number of Warrants to zero for such date. In either case, the Calculation Agent shall designate a Scheduled Trading Day or a number of Scheduled Trading Days as the Expiration Date(s) for the remaining Daily Number of Warrants or a portion thereof for the originally scheduled Expiration Date; and *provided further* that if such Expiration Date has not occurred pursuant to this clause as of the eighth Scheduled Trading Day following the last scheduled Expiration Date under this Transaction, the Calculation Agent shall have the right to declare such Scheduled Trading Day to be the final Expiration Date and the Calculation Agent shall determine its good faith estimate of the fair market value for the Shares as of the Valuation Time on that eighth Scheduled Trading Day or on any subsequent Scheduled Trading Day, as the Calculation Agent shall determine using commercially reasonable means. Any Scheduled Trading Day on which, as of the date hereof, the Exchange is scheduled to close prior to its normal close of trading shall be deemed not to be a Scheduled Trading Day; if a closure of the Exchange prior to its normal close of trading on any Scheduled Trading Day is scheduled (i) following the date hereof and (ii) on or prior to the Scheduled Trading Day that is at least one Scheduled Trading Day before such Scheduled Trading Day, then such Scheduled Trading Day shall be deemed to be a Disrupted Day in full. If a closure of the Exchange prior to its normal close of trading on any Scheduled Trading Day is scheduled on such Scheduled Trading Day, such Scheduled Trading Day shall be deemed to be a Disrupted Day in part.
First Expiration Date:	Monday, December 2, 2019 (or if such day is not a Scheduled Trading Day, the next following Scheduled Trading Day), subject to Market Disruption Event below.
Multiple Exercise:	Applicable
Minimum Number of Warrants:	1
Maximum Number of Warrants:	All Warrants remaining unexercised as of the remaining Exercise Date(s).
Automatic Exercise:	Applicable; and means that a number of Warrants (as adjusted pursuant to the terms hereof) for each Expiration Date equal to the Daily Number of Warrants (as adjusted pursuant to the terms hereof) for such Expiration Date will be deemed to be automatically exercised; *provided* that “In-the-Money” means that the Settlement Price for such Expiration Date exceeds the Strike Price for such Expiration Date; and *provided further* that all references in Section 3.4(b) of the Equity Definitions to “Physical Settlement” shall be read as references to “Net Share Settlement”.

Market Disruption Event:	Section 6.3(a)(ii) of the Equity Definitions is hereby amended by replacing clause (ii) in its entirety with "(ii) an Exchange Disruption, or" and inserting immediately following clause (iii) the phrase "; in each case that the Calculation Agent determines is material."
Valuation:	
Valuation Time:	Scheduled Closing Time; *provided* that if the principal trading session is extended, the Calculation Agent shall determine the Valuation Time in its reasonable discretion.
Valuation Date:	Each Exercise Date.
Settlement Terms:	
Settlement Method Election:	Applicable; *provided* that the same Settlement Method shall apply to each Warrant under the Transaction; and *provided further* that references to "Physical Settlement" in Section 7.1 of the Equity Definitions shall be replaced with "Net Share Settlement"; and *provided further* that Company may elect Cash Settlement only if at the time of such election it provides to Dealer a written statement that the representations contained in paragraph 8(A)(c) below are true and correct as of and as if made on the date of such election.
Electing Party:	Company
Settlement Method Election Date:	No less than 10 Scheduled Trading Days prior to the First Expiration Date.
Default Settlement Method:	Net Share Settlement
Settlement Currency:	USD
Cash Settlement Payment Date:	Three (3) Currency Business Days after the Valuation Date.
Net Share Settlement:	If Net Share Settlement is applicable to the Transaction, on the relevant Settlement Date, Company shall deliver to Dealer the Share Delivery Quantity of Shares for such Settlement Date to the account specified herein free of payment through the Clearance System.
Share Delivery Quantity:	For any Settlement Date, a number of Shares, as calculated by the Calculation Agent, equal to the Net Share Settlement Amount for such Settlement Date divided by the Settlement Price on the Valuation Date in respect of such Settlement Date, rounded down to the nearest whole number plus any Fractional Share Amount.
Net Share Settlement Amount:	For any Settlement Date, an amount equal to the *product* of (i) the Number of Warrants exercised or deemed exercised on the relevant Exercise Date, (ii) the Strike Price Differential for such Exercise Date *and* (iii) the Warrant Entitlement.

Option Cash Settlement Amount	For any Cash Settlement Payment Date, an amount equal to the *product* of (i) the Number of Warrants exercised or deemed exercised on the relevant Exercise Date, (ii) the Strike Price Differential for such Exercise Date and (iii) the Warrant Entitlement.
Settlement Price:	For any Valuation Date, the per Share volume-weighted average price as displayed under the heading "Bloomberg VWAP" on Bloomberg page "HOS <EQUITY> AQR" (or any successor thereto) in respect of the period from the scheduled opening time of the Exchange to the Scheduled Closing Time on such Valuation Date (or if such volume-weighted average price is unavailable, the market value of one Share on such Valuation Date, as determined by the Calculation Agent using a volume-weighted method). Notwithstanding the foregoing, if (i) any Expiration Date is a Disrupted Day and (ii) the Calculation Agent determines that such Expiration Date shall be an Expiration Date for fewer than the Daily Number of Warrants, as described above, then the Settlement Price for the relevant Valuation Date shall be the volume-weighted average price per Share on such Valuation Date on the Exchange, as determined by the Calculation Agent based on such sources as it deems appropriate using a volume-weighted methodology, for the portion of such Valuation Date for which the Calculation Agent determines there is no Market Disruption Event.
Settlement Date(s):	As determined in reference to Section 9.4 of the Equity Definitions, subject to paragraph 9(j)(i) hereof.
Other Applicable Provisions:	The provisions of Sections 9.1(c), 9.8, 9.9, 9.11, 9.12 and 10.5 of the Equity Definitions will be applicable (except that the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by excluding any representations therein relating to restrictions, obligations, limitations or requirements under applicable securities laws as a result of the fact that Company is the Issuer of the Shares and except that all references in such provisions to "Physically-Settled" shall be read as references to "Net Share Settled"). "Net Share Settled" in relation to any Warrant means that Net Share Settlement is applicable to that Warrant.

3. Additional Terms applicable to the Transaction:

Adjustments applicable to the Warrants:

Method of Adjustment:	Calculation Agent Adjustment. For the avoidance of doubt, in making any adjustments under the Equity Definitions, the Calculation Agent may make adjustments, if any, to any one or more of the Strike Price, the Number of Warrants, the Daily Number of Warrants and the Warrant Entitlement. Notwithstanding the foregoing, any cash dividends or distributions on the Shares, whether or not extraordinary, shall be governed by paragraph 9(f) of this Confirmation in lieu of Article 10 or Section 11.2(c) of the Equity Definitions.

Extraordinary Events applicable to the Transaction:

New Shares:	Section 12.1(i) of the Equity Definitions is hereby amended by deleting the text in clause (i) in its entirety and replacing it with the phrase "publicly quoted, traded or listed on any of the New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or their respective successors)".
Consequence of Merger Events:	
Share-for-Share:	Modified Calculation Agent Adjustment
Share-for-Other:	Cancellation and Payment (Calculation Agent Determination)
Share-for-Combined:	Cancellation and Payment (Calculation Agent Determination); *provided* that Dealer may elect, in its commercially reasonable judgment, Component Adjustment (Calculation Agent Determination).
Consequence of Tender Offers:	
Tender Offer:	Applicable; *provided however* that if an event occurs that constitutes both a Tender Offer under Section 12.1(d) of the Equity Definitions and Additional Termination Event under paragraph 9(g)(iii)(C) of this Confirmation, Dealer may elect, in its commercially reasonable judgment, whether the provisions of Section 12.3 of the Equity Definitions or paragraph 9(g)(iii)(C) of this Confirmation will apply.
Share-for-Share:	Modified Calculation Agent Adjustment
Share-for-Other:	Modified Calculation Agent Adjustment
Share-for-Combined:	Modified Calculation Agent Adjustment
Nationalization, Insolvency or Delisting:	Cancellation and Payment (Calculation Agent Determination); *provided* that, for purposes of Section 12.6(a)(iii) of the Equity Definitions, it will 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), a Delisting shall not have occurred and such exchange or quotation system shall thereafter be deemed to be the Exchange.
Additional Disruption Events:	
Change in Law:	Applicable; *provided* that Section 12.9(a)(ii) of the Equity Definitions is hereby amended replacing the word "Shares" where it appears in clause (X) thereof with the words "Hedge Position".

Failure to Deliver:	Applicable
Insolvency Filing:	Applicable
Hedging Disruption:	Applicable; *provided* that Section 12.9(a)(v) of the Equity Definitions is hereby modified by inserting the following two phrases at the end of such Section: "The term "equity price risk" shall be deemed to include stock price and volatility risk. Any such transactions or assets referred to in phrases (A) or (B) above must be available on commercially reasonable pricing terms."
Increased Cost of Hedging:	Not Applicable
Loss of Stock Borrow:	Applicable
Maximum Stock Loan Rate:	200 basis points
Increased Cost of Stock Borrow:	Applicable
Initial Stock Loan Rate:	25 basis points, as adjusted by the Calculation Agent to reflect any subsequent Price Adjustment due to an Increased Cost of Stock Borrow.
Hedging Party:	Dealer or an affiliate of Dealer that is involved in the hedging of this Transaction for all applicable Additional Disruption Events. Section 13.2(b) of the Equity Definitions is hereby amended by adding the words "(or an Affiliate of such party)" following the words "by a party" in the third line thereof.
Determining Party:	Dealer for all applicable Extraordinary Events
Non-Reliance:	Applicable
Agreements and Acknowledgments Regarding Hedging Activities:	Applicable
Additional Acknowledgments:	Applicable

4. Calculation Agent: Dealer, whose judgments, determinations and calculations shall be made in good faith and in a commercially reasonable manner. Following any determination or calculation by the Calculation Agent hereunder, upon a request by Company, the Calculation Agent shall promptly (but in any event within three Scheduled Trading Days) provide to Company by e-mail to the e-mail address provided by Company 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 determination or calculation (including any assumptions used in making such determination or calculation), it being understood that the Calculation Agent shall not be obligated to disclose any proprietary models used by it for such determination or calculation.

5. Account Details:

(a) Account for payments to Company:	Capital One, N.A. New Orleans, LA ABA 065-000-090

	For credit to: Hornbeck Offshore Services, Inc. 103 Northpark Blvd., Suite 300 Covington, LA 70433 Account 812519859
Account for delivery of Shares to Company:	To be provided under separate cover by Company.
(b) Account for payments to Dealer:	Wells Fargo Bank, N.A. ABA 121-000-248 Internal Acct No. 01020304464228 A/C Name: WFB Equity Derivatives DTC Number: 2072 Agent ID: 52196 Institution ID: 52196

6. Offices:

The Office of Company for the Transaction is:	Inapplicable, Company is not a Multibranch Party.
The Office of Dealer for the Transaction is:	Charlotte.

7. Notices: For purposes of this Confirmation:

(a) Address for notices or communications to Company:	Hornbeck Offshore Services, Inc. 103 Northpark Boulevard, Suite 300 Covington, Louisiana, 70433 Attention: Sam Giberga, General Counsel Facsimile No.: (985) 727-2006
(b) Address for notices or communications to Dealer:	Wells Fargo Bank, National Association 375 Park Avenue New York, NY 10152 Attention: Derivatives Structuring Group Telephone: 212-214-6101 Facsimile: 212-214-5913 Trader's Contact Information: Mark Kohn or Head Trader Telephone: 212-214-6089 Facsimile: 212-214-8914

8. Representations, Warranties and Agreements of Company

(A) The Company hereby represents and warrants to, and agrees with, Dealer that:

(a) The Shares initially issuable upon exercise of the Warrant by the net share settlement method (the "**Warrant Shares**") have been reserved for issuance by all required corporate action of Company. The Warrant Shares have been duly authorized and, when delivered against payment therefor (which may include Net Share

Settlement in lieu of cash) and otherwise as contemplated by the terms of the Warrant following the exercise of the Warrant in accordance with the terms and conditions of the Warrant, will be validly issued, fully-paid and non-assessable, and the issuance of the Warrant Shares will not be subject to any preemptive or similar rights;

(b) Company is an "eligible contract participant" (as such term is defined in the Commodity Exchange Act, as amended (the "**CEA**"));

(c) Company is not, on the date hereof, in possession of any material non-public information with respect to Company;

(d) Without limiting the generality of Section 13.1 of the Equity Definitions, Company acknowledges that Dealer is not making any representations or warranties 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, 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 under FASB's Liabilities & Equity Project;

(e) Prior to or on the Trade Date, Company shall deliver to Dealer a resolution of Company's board of directors authorizing the Transaction;

(f) Company is not, and after giving effect to 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;

(g) On the Trade Date (A) the assets of Company at their fair valuation exceed the liabilities of Company, including contingent liabilities, (B) the capital of Company is adequate to conduct the business of Company and (C) Company has the ability to pay its debts and obligations as such debts mature and does not intend to, or does not believe that it will, incur debt beyond its ability to pay as such debts mature;

(h) Company understands that no obligations of Dealer to it hereunder will be entitled to the benefit of deposit insurance and that such obligations will not be guaranteed by any affiliate of Dealer or any governmental agency;

(i) During the period starting on the first Expiration Date and ending on the last Expiration Date (the "**Settlement Period**"), the Shares or securities that are convertible into, or exchangeable or exercisable for Shares, are not, and shall not be, subject to a "restricted period," as such term is defined in Regulation M ("**Regulation M**") under the Securities Exchange Act of 1934, as amended ("**Exchange Act**") and (B) Issuer shall not engage in any "distribution," as such term is defined in Regulation M, other than a distribution meeting the requirements of the exceptions set forth in sections 101(b)(10) and 102(b)(7) of Regulation M, until the second Exchange Business Day immediately following the Settlement Period;

(j) Prior to the Trade Date, the Company has not taken any action which is designed to or which has constituted or which might have been expected to cause or result in stabilization or manipulation of the price of any security of the Company in connection with the offering of the Convertible Notes;

(k) None of the Company or any of its subsidiaries is in violation of its certificate of incorporation or certificate of formation, or its bylaws or limited liability company agreement (or other organizational documents), or in default in the performance or observance of any material obligation, covenant or condition contained in any material indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which it is a party or by which it or any of its properties may be bound, other than such defaults that individually or in the aggregate would not have a Material Adverse Effect on this Transaction or Dealer's rights or obligations relating to this Transaction. "**Material Adverse Effect**" means any change in the capital stock, increase in long-term debt or any decreases in consolidated net current assets or stockholders' equity of the Company or any of its subsidiaries or any material adverse change, or any development involving a prospective material adverse change, in or affecting the general affairs, management, current or future consolidated financial position, stockholders' equity or results of operations of the Company and its subsidiaries taken as a whole;

(l) (A) Company is acting for its own account, and it has made its own independent decisions to enter into the Transaction and as to whether the Transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary, (B) Company is not relying on any communication (written or oral) of Dealer or any of its affiliates as investment advice or as a recommendation to enter into the Transaction (it being understood that information and explanations related to the terms and conditions of the Transaction shall not be considered investment advice or a recommendation to enter into the Transaction) and (C) no communication (written or oral) received from Dealer or any of its affiliates shall be deemed to be an assurance or guarantee as to the expected results of the Transaction;

(m) Company understands, agrees and acknowledges that Dealer has no obligation or intention to register the Transaction under the Securities Act of 1933, as amended (the "**Securities Act**"), any state securities law or other applicable federal securities law;

(n) Company shall use its reasonable best efforts to have the Warrant Shares duly listed, subject to notice of issuance, on the New York Stock Exchange;

(o) Company shall not take any action to decrease the number of Available Shares below the Maximum Amount (each as defined below);

(p) The assets used in the Transaction (1) are not assets of any "plan" (as such term is defined in Section 4975 of the United States 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;

(q) During the Settlement Period and on any other Exercise Date, neither Company nor any "affiliate" or "affiliated purchaser" (each as defined in Rule 10b-18 under the Exchange Act ("**Rule 10b-18**")) shall directly or indirectly (including, without limitation, by means of any cash-settled or other derivative instrument) purchase, offer to purchase, place any bid or limit order that would effect a purchase of, or commence any tender offer relating to, any Shares (or an equivalent interest, including a unit of beneficial interest in a trust or limited partnership or a depository share) or any security convertible into or exchangeable or exercisable for Shares, except through Dealer; and

(r) Company agrees that it (A) will not during the Settlement Period make, or permit to be made, any public announcement (as defined in Rule 165(f) under the Securities Act) of any Merger Transaction or potential Merger Transaction unless such public announcement is made prior to the opening or after the close of the regular trading session on the Exchange for the Shares; (B) shall promptly (but in any event prior to the next opening of the regular trading session on the Exchange) notify Dealer following any such announcement that such announcement has been made; and (C) shall promptly (but in any event prior to the next opening of the regular trading session on the Exchange) provide Dealer with written notice specifying (i) Company's average daily Rule 10b-18 Purchases (as defined in Rule 10b-18) during the three full calendar months immediately preceding the announcement date that were not effected through Dealer or its affiliates and (ii) the number of Shares purchased pursuant to the proviso in Rule 10b-18(b)(4) under the Exchange Act for the three full calendar months preceding the announcement date. Such written notice shall be deemed to be a certification by Company to Dealer that such information is true and correct. In addition, Company shall promptly notify Dealer of the earlier to occur of the completion of such transaction and the completion of the vote by target shareholders. "**Merger Transaction**" means any merger, acquisition or similar transaction involving a recapitalization as contemplated by Rule 10b-18(a)(13)(iv) under the Exchange Act.

(B) Each party makes to the other the representations and warranties set forth in Sections 3(a) through (f) of the Agreement with respect to the Agreement as supplemented by this Confirmation; *provided* that Dealer makes the representation and warranty set forth in Section 3(f) and Company makes the representation and warranty set forth in Section 3(e). In addition, each of Dealer and Company acknowledges that the offer and sale of the Transaction to it is intended to be exempt from registration under the Securities Act, by virtue of Section 4(2) thereof. Accordingly, Dealer represents and warrants to Company that (i) it has the financial ability to bear the economic risk of its investment in the Transaction and is able to bear a total loss of its investment and its

investments in and liabilities in respect of the Transaction, which it understands are not readily marketable, are not disproportionate to its net worth, and it is able to bear any loss in connection with the Transaction, including the loss of its entire investment in the Transaction, (ii) it is an "accredited investor" as that term is defined in Regulation D as promulgated under the Securities Act, (iii) it is entering into the Transaction for its own account without a view to the distribution or resale thereof, (iv) the assignment, transfer or other disposition of the Transaction has not been and will not be registered under the Securities Act and is restricted under the Securities Act and state securities laws, (v) its financial condition is such that it has no need for liquidity with respect to its investment in the Transaction and no need to dispose of any portion thereof to satisfy any existing or contemplated undertaking or indebtedness and is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of the Transaction.

9. Other Provisions:

(a) *Opinions*. Company shall deliver an opinion of counsel, dated as of the Trade Date, to Dealer with respect to the matters set forth in Section 3(a) of the Agreement and Section 8(A)(f) of this Confirmation; *provided* that such opinion of counsel may contain customary exceptions and qualifications, including, without limitation, exceptions and qualifications relating to indemnification provisions.

(b) *Repurchase Notices*. Company shall, on any day on which Company 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 Notice Percentage as determined on such day is (i) greater than 4.5% and (ii) greater by 0.5% than the Notice Percentage included in the immediately preceding Repurchase Notice (or, in the case of the first such Repurchase Notice, greater than the Notice Percentage as of the date hereof). The "**Notice Percentage**" as of any day is the fraction, expressed as a percentage, the numerator of which is the product of the Number of Warrants and the Warrant Entitlement and the denominator of which is the number of Shares outstanding on such day.

(c) *Regulation M*. Company is not on the date hereof engaged in a distribution, as such term is used in Regulation M under the Securities Exchange Act, of any securities of Company, other than a distribution meeting the requirements of the exception set forth in Rules 101(b)(10) and 102(b)(7) of Regulation M. Company shall not, until the second Scheduled Trading Day immediately following the Trade Date, engage in any such distribution.

(d) *No Manipulation*. Company is not entering into this 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 and Assignment*. Subject to applicable law, Dealer may transfer and assign all of its rights and obligations hereunder and under the Transaction and Agreement, in whole or in part, without the consent of Company (1) to any affiliate of Dealer of credit quality at least equivalent to that of Dealer as of the Trade Date or to any other affiliate of Dealer with respect to which Company shall have received a full guaranty of such affiliate's obligations from Dealer in form and substance reasonably satisfactory to Company or (2) any third party with a rating (or whose guarantor has a rating) for its long term, unsecured and unsubordinated indebtedness equal to the Required Rating, in each case, if (x) an Event of Default, Potential Event of Default or Termination Event will not occur as a result of such transfer or assignment and (y) as a result of such transfer or assignment, Company will not be required to pay the transferee on any payment date an amount under Section 2(d)(i)(4) of the Agreement, if at all applicable, greater than an amount that Company would have been required to pay to Dealer in the absence of such transfer or assignment. The Company may not transfer or assign any of its rights or obligations under the Transaction or the Agreement without the prior written consent of Dealer. "**Required Rating**" means a rating of A-or better by Standard & Poor's Ratings Services or its successor ("**S&P**"), or A3 or better by Moody's Investors Service, Inc. or its successor ("**Moody's**") or, if either S&P or Moody's ceases to rate such debt, at least an equivalent rating or better by a substitute rating agency mutually agreed by Counterparty and Dealer.

(f) *Dividends*. If at any time during the period from and including the Trade Date, to but excluding the final Expiration Date, an ex-dividend date for a cash dividend occurs with respect to the Shares (an "**Ex-Dividend Date**"), then the Calculation Agent will adjust the Strike Price and/or the Number of Warrants to preserve the fair value of the Transaction, after taking into account such dividend, of the Warrants representing the aggregate Daily Number of Warrants for all Expiration Dates occurring on or after such Ex-Dividend Date.

(g) *Additional Provisions*.

(i) *Amendments to the Equity Definitions*:

(A) Section 11.2(a) of the Equity Definitions is hereby amended by deleting the words "that may have a diluting or concentrative" and replacing them with the words "that may have a material".

(B) Section 11.2(c) of the Equity Definitions is hereby amended by (x) deleting the words "diluting or concentrative" and (y) deleting the phrase "(provided that no adjustments will be made to account solely for changes in volatility, expected dividends, stock loan rate or liquidity relative to the relevant Shares)" and replacing it with the phrase "(and, for the avoidance of doubt, adjustments may be made to account solely for changes in volatility, expected dividends, stock loan rate or liquidity relative to the relevant Shares)."

(C) Section 11.2(e)(vii) of the Equity Definitions is hereby amended by deleting the words "that may have a diluting or concentrative" and replacing them with the word "that is the result of a corporate event involving the Company and that may have a material"; and adding the phrase "or Warrants" at the end of the sentence.

(D) Section 12.9(b)(iv) of the Equity Definitions is hereby amended by:

(x) deleting (1) subsection (A) in its entirety, (2) the phrase "or (B)" following subsection (A) and (3) the phrase "in each case" in subsection (B); and

(y) deleting the phrase "neither the Non-Hedging Party nor the Lending Party lends Shares in the amount of the Hedging Shares or" in the penultimate sentence.

(ii) *Announcement Event*. If an Announcement Date occurs in respect of a Merger Event or Tender Offer (such occurrence, an "Announcement Event"), then on the earliest to occur of the Expiration Date, the date occurring a commercially reasonable period of time after the relevant Announcement Cessation Date, an Early Termination Date or other date of cancellation (the "Announcement Event Adjustment Date") in respect of each Warrant, the Calculation Agent will determine the cumulative economic effect on such Warrant of the Announcement Event and the Announcement Cessation Date, if any (without duplication in respect of any other adjustment or cancellation valuation made pursuant to the Equity Definitions, regardless of whether the Announcement Event actually results in a Merger Event or Tender Offer, and taking into account such factors as the Calculation Agent shall determine, including, without limitation, stock price movement, changes in volatility, expected dividends, stock loan rate or liquidity relevant to the Shares or the Transaction whether prior to or after the Announcement Event or for any period of time, including, without limitation, the period from the Announcement Event to the relevant Announcement Event Adjustment Date). If the Calculation Agent determines that such cumulative economic effect on any Warrant is material, then on the Announcement Event Adjustment Date for such Warrant, the Calculation Agent shall make such adjustment to the exercise, settlement, payment or any other terms of such Warrant as the Calculation Agent determines appropriate to account for such cumulative economic effect, which adjustment shall be effective immediately prior to the Announcement Event Adjustment Date.

"**Announcement Cessation Date**" means, in respect of an Announcement Event, (i) in the case of an Announcement Event relating to an intention to engage in a transaction that, if completed, would lead to a Merger Event, the date of the first public announcement by the Issuer, any potential counterparty to such transaction or any of their agents or affiliates of its withdrawal from, or the discontinuation of, such transaction, or (ii) in the case of an Announcement Event relating to an intention to purchase or otherwise obtain Shares that, if completed, would lead to a Tender Offer, the date of the first public announcement by

any potential offeror in respect of such Tender Offer or any of their agents or affiliates of its withdrawal from, or the discontinuation of, such purchase or other acquisition of Shares. If any such announcement is made after the actual closing time for the regular trading session of on the relevant Exchange, without regard to any after hours or any other trading outside of such regular trading session hours, the Announcement Cessation Date shall be deemed to be the next following Scheduled Trading Day; *provided* that, for the avoidance of doubt, the occurrence of an Announcement Cessation Date with respect to any transaction shall not preclude the occurrence of a later Announcement Date with respect to such transaction. For purposes hereof, the definition of "Announcement Date" in Section 12.1 of the Equity Definitions shall be amended by (i) replacing the word "leads to the" in the third and the fifth lines thereof with the words ", if completed, would lead to a"; (ii) replacing the words "voting shares" in the fifth line thereof with the word "Shares"; (iii) inserting the words "by any entity" after the word "announcement" in the second and the fourth lines thereof; (iv) replacing the words "a firm" with the word "any bona fide" in the second and fourth lines thereof; (v) inserting the words "or to explore the possibility of engaging in" after the words "engage in" in the second line thereto; and (vi) inserting the words "or to explore the possibility of purchasing or otherwise obtaining" after the word "obtain" in the fourth line thereto.

(iii) Notwithstanding anything to the contrary in this Confirmation, upon the occurrence of one of the following events, with respect to this Transaction, (1) Dealer shall have the right to designate such event an Additional Termination Event and designate an Early Termination Date pursuant to Section 6(b) of the Agreement, and (2) Company shall be deemed the sole Affected Party and the Transaction shall be deemed the sole Affected Transaction:

(A) the consummation of (i) any binding share exchange, consolidation or merger of Company pursuant to which the Shares will be converted into cash, securities or other property; or (ii) any sale, lease or other transfer in one transaction or a series of transactions of all of the consolidated assets of Company and its subsidiaries, taken as a whole, to any person other than one of Company's subsidiaries; *provided*, *however*, that a transaction in which the holders of more than 50% of all classes of common equity of Company 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 any direct or indirect parent thereof immediately after the consummation of such transaction shall not be an Additional Termination Event;

(B) There is a default by Company under any of its Public Indebtedness under which there may be outstanding in excess of $25 million, whether such Public Indebtedness now exists or shall hereafter be created, resulting in such Public Indebtedness becoming or being declared due and payable; "**Public Indebtedness**" shall mean any indebtedness of the Company for money borrowed under notes, bonds or similar instruments offered and sold by the Company in an offering registered with the Securities and Exchange Commission or pursuant to Rule 144A under the Securities Act;

(C) Any "person" or "group" within the meaning of Section 13(d) of the Exchange Act other than Company, any of its subsidiaries or its employee benefit plans, files a Schedule TO or any schedule, form or report under the Exchange Act disclosing that such person or group has become the direct or indirect ultimate "beneficial owner", as defined in Rule 13d-3 under the Exchange Act, of the common equity of Company representing more than 50% of the ordinary voting power of such common equity;

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

(E) the Shares (or other common stock or depositary shares or receipts in respect thereof) cease to be listed or quoted on any of the New York Stock Exchange, The NASDAQ Global Select Market, The NASDAQ Global Market or any other national securities exchange or automated quotation system (or any of their respective successors) for a period of 30 consecutive scheduled trading days;

(F) Dealer, despite using commercially reasonable efforts, is unable or reasonably determines based on the advice of counsel that it is illegal or inadvisable, to hedge its obligations pursuant to this Transaction in the public market without registration under the Securities Act or as a result of any legal, regulatory or self-regulatory requirements or related policies and procedures (whether or not such requirements, policies or procedures are imposed by law or have been voluntarily adopted by Dealer).

Notwithstanding any provision of paragraph 9(g)(iii)(A) or (C), however, an Additional Termination Event will not be deemed to have occurred if 90% of the consideration received or exchanged by common stockholders of Company (excluding cash payments for fractional shares and cash payments made pursuant to dissenters' appraisal rights), in connection with the transaction or transactions otherwise constituting the Additional Termination Event consists of shares of common stock or depositary shares or receipts in respect thereof traded on any of the New York Stock Exchange, The NASDAQ Global Select Market, The NASDAQ Global Market or any other national securities exchange or automated quotation system (or any of their respective successors) or which will be so traded when issued or exchanged in connection with such transaction or transactions ("**Publicly Traded Securities**") and as a result of such transaction or transactions the Convertible Notes (as defined in the Purchase Agreement) become convertible into cash, such Publicly Traded Securities or a combination of cash and such Publicly Traded Securities.

(h) *No Collateral or Setoff*. Notwithstanding any provision of the Agreement or any other agreement between the parties to the contrary, the obligations of Company hereunder are not secured by any collateral. In addition, obligations under this Transaction shall not be netted, recouped or set off (including pursuant to Section 6 of the Agreement) against any other obligations of the parties, whether arising under the Agreement, this Confirmation, under any other agreement between the parties hereto, by operation of law or otherwise, and no other obligations of the parties shall be netted, recouped or set off (including pursuant to Section 6 of the Agreement) against obligations under the Transaction, whether arising under the Agreement, this Confirmation, under any other agreement between the parties hereto, by operation of law or otherwise, and each party hereby waives any such right of setoff, netting or recoupment; provided that both parties agree that subparagraph (ii) of Section 2(c) of the Agreement shall apply to the Transaction.

(i) *Alternative Calculations and Payment on Early Termination and on Certain Extraordinary Events*. If, in respect of this Transaction, an amount is payable by Company to Dealer, (i) pursuant to Sections 12.2, 12.3, 12.6, 12.7 or 12.9 of the Equity Definitions (except in the event of an Insolvency, Nationalization, Tender Offer or Merger Event in which the consideration or proceeds to be paid to holders of shares consists solely of cash) or (ii) pursuant to Section 6(d)(ii) of the Agreement (except in the event of an Event of Default in which Company is the Defaulting Party or a Termination Event in which Company is the Affected Party, other than an Event of Default of the type described in (x) Section 5(a)(iii), (v), (vi), (vii) or (viii) of the Agreement or (y) a Termination Event of the type described in Section 5(b)(i), (ii), (iii), (iv), (v) or (vi) of the Agreement, in the case of both (x) and (y), resulting from an event or events outside Company's control) (a "**Payment Obligation**"), Company shall satisfy any such Payment Obligation by the Share Termination Alternative (as defined below), unless Company elects to satisfy any such Payment Obligation by delivering cash (in which case the provisions of Sections 12.2, 12.3, 12.6, 12.7 or 12.9 of the Equity Definitions or Section 6(d)(ii) of the Agreement, as the case may be, shall apply in lieu of the provisions of this paragraph 9(i)), by giving irrevocable telephonic notice to Dealer, confirmed in writing within one Scheduled Trading Day, no later than 12:00 p.m. New York local 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 where such notice shall include a representation and warranty from Company that it is not, as of the date of the telephonic notice and the date of such written notice, aware of any "material non-public information" (within the meaning of Section 10(b) of the Exchange Act and the rules promulgated thereunder) concerning itself or the Shares. Notwithstanding the foregoing, satisfaction of a Payment Obligation in the Share Termination Alternative as set forth in this clause shall only apply to this Transaction and, notwithstanding anything to the contrary in the Agreement, (1) separate amounts shall be calculated with respect to (a) the Transaction and (b) all other Transactions under the Agreement, and (2) such separate amounts shall be payable pursuant to Section 6(d)(ii) of the Agreement, subject to, in the case of clause (a), Company's right to deliver cash in satisfaction of any Payment Obligation hereunder.

Share Termination Alternative:	If applicable, Company shall deliver to Dealer the Share Termination Delivery Property on the date (the **"Share Termination Payment Date"**) on which the Payment Obligation would otherwise be due pursuant to Section 12.7 or Section 12.9 of the Equity Definitions or pursuant to Section 6(d)(ii) of the Agreement, subject to paragraph (j)(i) below, in satisfaction, subject to paragraph (j)(ii) below, of the Payment Obligation in the manner reasonably requested by Dealer 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 amount of 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 on the date such Share Termination Delivery Units are to be delivered as Share Termination Delivery Property, as determined by the Calculation Agent in its discretion by commercially reasonable means. The Calculation Agent shall notify Company of such Share Termination Unit Price at the time of notification of the Payment Obligation. In the case of a Private Placement of Share Termination Delivery Units that are Restricted Shares (as defined below), as set forth in paragraph (j)(i) below, the Share Termination Unit Price shall be determined by the discounted price applicable to such Share Termination Delivery Units. In the case of a Registration Settlement of Share Termination Delivery Units that are Restricted Shares (as defined below) as set forth in paragraph (j)(ii) below, the Share Termination Unit Price shall be the Settlement Price on the Merger Date, the Announcement Date (in the case of a Nationalization, Insolvency or Delisting) or the Early Termination Date, as applicable.
Share Termination Delivery Unit:	In the case of a Termination Event, Event of Default or Delisting, one Share or, in the case of Nationalization, Insolvency, Tender Offer or Merger Event, a unit consisting of the number or amount of each type of 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, Tender Offer or Merger Event. If such Nationalization, Insolvency, Tender Offer or Merger Event involves a choice of consideration to be received by holders, such holder shall be deemed to have elected to receive the maximum possible amount of cash.
Failure to Deliver:	Inapplicable
Other applicable provisions:	If Share Termination Alternative is applicable, the provisions of Sections 9.1(c), 9.8, 9.9, 9.11, 9.12 and 10.5 (as modified above) of the Equity Definitions will be applicable, except that the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by excluding any representations therein relating to restrictions, obligations, limitations or requirements under applicable securities laws as a result of the fact that Company is the Issuer of the Shares or any portion of the Share Termination Delivery Units, and 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 this Transaction means that Share Termination Alternative is applicable to this Transaction.

(j) *Registration/Private Placement Procedures*. If, in the commercially reasonable judgment of Dealer based on the advice of counsel, following any delivery of Shares or Share Termination Delivery Property to Dealer hereunder, such Shares or Share Termination Delivery Property would be in the hands of Dealer subject to any applicable restrictions with respect to any registration or qualification requirement or prospectus delivery requirement for such Shares or Share Termination Delivery Property pursuant to any applicable federal or any applicable material restrictions pursuant to any applicable state securities law (including, without limitation, any such requirement arising under Section 5 of the Securities Act as a result of such Shares or Share Termination Delivery Property being "restricted securities", as such term is defined in Rule 144 under the Securities Act, or as a result of the sale of such Shares or Share Termination Delivery Property being subject to paragraph (c) of Rule 145 under the Securities Act) (such Shares or Share Termination Delivery Property, "**Restricted Shares**"), then delivery of such Restricted Shares shall be effected pursuant to either clause (i) or (ii) below at the election of Company, unless Dealer waives the need for registration/private placement procedures set forth in (i) and (ii) below. Notwithstanding the foregoing, solely in respect of any Daily Number of Warrants exercised or deemed exercised on any Expiration Date, Company shall, if applicable, elect, prior to the first Settlement Date for the first Expiration Date, a Private Placement Settlement or Registration Settlement for all deliveries of Restricted Shares for all such Expiration Dates which election shall be applicable to all Settlement Dates for such Warrants and the procedures in clause (i) or clause (ii) below shall apply for all such delivered Restricted Shares on an aggregate basis commencing after the final Settlement Date for such Warrants. The Calculation Agent shall make reasonable adjustments to settlement terms and provisions under this Confirmation to reflect a single Private Placement or Registration Settlement for such aggregate Restricted Shares delivered hereunder.

(i) If Company elects to settle the Transaction pursuant to this clause (i) (a "**Private Placement Settlement**"), then delivery of Restricted Shares by Company shall be effected in accordance with customary private placement procedures for private placements of equity offerings of substantially similar size reasonably acceptable to Dealer; *provided* that Company may not elect a Private Placement Settlement if, on the date of its election, it has taken, or caused to be taken, any action that would make unavailable either the exemption pursuant to Section 4(2) of the Securities Act for the sale by Company to Dealer (or any affiliate designated by Dealer) of the Restricted Shares or the exemption pursuant to Section 4(1) or Section 4(3) of the Securities Act for resales of the Restricted Shares by Dealer (or any such affiliate of Dealer). The Private Placement Settlement of such Restricted Shares shall include customary representations, covenants, blue sky and other governmental filings and/or registrations, indemnities to Dealer, due diligence rights (for Dealer or any designated buyer of the Restricted Shares by Dealer), opinions and certificates, and such other documentation as is customary for private placements of equity offerings of substantially similar size, all reasonably acceptable to Dealer. In the case of a Private Placement Settlement, Dealer shall determine the appropriate discount to the Share Termination Unit Price (in the case of settlement of Share Termination Delivery Units pursuant to paragraph (i) above) or any Settlement Price (in the case of settlement of Shares pursuant to paragraph 2 above) applicable to such Restricted Shares in a commercially reasonable manner to account for the lack of marketability and illiquidity of such Restricted Shares and appropriately adjust the number of such Restricted Shares to be delivered to Dealer hereunder; *provided* that in no event shall such number be greater than 2 times the Number of Warrants multiplied by the Warrant Entitlement (the "**Maximum Amount**"). Notwithstanding the Agreement or this Confirmation, the date of delivery of such Restricted Shares shall be the Exchange Business Day following notice by Dealer to Company, of such applicable discount and the number of Restricted Shares to be delivered pursuant to this clause (i). For the avoidance of doubt, delivery of Restricted Shares shall be due as set forth in the previous sentence and not be due on the Share Termination Payment Date (in the case of settlement of Share Termination Delivery Units pursuant to paragraph (i) above) or on the Settlement Date for such Restricted Shares (in the case of settlement in Shares pursuant to paragraph 2 above).

In the event Company shall not have delivered the full number of Restricted Shares otherwise applicable as a result of the proviso above relating to the Maximum Amount (such deficit, the "**Deficit Restricted Shares**"), Company shall be continually obligated to deliver, from time to time until the full number of Deficit Restricted Shares have been delivered pursuant to this paragraph, Restricted Shares when, and to the extent, that (i) Shares are repurchased, acquired or otherwise received by Company or any of its subsidiaries after the Trade Date (whether or not in exchange for cash, fair value or any other

consideration), (ii) Company authorized any unissued Shares reserved for issuance in respect of other transactions prior to such date which prior to the relevant date become no longer so reserved and (iii) Company additionally authorizes any unissued Shares that are not reserved for other transactions. At such time as there may be Deficit Restricted Shares, Company shall promptly notify Dealer of the occurrence of any of the foregoing events (including the number of Shares subject to clause (i), (ii) or (iii) and the corresponding number of Restricted Shares to be delivered) and promptly deliver such Restricted Shares thereafter.

(ii) If Company elects to settle the Transaction pursuant to this clause (ii) (a "**Registration Settlement**"), then Company shall file and use its reasonable best efforts to make effective under the Securities Act a registration statement or supplement or amend an outstanding registration statement in form and substance reasonably satisfactory to Dealer, to cover the resale of such Restricted Shares (and any Company Make-whole Shares) in accordance with customary resale registration procedures for registered secondary offerings of a substantially similar size, including covenants, conditions, representations, underwriting discounts (if applicable), commissions (if applicable), indemnities due diligence rights, opinions and certificates, and such other documentation as is customary for equity resale underwriting agreements for registered secondary offerings of a substantially similar size, all reasonably acceptable to Dealer. If Dealer, in its good faith and reasonable discretion, is not satisfied with such procedures and documentation, Private Placement Settlement shall apply. If Dealer is satisfied with such procedures and documentation, it shall sell the Restricted Shares pursuant to such registration statement during a period (the "**Resale Period**") commencing on the Exchange Business Day following delivery of such Restricted Shares (and any Company Make-whole Shares) (which, for the avoidance of doubt, shall be (x) any Settlement Date in the case of an exercise of Warrants prior to the first Expiration Date pursuant to paragraph 2 above, (y) the Share Termination Payment Date in case of settlement in Share Termination Delivery Units pursuant to paragraph (i) above or (z) the Settlement Date in respect of the final Expiration Date for all Daily Number of Warrants) and ending on the earliest of (i) the Exchange Business Day on which Dealer completes the sale of all Restricted Shares or, in the case of settlement of Share Termination Delivery Units, a sufficient number of Restricted Shares so that the realized net proceeds of such sales exceed the Payment Obligation (as defined above) and (ii) the date upon which all Restricted Shares have been sold or transferred pursuant to Rule 144 (or similar provisions then in force) or Rule 145(d)(1) or (2) (or any similar provision then in force) under the Securities Act.

(iii) (A) If (ii) above is applicable and the Net Share Settlement Amount or the Payment Obligation, as applicable, exceeds the realized net proceeds from such resale, or if (i) above is applicable and the Freely Tradable Value (as defined below) of the Net Share Settlement Amount or the Payment Obligation (in each case as adjusted pursuant to (i) above), as applicable, exceeds the realized net proceeds from such resale, Company shall transfer to Dealer by the open of the regular trading session on the Exchange on the Exchange Trading Day immediately following the last day of the Resale Period a number of Shares ("**Company Make-whole Shares**") in an amount that, based on the Settlement Price on the last day of the Resale Period (as if such day was the "Valuation Date" for purposes of computing such Settlement Price), has a dollar value equal to the amount of such excess (the "**Company Additional Amount**"), or if Company so elects, an amount in cash equal to the Company Additional Amount. The Resale Period shall continue to enable the sale of the Company Make-whole Shares. If Company elects to pay the Additional Amount in Shares, the requirements and provisions for Registration Settlement or Private Placement Settlement, as the case may be, shall apply. This provision shall be applied successively until the Additional Amount is equal to zero. In no event shall Company deliver a number of Restricted Shares greater than the Maximum Amount.

If (ii) above is applicable and the realized net proceeds from such resale (including the sale of any Company Make-whole Shares) exceed the Net Share Settlement Amount or the Payment Obligation, as applicable, or if (i) above is applicable and the realized net proceeds from such resale (including the sale of any Company Make-whole Shares) exceed the Freely Tradeable Value (as defined below) of the Net Share Settlement Amount or the Payment Obligation (in each case as adjusted pursuant to (i) above), as applicable, Dealer shall transfer to Company the amount of such excess (the "**Dealer Additional Amount**") in a number of Shares ("**Dealer Make-whole Shares**") that, based on the Settlement Price on the last day of the Resale Period (as if such day was the Valuation Date for purposes of computing such Settlement Price), has a value equal to the Dealer Additional Amount, or, at Company's option, in cash in

an amount equal to the Dealer Additional Amount. The transfer of the Dealer Additional Amount shall be made (x) if in cash, by the open of the regular trading session on the Exchange on the Exchange Trading Day immediately following the last day of the Resale Period, and (y) if in Shares, one Settlement Cycle following the date Dealer is able, using commercially reasonable efforts, to purchase Dealer Make-whole Shares. This provision shall be applied successively until the Dealer Additional Amount is equal to zero.

"**Freely Tradeable Value**" means the value of the number of Shares delivered to Dealer which such Shares would have if they were freely tradeable (without prospectus delivery) upon receipt by Dealer, as determined by the Calculation Agent by commercially reasonable means.

(iv) Without limiting the generality of the foregoing, Company agrees that any Restricted Shares delivered to Dealer, as purchaser of such Restricted Shares, (i) may be transferred by and among Dealer and its affiliates and Company shall effect such transfer without any further action by Dealer and (ii) after the minimum "holding period" within the meaning of Rule 144(d) under the Securities Act has elapsed after any Settlement Date for such Restricted Shares, Company shall promptly remove, or cause the transfer agent for such Restricted Shares to remove, any legends referring to any such restrictions or requirements from such Restricted Shares upon delivery by Dealer (or such affiliate of Dealer) to Company or such transfer agent of seller's and broker's representation letters customarily delivered by Dealer in connection with resales of restricted securities pursuant to Rule 144 under the Securities Act, without any further requirement for the delivery of any certificate, consent, agreement, opinion of counsel, notice or any other document, any transfer tax stamps or payment of any other amount or any other action by Dealer (or such affiliate of Dealer).

If the Private Placement Settlement or the Registration Settlement shall not be effected as set forth in clauses (i) or (ii), as applicable, then failure to effect such Private Placement Settlement or such Registration Settlement shall constitute an Event of Default with respect to which Company shall be the Defaulting Party.

(k) *Limit on Beneficial Ownership*. Except as provided below in this paragraph (k), notwithstanding any other provision to the contrary in this Confirmation, in no event shall Dealer be entitled to receive, or shall be deemed to receive, Shares to the extent that, immediately upon giving effect to such receipt of such Shares,

(i) the Option Equity Percentage (as defined below) exceeds 4.9%,

(ii) Dealer, Dealer Group (as defined below) or any person whose ownership position would be aggregated with that of Dealer or Dealer Group (Dealer, Dealer Group or any such person, a "**Dealer Person**") under any relevant state corporate law or other state, federal or local laws, regulations or regulatory orders applicable to ownership of Shares ("**Applicable Laws**"), owns, beneficially owns, constructively owns, controls, holds the power to vote or otherwise meets a relevant definition of ownership in excess of a number of Shares equal to (x) the number of Shares that, in the good faith determination of the relevant Dealer Person, would give rise to materially burdensome reporting or registration obligations or other requirements (including obtaining prior approval by a state or federal regulator) of a Dealer Person under Applicable Laws (including, without limitation, "interested stockholder" or "acquiring person" status under Section 203 of the Delaware General Corporation Law, but excluding any report or filing required pursuant to Section 13 of the Exchange Act and the rules promulgated thereunder) and with respect to which such requirements have not been met or the relevant approval has not been received *minus* (y) 1.0% of the number of Shares outstanding on the date of determination,

(iii) the Maritime Law Ownership Percentage (as defined below) of the Maritime Law Dealer Group (as defined below) would be greater than 4.9% of the outstanding Shares, unless Dealer has established to the reasonable satisfaction of the Company that it (or the person designated to take delivery) is a citizen of the United States for purposes of the U.S. coastwise trade under the Maritime Laws (as defined below),

(iv) such Shares would reasonably be anticipated by the Company to be "Excess Shares" ("**Excess Shares**") as defined in the Company's Second Restated Certificate of Incorporation (the "**Certificate**") or

(v) such Shares, in the good faith determination of the Company, would cause the Company to cease to be qualified under Maritime Laws (as defined below) or Applicable Laws to own and operate vessels in the coastwise trade of the United States (each of clause (i) through (iv) above and this clause (v), an "**Ownership Limitation**").

If any delivery owed to Dealer hereunder is not made, in whole or in part, as a result of an Ownership Limitation, the Company's obligation to make such delivery shall not be extinguished and the Company shall make such delivery as promptly as practicable after, but in no event later than three Exchange Business Days after, Dealer gives notice to the Company that such delivery would not result in any of such Ownership Limitations being breached. Such notice by Dealer will include details sufficient to support the position taken by Dealer in such notice.

The "**Option Equity Percentage**" as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the sum of (i) the number of Shares that Dealer and any of its affiliates subject to aggregation with Dealer, for purposes of the "beneficial ownership" test under Section 13 of the Exchange Act, and all persons who may form a "group" (within the meaning of Rule 13d-5(b)(1) under the Exchange Act) with Dealer ("**Dealer Group**") "beneficially owns" (within the meaning of Section 13 of the Exchange Act) on such day, other than any Shares so owned as a hedge of the Transaction, and (ii) the product of the Number of Warrants and the Warrant Entitlement and (B) the denominator of which is the number of Shares outstanding on such day. "**Maritime Law Ownership Percentage**" means the ownership, as construed under the Maritime Laws, of Shares by Dealer or any person whose ownership would be aggregated with that of Dealer or Dealer's parent entity under the Maritime Laws (collectively, the "**Maritime Law Dealer Group**"). "**Maritime Laws**" means, collectively and without duplication, Chapters 121 and 505 of Title 46 of the United States Code and any successor or replacement statute thereto, and the regulations promulgated under such Title or successor or replacement statute or, to the extent remaining in force, under any predecessor statute, in each case as amended or supplemented from time to time.

The Company represents and warrants that, assuming the accuracy of any factual information regarding Dealer that is provided by Dealer to the Company upon the Company's request, any Shares delivered by the Company to Dealer pursuant to the Transaction shall not be Excess Shares, and the issuance and delivery of such Shares shall have been approved by the board of directors of the Company. If Dealer designates any person to receive any Shares pursuant to Section 9(t), clauses (iii), (iv) and (v) of this Section 9(k) shall apply as if such person were Dealer. If the Company is unable to deliver any Shares to Dealer as a result of this Section 9(k), notwithstanding Company's continuing obligation to deliver such Shares as described herein, the Company may at any time following the Settlement Date, upon one Exchange Business Day's prior written notice to Dealer, elect to deliver cash in lieu of any or all such Shares, in which case the Shares for which cash delivery has been so elected shall be valued by the Calculation Agent in a commercially reasonable manner over such time period as the Calculation Agent reasonably determines appropriate in light of the liquidity of the Shares at such time and applicable law and related regulations, policies and procedures. The Company's right to elect cash pursuant to the foregoing sentence shall be subject to the Company giving representations, warranties and covenants customary for transactions under Rule 10b5-1 under the Exchange Act and satisfactory to Dealer. The Company shall promptly notify Dealer if at any time either (i) any purported transfer of any shares of any class or series of capital stock of the Company is void and ineffective pursuant to Section 2 of Article Twelve of the Certificate or (ii) any shares of any class or series of capital stock of the Company are "Excess Shares" pursuant to Section 3 of Article Twelve of the Certificate. The Company covenants that it shall provide prompt written notice to Dealer upon having actual knowledge that more than 10% of the aggregate Shares outstanding are owned by persons other than citizens of the United States for purposes of the U.S. coastwise trade under the Maritime Laws and upon becoming aware of each additional 5% thereafter.

The Company shall provide Dealer with a copy of any filings submitted to any regulatory authority relating to the Company's or the Company's stockholders' citizenship under the Maritime Laws so long as Dealer (or any assignee of Dealer) has agreed to keep any such filings and the information contained therein confidential on terms reasonably acceptable to the Company and Dealer. Dealer acknowledges that Dealer will not have any rights as a holder of the Company's common stock with respect to Shares, prior to the delivery thereof hereunder, that the Company is unable to deliver as a result of this Section 9(k). The Company acknowledges that, as a result of this Section 9(k), it will not treat Dealer (or any affiliate or designee of Dealer) as the owner, for any purpose (including, without limitation, for purposes of the Maritime Laws or Article Twelve of the Certificate), of Shares, prior to the delivery of such Shares hereunder, that the Company is unable to deliver as a result of this Section 9(k). For purposes of this Section 9(k), the term "Dealer" shall include any of the Dealer's permitted successors or assigns.

(l) *Share Deliveries*. Company acknowledges and agrees that, to the extent the holder of this Warrant is not then an affiliate, as such term is used in Rule 144 under the Securities Act, of Company and has not been such an affiliate of Company for 90 days (it being understood that Dealer will not be considered an affiliate of Company solely by reason of its receipt of or right to receive Shares pursuant to this Transaction), and otherwise satisfies all holding period and other requirements of Rule 144 of the Securities Act applicable to it, any delivery of Shares or Share Termination Delivery Property hereunder at any time after 6 months from the Trade Date (or 1 year from the Trade Date if, at such time, informational requirements of Rule 144(c) are not satisfied with respect to Company) shall be eligible for resale under Rule 144 of the Securities Act, and Company agrees to promptly remove, or cause the transfer agent for such Shares or Share Termination Delivery Property to remove, any legends referring to any restrictions on resale under the Securities Act from the certificates representing such Shares or Share Termination Delivery Property. Company further agrees and acknowledges that Dealer shall run a holding period under Rule 144 under the Securities Act with respect to the Warrants and/or any Shares or Share Termination Delivery Property delivered hereunder notwithstanding the existence of any other transaction or transactions between Company and Dealer relating to the Shares. Company further agrees that Shares or Share Termination Delivery Property delivered hereunder prior to the date that is 6 months from the Trade Date (or 1 year from the Trade Date, if, at such time, informational requirements of Rule 144(c) are not satisfied with respect to Company) may be freely transferred by and among Dealer and its affiliates, and Company shall effect such transfer without any further action by Dealer. Notwithstanding anything to the contrary herein, Company agrees that any delivery of Shares or Share Termination Delivery Property shall be effected by book-entry transfer through the facilities of DTC, or any successor depositary, if, at the time of delivery, the certificates representing such Shares or Share Termination Delivery Property would not contain any restrictive legend as described above. Notwithstanding anything to the contrary herein, to the extent the provisions of Rule 144 of the Securities Act or any successor rule are amended, or the applicable interpretation thereof by the Securities and Exchange Commission or any court changes after the Trade Date, including without limitation to lengthen or shorten the holding periods, the agreements of Company herein shall be deemed modified to the extent necessary, in the opinion of outside counsel of Company, to comply with Rule 144 of the Securities Act, including Rule 144, as in effect at the time of delivery of the relevant Shares or Share Termination Delivery Property.

(m) *Additional Termination Event*. If within the period commencing on the Trade Date and ending on the first anniversary of the Premium Payment Date, Dealer reasonably determines that it is advisable to terminate a portion of the Transaction so that Dealer's related hedging activities will comply with applicable securities laws, rules or regulations, an Additional Termination Event shall occur in respect of which (1) Company shall be the sole Affected Party and (2) the Transaction shall be the sole Affected Transaction.

(n) *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 this Transaction. Each party (i) certifies that no representative, agent or attorney of the other 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 this Transaction, as applicable, by, among other things, the mutual waivers and certifications provided herein.

(o) *Tax Disclosure*. Effective from the date of commencement of discussions concerning the Transaction, each party and each of their respective 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) relating to such tax treatment and tax structure.

(p) *Maximum Share Delivery*. Notwithstanding any other provision of this Confirmation or the Agreement, in no event will Company be required to deliver more than the lesser of (i) the Maximum Amount of Shares in the aggregate to Dealer in connection with this Transaction and (ii) when aggregated with any Shares deliverable to Dealer under the Base Warrant Confirmation dated August 7, 2012 between the parties hereto, 2,112,465 Shares, subject to the provisions regarding Deficit Restricted Shares.

(q) *Status of Claims in Bankruptcy*. Dealer acknowledges and agrees that this Confirmation is not intended to convey to Dealer rights with respect to the Transaction that are senior to the claims of common stockholders in any U.S. bankruptcy proceedings of Company; *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 Company 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.

(r) *Securities Contract*. Each of Dealer and Company agrees and acknowledges that Dealer is one or more of a "financial institution" and "financial participant" within the meaning of sections 101(22) and 101(22A) of Title 11 of the United States Code (the "**Bankruptcy Code**"). The parties further agree and acknowledge (A) that this Confirmation is 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 is a "settlement payment" (as such term is defined in Section 741(8) of the Bankruptcy Code) or a "transfer" within the meaning of section 546 of the Bankruptcy Code, and (B) that is the parties are entitled to the protections afforded by, among other sections, section 362(b)(6), 362(b)(27), 362(o), 546(e), 546(j), 548(d)(2), 555 and 561 of the Bankruptcy Code.

(s) *Right to Extend*. Dealer may postpone any Exercise Date, Settlement Date or any other date of valuation or delivery with respect to some or all of the relevant Warrants (in which case the Calculation Agent may make appropriate adjustments to the relevant number of Warrants being exercised), if Dealer determines, in its good faith and commercially reasonable judgment based on the advice of counsel, that such action is advisable to preserve Dealer's Hedging Activity hereunder in light of existing liquidity conditions to enable Dealer to effect purchases of Shares in connection with its Hedging Activity hereunder in a manner that would, if Dealer were the Company or an affiliated purchaser of the Company, be in compliance with applicable legal and regulatory requirements.

(t) *Method of Delivery*. Whenever delivery of funds or other assets is required hereunder by or to Company, such delivery shall be effected through Agent.

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 to or from Company, Dealer may designate any of its affiliates to purchase, sell, receive or deliver such Shares or other securities 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 Company to the extent of any such performance.

(u) *Regulatory Provisions.* The time of dealing for the Transaction will be confirmed by Dealer upon written request by Company.

(v) *Terms relating to the Agent*.

(i) The Agent is registered as a broker-dealer with the U.S. Securities and Exchange Commission and the Financial Industry Regulatory Authority (FINRA), is acting hereunder for and on behalf of Dealer solely in its capacity as agent for Dealer pursuant to instructions from Dealer, and is not and will not be acting as the Company's agent, broker, advisor or fiduciary in any respect under or in connection with the Transaction.

(ii) In addition to acting as Dealer's agent in executing this Transaction, the Agent is authorized from time to time to give written payment and/or delivery instructions to the Company directing it to make its payments and/or deliveries under this Transaction to an account of the Agent for remittance to Dealer (or its designee), and for that purpose any such payment or delivery by the Company to the Agent shall be treated as a payment or delivery to Dealer.

(iii) Except as otherwise provided herein, any and all notices, demands, or communications of any kind transmitted in writing by either Dealer or the Company under or in connection with this Transaction will be transmitted exclusively by such party to the other party through the Agent at the following address:

Wells Fargo Securities, LLC
201 South College Street, 6th Floor
Charlotte, NC 28288-0601
Facsimile No.: (704) 383-8425
Telephone No.: (704) 715-8086
Attention: Equity Derivatives

(iv) The Agent shall have no responsibility or liability to Dealer or the Company for or arising from (a) any failure by either Dealer or the Company to perform any of their respective obligations under or in connection with this Transaction, (b) the collection or enforcement of any such obligations, or (c) the exercise of any of the rights and remedies of either Dealer or the Company under or in connection with this Transaction. Each of Dealer and the Company agrees to proceed solely against the other to collect or enforce any such obligations, and the Agent shall have no liability in respect of this Transaction except for its gross negligence or willful misconduct in performing its duties as the agent of Dealer.

(v) Upon written request, the Agent will furnish to Dealer and the Company the date and time of the execution of this Transaction and a statement as to the source and amount of any remuneration received or to be received by the Agent in connection with this Transaction.

(w) *Additional ISDA Schedule Terms*.

(i) "**Specified Entity**" means in relation to each of Dealer and Company for purposes of Sections 5(a)(v), 5(a)(vi), 5(a)(vii) and 5(b)(v) of the Agreement, not applicable.

(ii) "**Specified Transaction**" will have the meaning specified in Section 14 of the Agreement.

(iii) The "Cross-Default" provisions of Section 5(a)(vi) of the Agreement shall not apply to either party.

(iv) **Automatic Early Termination**. The "Automatic Early Termination" provision of Section 6(a) of the Agreement will not apply to Dealer and will not apply to Company.

(v) "**Termination Currency**" means United States Dollars ("**USD**").

(vi) **Consent to Recording**. Each party (i) consents to the monitoring or recording, at any time and from time to time, by the other party of any and all communications between officers or employees of the parties, (ii) waives any further notice of such monitoring or recording, and (iii) agrees to notify (and, if required by law, obtain the consent of) its officers and employees with respect to such monitoring or recording. Any such recording may be submitted in evidence to any court or in any Proceeding for the purpose of establishing any matters pertinent to this Transaction.

(vii) **Severability**. In the event any one or more of the provisions contained in this Confirmation or the Agreement shall be held illegal, invalid or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby.

(viii) **Deduction or Withholding for Tax.** So long as Company is organized under the laws of the United States or any State thereof, the provisions of Section 2(d)(i)(4) of the Agreement shall not apply to the Transaction.

(ix) **Part 2(b) of the ISDA Schedule—Payee Representation**:

For the purpose of Section 3(f) of this Agreement, Company makes the following representation to Dealer:

Company is a corporation established under the laws of the State of Delaware and is a U.S. person (as that term is defined in Section 7701(a)(30) of the Code).

For the purpose of Section 3(f) of this Agreement, Dealer makes the following representation to Company:

Dealer is a national banking association organized or formed under the laws of the United States and is a United States resident for United States federal income tax purposes.

(x) **Part 3(a) of the ISDA Schedule—Tax Forms:**

Party Required to Deliver Document	Form/Document/Certificate	Date by which to be Delivered
Company	A complete and duly executed United States Internal Revenue Service Form W-9 (or successor thereto.)	(i) Upon execution and delivery of this Agreement; (ii) promptly upon reasonable demand by Dealer; and (iii) promptly upon learning that any such Form previously provided by Company has become obsolete or incorrect.
Dealer	A complete and duly executed United States Internal Revenue Service Form W-9 (or successor thereto).	(i) Upon execution and delivery of this Agreement; (ii) promptly upon reasonable demand by Company; and (iii) promptly upon learning that any such Form previously provided by Dealer has become obsolete or incorrect.

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.

THE SECURITIES REPRESENTED BY THE CONFIRMATION HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED, OR ANY OTHER UNITED STATES FEDERAL OR STATE SECURITIES LAWS; SUCH SECURITIES MAY NOT BE SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF APPROPRIATE REGISTRATION UNDER SUCH SECURITIES LAWS OR EXCEPT IN A TRANSACTION EXEMPT FROM OR NOT SUBJECT TO THE REGISTRATION REQUIREMENTS OF SUCH SECURITIES LAWS.

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing a copy of this Confirmation and returning it to us by facsimile at 212-214-5913 (Attention: Derivatives Structuring Group).

Very truly yours,

WELLS FARGO SECURITIES, LLC,
acting solely in its capacity as Agent
of Wells Fargo Bank, National Association

By: /s/ Cathleen Burke
Name: Cathleen Burke
Title: Managing Director

WELLS FARGO BANK, NATIONAL ASSOCIATION
By: Wells Fargo Securities, LLC,
acting solely in its capacity as its Agent

By: /s/ Cathleen Burke
Name: Cathleen Burke
Title: Managing Director

Accepted and confirmed as of the Trade Date:

HORNBECK OFFSHORE SERVICES, INC.

By: /s/ James O. Harp, Jr.
Name: James O. Harp, Jr.
Title: Executive Vice President and CFO

ANNEX A: Daily Number of Warrants

Expiration Date	Number of Warrants
Monday, December 02, 2019	5,571
Tuesday, December 03, 2019	5,571
Wednesday, December 04, 2019	5,571
Thursday, December 05, 2019	5,571
Friday, December 06, 2019	5,571
Monday, December 09, 2019	5,571
Tuesday, December 10, 2019	5,571
Wednesday, December 11, 2019	5,571
Thursday, December 12, 2019	5,571
Friday, December 13, 2019	5,571
Monday, December 16, 2019	5,571
Tuesday, December 17, 2019	5,571
Wednesday, December 18, 2019	5,571
Thursday, December 19, 2019	5,571
Friday, December 20, 2019	5,571
Monday, December 23, 2019	5,571
Tuesday, December 24, 2019	5,571
Thursday, December 26, 2019	5,571
Friday, December 27, 2019	5,571
Monday, December 30, 2019	5,571
Tuesday, December 31, 2019	5,571
Thursday, January 02, 2020	5,571
Friday, January 03, 2020	5,571
Monday, January 06, 2020	5,571
Tuesday, January 07, 2020	5,571
Wednesday, January 08, 2020	5,571
Thursday, January 09, 2020	5,571
Friday, January 10, 2020	5,571
Monday, January 13, 2020	5,571
Tuesday, January 14, 2020	5,571
Wednesday, January 15, 2020	5,571
Thursday, January 16, 2020	5,571
Friday, January 17, 2020	5,571
Tuesday, January 21, 2020	5,571
Wednesday, January 22, 2020	5,571
Thursday, January 23, 2020	5,571
Friday, January 24, 2020	5,571
Monday, January 27, 2020	5,571
Tuesday, January 28, 2020	5,571
Wednesday, January 29, 2020	5,592

Exhibit 10.1

Execution Version

$260,000,000

HORNBECK OFFSHORE SERVICES, INC.

1.500% Convertible Senior Notes due 2019

Purchase Agreement

August 7, 2012

Barclays Capital Inc.
J.P. Morgan Securities LLC
Wells Fargo Securities, LLC
As Representatives of the several
Initial Purchasers named in Schedule I attached hereto,
c/o Barclays Capital Inc.
745 Seventh Avenue
New York, New York 10019

Ladies and Gentlemen:

Hornbeck Offshore Services, Inc., a Delaware corporation (the "Company"), proposes to issue and sell to the several initial purchasers listed in Schedule 1 hereto (the "Initial Purchasers"), for whom you are acting as representatives (the "Representatives"), $260,000,000 principal amount of its 1.500% Convertible Senior Notes due 2019 (the "Firm Securities"). The Company also proposes to issue and sell to the Initial Purchasers, not more than an additional $40,000,000 of its 1.500% Convertible Senior Notes due 2019 (the "Additional Securities") if and to the extent that the Initial Purchasers shall have determined to exercise the right to purchase such additional 1.500% Convertible Senior Notes due 2019 granted to the Initial Purchasers in Section 1(b) hereof. The Firm Securities, the Additional Securities and the Guarantees (defined below) are hereinafter collectively referred to as the "Securities." The Securities will be convertible into cash, shares of the Company's common stock, par value $0.01 per share (the "Common Stock") or a combination of cash and shares of Common Stock, at the Company's election (any such shares of Common Stock issuable upon the conversion of the Securities, collectively, the "Underlying Common Stock"), as set forth in the Offering Memorandum. The Securities will be issued pursuant to an Indenture to be dated as of August 13, 2012 (the "Indenture") among the Company, the guarantors listed in Schedule 2 hereto (the "Guarantors") and Wells Fargo Bank, National Association, as trustee (the "Trustee"), and will be guaranteed on an unsecured senior basis by each of the Guarantors (the "Guarantees").

The Securities will be sold to the Initial Purchasers without being registered under the Securities Act of 1933, as amended (the "Securities Act"), in reliance upon an exemption therefrom. The Company and the Guarantors have prepared a preliminary offering memorandum dated August 6, 2012 (the "Preliminary Offering Memorandum") and will prepare an offering memorandum dated the date hereof (the "Offering

Memorandum") setting forth information concerning the Company and the Securities. Copies of the Preliminary Offering Memorandum have been, and copies of the Offering Memorandum will be, delivered by the Company to the Initial Purchasers pursuant to the terms of this Agreement. The Company hereby confirms that it has authorized the use of the Preliminary Offering Memorandum, the other Time of Sale Information (as defined below) and the Offering Memorandum in connection with the offering and resale of the Securities by the Initial Purchasers in the manner contemplated by this Agreement. Capitalized terms used but not defined herein shall have the meanings given to such terms in the Preliminary Offering Memorandum. References herein to the Preliminary Offering Memorandum, the Time of Sale Information and the Offering Memorandum shall be deemed to refer to and include any document incorporated by reference therein.

At or prior to the time when sales of the Securities were first made (the "Time of Sale"), the following information shall have been prepared (collectively, the "Time of Sale Information"): the Preliminary Offering Memorandum, as supplemented and amended by the written communications listed on Annex A hereto.

The Company hereby confirms its agreement with the several Initial Purchasers concerning the purchase and resale of the Securities, as follows:

1. Purchase and Resale of the Securities.

(a) The Company agrees to issue and sell the Firm Securities to the several Initial Purchasers as provided in this Agreement, and each Initial Purchaser, on the basis of the representations, warranties and agreements set forth herein and subject to the conditions set forth herein, agrees, severally and not jointly, to purchase from the Company the respective principal amount of Firm Securities set forth opposite such Initial Purchaser's name in Schedule 1 hereto at a price equal to 97.25% of the principal amount thereof plus accrued interest, if any, from August 13, 2012 to the Closing Date. The Company will not be obligated to deliver any of the Securities except upon payment for all the Securities to be purchased as provided herein.

(b) In addition, the Company hereby agrees, on the basis of the representations and warranties, covenants and agreements of the Initial Purchasers contained herein and subject to all the terms and conditions set forth herein, in order to cover sales in excess of the Firm Securities, to issue and sell to the Initial Purchasers the Additional Securities, and the Initial Purchasers shall have the right to purchase, severally and not jointly, up to $40,000,000 aggregate principal amount of Additional Securities at the purchase price referred to in the preceding paragraph. The Representatives may exercise this right on behalf of the Initial Purchasers in whole or from time to time in part by giving written notice not later than 30 days after the date of this Agreement. Any exercise notice shall specify the principal amount of Additional Securities to be purchased by the Initial Purchasers and the date on which such Additional Securities are to be

purchased. Unless otherwise agreed to by the Company, each purchase date must be at least one business day after the written notice is given and may not be earlier than the closing date for the Firm Securities nor later than ten business days after the date of such notice. On each day, if any, that Additional Securities are to be purchased (an "Option Closing Date"), each Initial Purchaser agrees, severally and not jointly, to purchase the principal amount of Additional Securities (subject to such adjustments to eliminate fractional Securities as you may determine) that bears the same proportion to the total principal amount of Additional Securities to be purchased on such Option Closing Date as the principal amount of Firm Securities set forth in Schedule I opposite the name of such Initial Purchaser bears to the total principal amount of Firm Securities; provided, however, that the Initial Purchasers may not exercise their option to purchase Additional Securities in whole or in part, unless (i) the delivery of any Additional Securities occurs within 12 calendar days or less after the delivery of the Firm Securities, and the other requirements under Treasury Regulation Section 1.1275-1(f)(1) are met; (ii) neither the Firm Securities nor the Additional Securities are treated as having been issued with more than a de minimis amount of original issue discount for U.S. federal income tax purposes (as defined in Section 1273 of the Code and the Treasury regulations promulgated thereunder); or (iii) the Firm Securities are publicly traded (within the meaning of Treasury Regulation Section 1.1273-2(f)) and either (a) the Additional Securities are treated as having been issued with no more than a de minimis amount of original issue discount for U.S. federal income tax purposes (determined without the application of Treasury Regulation Section 1.1275-2(k)) or (b) on the Pricing Date (as defined below), the yield of the Firm Securities (based on their then fair market value) is not more than 110% of the yield of such Firm Securities on their issue date as defined in Treasury Regulation Section 1.1273-2(a)(2) (or 110% of the coupon rate, if the Firm Securities are treated as having been issued with no more than a de minimis amount of original issue discount for U.S. federal income tax purposes). The "Pricing Date" shall mean the earlier of (i) the date on which the price of the Additional Securities is established and (ii) the later of (A) seven calendar days before the date on which the price of the Additional Securities is established and (B) the date on which the Company's intention to issue the Additional Securities is publicly announced through one or more media (the date of such public announcement may be the same as the Closing Date but not earlier than the Closing Date nor later than ten business days after the date of the exercise notice discussed above).

(c) The Company understands that the Initial Purchasers intend to offer the Securities for resale on the terms set forth in the Time of Sale Information. Each Initial Purchaser, severally and not jointly, represents, warrants and agrees that:

(i) it is a qualified institutional buyer within the meaning of Rule 144A under the Securities Act (a "QIB") and an accredited investor within the meaning of Rule 501(a) under the Securities Act;

(ii) it has not solicited offers for, or offered or sold, and will not solicit offers for, or offer or sell, the Securities by means of any form of general solicitation or general advertising within the meaning of Rule 502(c) of Regulation D under the Securities Act ("Regulation D") or in any manner involving a public offering within the meaning of Section 4(2) of the Securities Act; and

(iii) it has not solicited offers for, or offered or sold, and will not solicit offers for, or offer or sell, the Securities as part of their initial offering except within the United States to persons whom it reasonably believes to be QIBs in transactions pursuant to Rule 144A under the Securities Act ("Rule 144A") and in connection with each such sale, it has taken or will take reasonable steps to ensure that the purchaser of the Securities is aware that (1) such sale is being made in reliance on Rule 144A, (2) the Securities have not been and, except as described in the Time of Sale Information, will not be registered under the Securities Act and (3) the Securities may not be offered, sold or otherwise transferred except as described in the Time of Sale Information.

(d) Each Initial Purchaser acknowledges and agrees that the Company and, for purposes of the opinions to be delivered to the Initial Purchasers pursuant to Sections 6(f) and 6(g), counsel for the Company and counsel for the Initial Purchasers, respectively, may rely upon the accuracy of the representations and warranties of the Initial Purchasers, and compliance by the Initial Purchasers with their agreements, contained in paragraph (c) above, and each Initial Purchaser hereby consents to such reliance.

(e) The Company acknowledges and agrees that the Initial Purchasers may offer and sell Securities to or through any affiliate of an Initial Purchaser and that any such affiliate may offer and sell Securities purchased by it to or through any Initial Purchaser so long as (i) such offers and sales are consistent with Section 1(c) and (ii) the Initial Purchasers remain liable for the actions or omission of any such authorized affiliate to the same extent as if such actions or omissions were performed by the Initial Purchaser.

(f) The Company and the Guarantors acknowledge and agree that the Initial Purchasers are acting solely in the capacity of an arm's length contractual counterparty to the Company and the Guarantors with respect to the offering of Securities contemplated hereby (including in connection with determining the terms of the offering) and not as financial advisors or fiduciaries to, or agents of, the Company, the Guarantors or any other person. Additionally, neither the Representatives nor any other Initial Purchaser is advising the Company, the Guarantors or any other person as to any legal, tax, investment, accounting or regulatory matters in any jurisdiction. The Company and the Guarantors shall consult with their own advisors concerning such matters and shall be responsible for making their own independent investigation and appraisal of the transactions contemplated hereby, and neither the Representatives nor any other Initial

Purchaser shall have any responsibility or liability to the Company or the Guarantors with respect thereto. Any review by the Representatives or any Initial Purchaser of the Company, the Guarantors, and the transactions contemplated hereby or other matters relating to such transactions will be performed solely for the benefit of the Representatives or such Initial Purchaser, as the case may be, and shall not be on behalf of the Company, the Guarantors or any other person.

2. Payment and Delivery.

(a) Payment for and delivery of the Securities will be made at the offices of Vinson & Elkins LLP, First City Tower, 1001 Fannin, Suite 2500, Houston, Texas 77002-6760, at 10:00 A.M., New York City time, on August 13, 2012, or at such other time or place on the same or such other date, not later than the fifth business day thereafter, as the Representatives and the Company may agree upon in writing. The time and date of such payment and delivery is referred to herein as the “Closing Date”.

Payment for any Additional Securities shall be made to the Company against delivery of such Additional Securities for the respective accounts of the several Initial Purchasers at 10:00 A.M., New York City time, on the Option Closing Date.

(b) Payment for the Securities shall be made by wire transfer in immediately available funds to the account(s) specified by the Company to the Representatives against delivery to the Trustee as custodian for The Depository Trust Company, for the account of the Initial Purchasers, of one or more global notes representing the Securities (collectively, the “Global Note”), with any transfer taxes payable in connection with the sale of the Securities to the Initial Purchasers duly paid by the Company. The Global Note will be made available for inspection by the Representatives not later than 1:00 P.M., New York City time, on the business day prior to the Closing Date or the Option Closing Date, as the case may be.

3. Representations and Warranties of the Company and the Guarantors. The Company and the Guarantors jointly and severally represent and warrant to each Initial Purchaser that:

(a) Preliminary Offering Memorandum, Time of Sale Information and Offering Memorandum. The Preliminary Offering Memorandum, as of its date, did not, the Time of Sale Information, at the Time of Sale, did not, and at the Closing Date, will not, and the Offering Memorandum, in the form first used by the Initial Purchasers to confirm sales of the Securities and as of the Closing Date, will not, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that the Company and the Guarantors make no representation or warranty with respect to any statements or omissions made in reliance upon and in conformity with

information relating to any Initial Purchaser furnished to the Company in writing by such Initial Purchaser through the Representatives expressly for use in the Preliminary Offering Memorandum, the Time of Sale Information or the Offering Memorandum.

(b) Additional Written Communications. The Company (including its agents and representatives, other than the Initial Purchasers in their capacity as such) has not prepared, made, used, authorized, approved or referred to and will not prepare, make, use, authorize, approve or refer to any written communication that constitutes an offer to sell or solicitation of an offer to buy the Securities (each such communication by the Company or its agents and representatives (other than a communication referred to in clauses (i), (ii) and (iii) below) an "Issuer Written Communication") other than (i) the Preliminary Offering Memorandum, (ii) the Offering Memorandum, (iii) the documents listed on Annex A hereto, including a term sheet substantially in the form of Annex B hereto, which constitute part of the Time of Sale Information, and (iv) any electronic road show or other written communications, in each case used in accordance with Section 4(c). Each such Issuer Written Communication, when taken together with the Time of Sale Information, did not, and at the Closing Date will not, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that the Company makes no representation and warranty with respect to any statements or omissions made in each such Issuer Written Communication in reliance upon and in conformity with information relating to any Initial Purchaser furnished to the Company in writing by such Initial Purchaser through the Representatives expressly for use in any Issuer Written Communication.

(c) Incorporated Documents. The documents incorporated by reference in each of the Time of Sale Information and the Offering Memorandum, when filed with the Securities and Exchange Commission (the "Commission"), conformed or will conform, as the case may be, in all material respects to the requirements of the Exchange Act and the rules and regulations of the Commission thereunder, and did not and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(d) Financial Statements. The financial statements, and the related notes thereto, of the Company included or incorporated by reference in the Time of Sale Information and the Offering Memorandum present fairly, in all material respects, the consolidated financial position of the Company and its consolidated subsidiaries as of the dates indicated and the results of their operations and the changes in their consolidated cash flows for the periods specified; and said financial statements have been prepared in conformity with United States generally accepted accounting principles and practices applied on a consistent basis, except as described in the notes to such financial statements; and the

other financial and statistical information and any other financial data included or incorporated by reference in the Time of Sale Information and the Offering Memorandum present fairly, in all material respects, the information purported to be shown thereby at the respective dates or for the respective periods to which they apply and, to the extent that such information is set forth in or has been derived from the financial statements and accounting books and records of the Company, have been prepared on a basis consistent with such financial statements and the books and records of the Company. The interactive data in eXtensbile Business Reporting Language included or incorporated by reference in the Offering Memorandum and the Time of Sale Information fairly presents the information called for in all material respects and has been prepared in accordance with the Commission's rules and guidelines applicable thereto.

(e) No Material Adverse Change. None of the Company, the Guarantors, or any of their subsidiaries has sustained since the date of the latest audited financial statements included or incorporated by reference in the Time of Sale Information any material loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labor dispute or court or governmental action, order or decree, otherwise than as set forth or contemplated in the Time of Sale Information and the Offering Memorandum; and, since the respective dates as of which information is given in the Time of Sale Information and the Offering Memorandum, there has not been any material change in the capital stock, material increase in long-term debt or any material decreases in consolidated net current assets or stockholders' equity of the Company, the Guarantors, or any of their subsidiaries or any material adverse change, or any development involving a prospective material adverse change, in or affecting the general affairs, management, current or future consolidated financial position, stockholders' equity or results of operations of the Company and its subsidiaries taken as a whole (a "Material Adverse Effect");

(f) Organization and Good Standing. Each of the Company and the Guarantors has been duly incorporated as a corporation or formed as a limited liability company and is validly existing as a corporation or limited liability company in good standing under the laws of the State of Delaware, with the corporate or limited liability company power and authority to own its properties and conduct its business as described in the Time of Sale Information and the Offering Memorandum, and has been duly qualified as a foreign corporation or limited liability company for the transaction of business and is in good standing under the laws of each other jurisdiction in which it owns or leases properties or conducts any business so as to require such qualification, except where the failure to be so qualified or in good standing in any such jurisdiction would not have a material adverse effect on the ability of the Company and its subsidiaries taken as a whole to own or lease their properties or conduct their businesses as described in the Time of Sale Information and the Offering Memorandum;

(g) Capitalization. The Company had, at the date indicated in the Time of Sale Information and the Offering Memorandum, a duly authorized, issued and outstanding capitalization as set forth in the Time of Sale Information and the Offering Memorandum under the caption “Capitalization”; all of the issued shares of capital stock of the Company have been duly and validly authorized and issued and are fully paid and non-assessable; such authorized capital stock of the Company conforms as to legal matters in all material respects to the description thereof contained in the Time of Sale Information and the Offering Memorandum; all of the equity interests in each subsidiary of the Company, have been duly and validly authorized and issued and are fully paid and non-assessable and are owned directly or indirectly by the Company, free and clear of any lien, charge, encumbrance, security interest, restriction on voting or transfer or any other claim of any third party;

(h) The Indenture. The Indenture has been duly authorized by the Company and the Guarantors and, when duly executed and delivered by the Company and the Guarantors (assuming the authorization, execution and delivery by the Trustee), will constitute a valid and legally binding instrument of the Company and the Guarantors, enforceable against the Company and the Guarantors in accordance with its terms, subject as to enforcement, to bankruptcy, insolvency, fraudulent transfer, fraudulent conveyance, moratorium, reorganization and laws of general applicability relating to or affecting creditors’ rights and general equity principles (regardless of whether enforceability is considered in a proceeding in equity or at law); the Indenture conforms, in all material respects to the requirements of the Trust Indenture Act of 1939, as amended (the “Trust Indenture Act”), and the rules and regulations of the Commission applicable to an indenture that is qualified thereunder; and the Indenture conforms, in all material respects, to the description thereof in the Time of Sale Information and the Offering Memorandum;

(i) The Securities. The Securities (except the Guarantees) have been duly authorized by the Company and, when issued and delivered as provided in this Agreement and duly authenticated pursuant to the Indenture, will be duly executed, authenticated, issued and delivered and will constitute valid and legally binding obligations of the Company entitled to the benefits provided by the Indenture, enforceable against the Company in accordance with their terms, subject as to enforcement, to bankruptcy, insolvency, fraudulent transfer, fraudulent conveyance, moratorium, reorganization and laws of general applicability relating to or affecting creditors’ rights and general equity principles (regardless of whether enforceability is considered in a proceeding in equity or at law); and the Securities (except the Guarantees) will conform, in all material respects, to the descriptions thereof in the Time of Sale Information and the Offering Memorandum;

(j) The Guarantees. The Guarantees have been duly authorized by the Guarantors, and, when issued and delivered as provided in this Agreement and duly authenticated pursuant to the Indenture will be duly executed, authenticated, issued and delivered and will constitute valid and legally binding obligations of the Guarantors entitled to the benefits provided by the Indenture

enforceable against the Guarantors in accordance with their terms, subject as to enforcement, to bankruptcy, insolvency, fraudulent transfer, fraudulent conveyance, moratorium, reorganization and laws of general applicability relating to or affecting creditors' rights and general equity principles (regardless of whether enforceability is considered in a proceeding in equity or at law); and the Guarantees will conform, in all material respects, to the descriptions thereof in the Time of Sale Information and the Offering Memorandum;

(k) Underlying Common Stock. Upon issuance and delivery of the Securities in accordance with the Agreement and the Indenture, the Securities (except the Guarantees) will be convertible at the option of the holder thereof into cash, the Underlying Common Stock, or a combination of cash and the Underlying Common Stock, at the Company's election, in accordance with the terms of the Securities (except the Guarantees); the Underlying Common Stock reserved for issuance upon conversion of the Securities (except the Guarantees) has been duly and validly authorized and reserved by the Company and, when issued upon conversion of the Securities (except the Guarantees) in accordance with the terms of the Securities (except the Guarantees), will be validly issued, fully paid and nonassessable, and the issuance of the Underlying Common Stock will not be subject to any preemptive or similar rights. The Underlying Common Stock will conform to the description thereof in each of the Time of Sale Information and the Offering Memorandum;

(l) Purchase Agreement. This Agreement has been duly authorized, executed and delivered by the Company and the Guarantors;

(m) Legal Summaries. The statements set forth in the Time of Sale Information and the Offering Memorandum under the captions "Description of Notes" and "Description of Capital Stock" and "United States federal income and estate tax considerations," insofar as they constitute summaries of the legal matters, documents or proceedings referred to therein, fairly present, in all material respects, the information called for with respect to such legal matters, documents or proceedings;

(n) No Violation. None of the Company, the Guarantors, or any of their subsidiaries is in violation of its certificate of incorporation or certificate of formation, or its bylaws or limited liability company agreement (or other organizational documents), or in default in the performance or observance of any obligation, covenant or condition contained in any indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which it is a party or by which it or any of its properties may be bound, other than such defaults that individually or in the aggregate would not have a Material Adverse Effect;

(o) No Conflicts. The issue and sale of the Securities (including the Guarantees), the issuance of the Underlying Common Stock upon conversion of the Securities and the compliance by the Company and the Guarantors with all of

the provisions of the Securities, the Guarantees, the Indenture and this Agreement and the consummation of the transactions herein and therein contemplated (A) will not conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries is bound or to which any of the property or assets of the Company or any of its subsidiaries is subject, except such conflict, breach or violation as would not have a Material Adverse Effect, (B) will not result in any violation of the provisions of the Certificate of Incorporation or bylaws of the Company or the certificate of formation or limited liability company agreement of any significant subsidiary, and (C) will not result in the violation of any statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Company or any of its subsidiaries or any of their properties, except such violations as would not have a Material Adverse Effect;

(p) No Consents Required. Except as disclosed in the Time of Sale Information and the Offering Memorandum, no consent, approval, authorization, order, registration or qualification of or with any such court or governmental agency or body is required for the issue and sale of the Securities (including the Guarantees), the issuance of the Underlying Common Stock upon the conversion of the Securities or the consummation by the Company of the transactions contemplated by this Agreement or the Indenture, except for such consents, approvals, authorizations, registrations or qualifications as may be required under state securities or Blue Sky laws in connection with the purchase and distribution of the Securities by the Initial Purchasers in the manner contemplated by this Agreement, the Time of Sale Information and the Offering Memorandum, the listing of the Underlying Common Stock on the New York Stock Exchange and except for such consents the failure to obtain would not have a Material Adverse Effect;

(q) Legal Proceedings. Except as set forth in the Time of Sale Information and the Offering Memorandum, there are no legal or governmental proceedings pending to which the Company, the Guarantors, or any of their subsidiaries is a party or of which any property of the Company or any of its subsidiaries is the subject which, if determined adversely to the Company or any of its subsidiaries, would individually or in the aggregate have a Material Adverse Effect; and, to the best of the Company's knowledge, no such proceedings are threatened or contemplated by governmental authorities or threatened by others;

(r) Independent Accountants. Ernst & Young LLP, who have certified the audited consolidated financial statements of the Company and its subsidiaries, are independent public accountants as required under the Securities Act and the rules and regulations of the Commission thereunder and the rules and regulations of the Public Company Accounting Oversight Board;

(s) Title to Personal Property. The Company and its subsidiaries own no material real property (other than leasehold interests); the Company and its subsidiaries have good title to (i) all barges, tugs, tankers, offshore supply vessels, multi-purpose supply vessels, anchor-handling towing supply vessels and other vessels (collectively, "Vessels") owned by them and (ii) all other personal property owned by them, in each case free and clear of all liens, encumbrances and defects except such as are described in the Time of Sale Information and the Offering Memorandum or such as do not materially affect the value of such property and do not interfere with the use made and proposed to be made of such property by the Company and its subsidiaries; and except for the leases at HOS Port, LLC, none of the real property and building space held under lease by the Company and its subsidiaries are material to the Company and its subsidiaries taken as a whole and, should their existing leases (except for such HOS Port LLC leases) expire or terminate, the cost to secure new facilities would not result in a Material Adverse Effect;

(t) Intellectual Property. The Company and its subsidiaries own or possess adequate licenses or other rights to use all trademarks, service marks, trade names and know-how necessary to conduct the businesses now or proposed to be operated by them as described in the Time of Sale Information and the Offering Memorandum, and neither the Company nor any of its subsidiaries has received any notice of conflict with (or knows of any such conflict with) asserted rights of others with respect to any trademarks, service marks, trade names or know-how which, if such assertion of conflict were sustained, would individually or in the aggregate have a Material Adverse Effect;

(u) No Undisclosed Relationships. No relationship, direct or indirect, exists between or among the Company or any of its subsidiaries, on the one hand, and the directors, officers, stockholders or other affiliates of the Company or any of its subsidiaries, on the other, that would be required by the Securities Act to be described in a registration statement to be filed with the Commission and that is not so described in each of the Time of Sale Information and the Offering Memorandum.

(v) Investment Company Act. The Company and the Guarantors are not and, after giving effect to the offering and sale of the Securities and the application of the proceeds thereof as described in the Time of Sale Information and the Offering Memorandum, will not be required to register as an "investment company" as such term is defined in the Investment Company Act of 1940, as amended, and the rules and regulations of the Commission thereunder (collectively, the "Investment Company Act");

(w) Taxes. The Company and its subsidiaries have filed all necessary federal, state, local and foreign income and franchise tax returns or have timely requested extensions thereof and, other than taxes that are currently being contested in good faith and for which adequate reserves have been provided, have paid all taxes shown as due thereon or made adequate accruals or

provision therefor, except to the extent such failures to pay or to file as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and other than tax deficiencies which the Company or any subsidiary is contesting in good faith and for which the Company or such subsidiary has provided adequate accruals, there is no tax deficiency that has been asserted against the Company or any subsidiary that would individually or in the aggregate have a Material Adverse Effect;

(x) Licenses and Permits. The Company and its significant subsidiaries possess all licenses, permits, certificates, consents, orders, approvals and other authorizations from, and have made all declarations and filings with, all federal, state, local or foreign and other governmental authorities, the American Bureau of Shipping and all courts and other tribunals, including without limitation under any applicable Environmental Laws (as defined below), currently required or necessary to own or lease, as the case may be, and to operate their properties and to carry on their business as now and proposed to be conducted as set forth in the Time of Sale Information and the Offering Memorandum ("Permits"), except where the failure to obtain such Permits would not individually or in the aggregate have a Material Adverse Effect; the Company and its subsidiaries have fulfilled and performed all of their obligations with respect to such Permits and no event has occurred which allows, or after notice or lapse of time would allow, revocation or termination thereof or results in any other material impairment of the rights of the holder of any such Permit, except where the failure to perform such obligations or the occurrence of such event would not have a Material Adverse Effect; and neither the Company nor any of its subsidiaries has received any notice of any proceeding relating to revocation or modification of any such Permit, except as described in the Time of Sale Information and the Offering Memorandum and except where such revocation or modification would not individually or in the aggregate have a Material Adverse Effect;

(y) No Labor Disputes. There is no strike, labor dispute, slowdown or work stoppage with the employees of the Company or any of its subsidiaries which is pending or, to the best of the Company's knowledge, threatened; neither the Company nor any of its subsidiaries is a party to or has any obligation under any collective bargaining agreement or other labor union contract, white paper or side agreement with any labor union or organization; except as described in the Time of Sale Information and the Offering Memorandum, to the best of the Company's knowledge, no collective bargaining organizing activities are taking place with respect to the Company or any of its subsidiaries; and the Company has a policy on drug and alcohol abuse applicable to each of the Vessels that meets or exceeds the standards contained in the current edition of the Oil Companies International Marine Forum Guidelines for the Control of Drugs and Alcohol Onboard Ship;

(z) Compliance With Environmental Laws. Except as described in the Time of Sale Information and the Offering Memorandum (or any amendment or supplement thereto) or as would not individually or in the aggregate have a Material Adverse Effect (A) the Company and its subsidiaries are in compliance with and not subject to any known liability under applicable Environmental Laws (as defined below), (B) the Company and its subsidiaries have made all filings and provided all notices required under any applicable Environmental Laws, and have, and are in compliance with, all Permits required under any applicable Environmental Laws and each of them is in full force and effect, (C) there is no civil, criminal or administrative action, suit, demand, claim, hearing, notice of violation, investigation, proceeding, notice or demand letter or request for information pending or, to the best of the Company's knowledge, threatened against the Company or its subsidiaries under any Environmental Law, (D) no lien, charge, encumbrance or restriction has been recorded under any Environmental Law with respect to any assets, facility or property owned, operated, leased or controlled by the Company or any of its subsidiaries, (E) neither the Company nor any of its subsidiaries has received written notice that it has been identified as a potentially responsible party under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), or any comparable state law, (F) no property or facility of the Company or any of its subsidiaries is (i) listed or, to the best of the Company's knowledge, proposed for listing on the National Priorities List under CERCLA or (ii) listed in the Comprehensive Environmental Response, Compensation, Liability Information System List promulgated pursuant to CERCLA, or on any comparable list maintained by any state or local governmental authority having jurisdiction and (G) each Vessel complies with the Federal Water Pollution Control Act, as amended, and has secured and carries on board a current U.S. Coast Guard Certificate of Financial Responsibility (Water Pollution);

For purposes of this Agreement, "Environmental Laws" means all applicable federal treaties and all applicable federal, state and local laws or regulations, codes, orders, decrees, judgments or injunctions issued, promulgated, approved or entered thereunder, relating to pollution or protection of public health and safety or the environment, including, without limitation, laws relating to (i) emissions, discharges, releases or threatened releases of Hazardous Materials (as defined below) into the environment (including, without limitation, ambient air, surface water, ground water, land surface or subsurface strata), (ii) the manufacture, processing, distribution, use, generation, treatment, storage, disposal, transport or handling of Hazardous Materials, and (iii) underground and above ground storage tanks and related piping, and emissions, discharges, releases or threatened releases therefrom. For purposes of this Agreement, "Hazardous Materials" means any pollutant, contaminant, substance, chemical or material that is listed, classified or regulated as a hazardous substance, hazardous waste or hazardous material, as defined in any applicable Environmental Law, to the extent any of the foregoing are present in a quantity or concentration regulated pursuant to an applicable Environmental Law;

(aa) Compliance With ERISA. Neither the Company nor any of its subsidiaries has any liability for any prohibited transaction or funding deficiency or any complete or partial withdrawal liability with respect to any pension, profit

sharing, 401(k) plan or other plan which is subject to the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), to which the Company or any of its subsidiaries makes or ever has made a contribution and in which any employee of the Company or any of its subsidiaries is or has ever been a participant, except for such liabilities which would not individually or in the aggregate have a Material Adverse Effect; and with respect to such plans, the Company and each of its subsidiaries are in compliance in all material respects with all applicable provisions of ERISA;

(bb) Disclosure Controls. The Company maintains disclosure controls and procedures (as such term is defined in Rule 13a-15(e) of the Exchange Act) that comply with the requirements of the Exchange Act; such disclosure controls and procedures have been designed to ensure that material information relating to the Company and its subsidiaries is made known to the Company's principal executive officer and principal financial executive officer by others within those entities; and such disclosure controls and procedures are effective;

(cc) Accounting Controls. Company maintains a system of internal control over financial reporting (as such term is defined in Rule 13a-15(f) of the Exchange Act) that complies with the requirements of the Exchange Act and has been designed by the Company's principal executive officer and principal financial officer, or under their supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles; the Company's internal control over financial reporting is effective, and the Company is not aware of any material weaknesses in its internal control over financial reporting.

(dd) Internal Controls. Since the date of the latest audited financial statements included or incorporated by reference in the Offering Memorandum and the Time of Sale Information, there has been no change in the Company's internal control over financial reporting that has materially and adversely affected, or is reasonably likely to materially and adversely affect, the Company's internal control over financial reporting.

(ee) Insurance. The Company and its subsidiaries carry insurance in such amounts and covering such risks as in their determination is adequate for the conduct of their business or the value of their properties.

(ff) No Unlawful Payments. Neither the Company nor any of its subsidiaries nor, to the best knowledge of the Company and each of the Guarantors, any director, officer, agent, employee or other person associated with or acting on behalf of the Company or any of its subsidiaries has (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; (iii) violated or is in violation of any provision of the Foreign

Corrupt Practices Act of 1977; or (iv) made any other unlawful payment from corporate funds, whether as a bribe, rebate, payoff, influence payment, kickback or otherwise.

(gg) Compliance with Money Laundering Laws. The operations of the Company and its subsidiaries are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the "Money Laundering Laws") and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its subsidiaries with respect to the Money Laundering Laws is pending or, to the best knowledge of the Company, threatened.

(hh) Compliance with OFAC. None of the Company, any of its subsidiaries or, to the knowledge of the Company, any director, officer, agent, employee or affiliate of the Company or any of its subsidiaries is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury ("OFAC"); and the Company will not directly or indirectly use the proceeds of the offering of the Securities hereunder, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, for the purpose of financing the activities of any person currently subject to any U.S. sanctions administered by OFAC.

(ii) No Broker's Fees. Neither the Company nor any of its subsidiaries is a party to any contract, agreement or understanding with any person (other than this Agreement) that would give rise to a valid claim against any of them or any Initial Purchaser for a brokerage commission, finder's fee or like payment in connection with the offering and sale of the Securities.

(jj) Rule 144A Eligibility. When the Securities are issued and delivered pursuant to this Agreement, no Securities will be of the same class (within the meaning of Rule 144A under the Securities Act) as securities which are listed on a national securities exchange registered under Section 6 of the Exchange Act, or quoted in a U.S. automated inter-dealer quotation system; the Securities satisfy the requirements set forth in Rule 144A(d)(3) under the Securities Act.

(kk) No Integration. Neither the Company, the Guarantors, nor any affiliate (as defined in Rule 501(b) of Regulation D) of the Company or the Guarantors has directly, or through any agent, sold, offered for sale, solicited offers to buy or otherwise negotiated in respect of, any security (as defined in the Securities Act) which is or will be integrated with the sale of the Securities or the Underlying Common Stock in a manner that would require the registration under the Securities Act of the offering contemplated by the Time of Sale Information and the Offering Memorandum.

(ll) No General Solicitation or Directed Selling Efforts. None of the Company, the Guarantors, any affiliate of the Company or any person acting on its or their behalf (other than the Initial Purchasers for whom we make no representation) has offered or sold the Securities or the Underlying Common Stock by means of any general solicitation or general advertising within the meaning of Rule 502(c) under the Securities Act.

(mm) Securities Law Exemptions. Assuming the accuracy of the representations and warranties of the Initial Purchasers contained in Section 1(b) and their compliance with their agreements set forth therein, it is not necessary, in connection with the issuance and sale of the Securities to the Initial Purchasers and the offer, resale and delivery of the Securities by the Initial Purchasers in the manner contemplated by this Agreement, the Time of Sale Information and the Offering Memorandum, to register the Securities under the Securities Act or to qualify the Indenture under the Trust Indenture Act.

(nn) No Stabilization. Prior to the date hereof, neither the Company nor any of its affiliates has taken any action which is designed to or which has constituted or which might have been expected to cause or result in stabilization or manipulation of the price of any security of the Company in connection with the offering of the Securities.

(oo) Margin Rules. None of the transactions contemplated by this Agreement (including, without limitation, the use of the proceeds from the sale of the Securities) will violate or result in a violation of Section 7 of the Exchange Act, or any regulation promulgated thereunder, including, without limitation, Regulations T, U, and X of the Board of Governors of the Federal Reserve System.

(pp) Forward-Looking Statements. No forward-looking statement (within the meaning of Section 27A of the Securities Act and Section 21E of the Exchange Act) contained in any of the Time of Sale Information or the Offering Memorandum has been made or reaffirmed without a reasonable basis or has been disclosed other than in good faith.

(qq) Statistical and Market Data. To the best of the Company's and the Guarantors' knowledge, the statistical and market related data included in the Time of Sale Information and the Offering Memorandum are based on or derived from sources which are reliable and accurate in all material respects.

(rr) Sarbanes-Oxley Act. There is and has been no failure on the part of the Company or any of the Company's directors or officers, in their capacities as such, to comply with any provision of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith (the "Sarbanes-Oxley Act"), including Section 402 related to loans and Sections 302 and 906 related to certifications.

4. Further Agreements of the Company and the Guarantors. The Company and each of the Guarantors jointly and severally covenant and agree with each Initial Purchaser that:

(a) Delivery of Copies. The Company will deliver, without charge, to the Initial Purchasers as many copies of the Preliminary Offering Memorandum, any other Time of Sale Information, any Issuer Written Communication and the Offering Memorandum (including all amendments and supplements thereto) as the Representatives may reasonably request.

(b) Offering Memorandum, Amendments or Supplements. Before finalizing the Offering Memorandum or making or distributing any amendment or supplement to any of the Time of Sale Information or the Offering Memorandum or, except as otherwise required by law with respect to any filing on Form 10-K, Form 10-Q or Form 8-K that is not related to the Securities, filing with the Commission any document that will be incorporated by reference therein, the Company will furnish to the Representatives and counsel for the Initial Purchasers a copy of the proposed Offering Memorandum or such amendment or supplement or document to be incorporated by reference therein for review, and will not distribute any such proposed Offering Memorandum, amendment or supplement or file, except as required by law with respect to any filing on Form 10-K, Form 10-Q or Form 8-K that is not related to the Securities, any such document with the Commission to which the Representatives reasonably object.

(c) Additional Written Communications. Before making, preparing, using, authorizing, approving or referring to any Issuer Written Communication, the Company will furnish to the Representatives and counsel for the Initial Purchasers a copy of such written communication for review and will not make, prepare, use, authorize, approve or refer to any such written communication to which the Representatives reasonably objects.

(d) Notice to the Representatives. The Company will advise the Representatives promptly, and, if requested by the Representatives, confirm such advice in writing (including, without limitation, via email or similar means of electronic communication), (i) of the issuance by any governmental or regulatory authority of any order preventing or suspending the use of any of the Time of Sale Information, any Issuer Written Communication or the Offering Memorandum or the initiation or threatening of any proceeding for that purpose; (ii) of the occurrence of any event at any time prior to the completion of the initial offering of the Securities as a result of which any of the Time of Sale Information, any Issuer Written Communication or the Offering Memorandum as then amended or supplemented would include any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances existing when such Time of Sale Information, Issuer

Written Communication or the Offering Memorandum is delivered to a purchaser, not misleading; and (iii) of the receipt by the Company of any notice with respect to any suspension of the qualification of the Securities for offer and sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose; and the Company will use its reasonable best efforts to prevent the issuance of any such order preventing or suspending the use of any of the Time of Sale Information, any Issuer Written Communication or the Offering Memorandum or suspending any such qualification of the Securities and, if any such order is issued, will use its reasonable best efforts to obtain as soon as possible the withdrawal thereof.

(e) Time of Sale Information. If at any time prior to the Closing Date (i) any event shall occur or condition shall exist as a result of which any of the Time of Sale Information as then amended or supplemented would include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading or (ii) it is necessary to amend or supplement any of the Time of Sale Information to comply with law, the Company will immediately notify the Initial Purchasers thereof and forthwith prepare and, subject to paragraph (b) above, furnish to the Initial Purchasers such amendments or supplements to any of the Time of Sale Information (or any document to be filed with the Commission and incorporated by reference therein) as may be necessary so that the statements in any of the Time of Sale Information as so amended or supplemented will not, in light of the circumstances under which they were made, be misleading or so that any of the Time of Sale Information will comply with law.

(f) Ongoing Compliance of the Offering Memorandum. If at any time prior to the completion of the initial offering of the Securities (i) any event shall occur or condition shall exist as a result of which the Offering Memorandum as then amended or supplemented would include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances existing when the Offering Memorandum is delivered to a purchaser, not misleading or (ii) it is necessary to amend or supplement the Offering Memorandum to comply with law, the Company will immediately notify the Initial Purchasers thereof and forthwith prepare and, subject to paragraph (b) above, furnish to the Initial Purchasers such amendments or supplements to the Offering Memorandum (or any document to be filed with the Commission and incorporated by reference therein) as may be necessary so that the statements in the Offering Memorandum as so amended or supplemented (including such document to be incorporated by reference therein) will not, in the light of the circumstances existing when the Offering Memorandum is delivered to a purchaser, be misleading or so that the Offering Memorandum will comply with law.

(g) Blue Sky Compliance. The Company will use its reasonable best efforts to qualify the Securities and the Underlying Common Stock for offer and sale under the securities or Blue Sky laws of such jurisdictions as the Representatives shall reasonably request and will use its reasonable best efforts to continue such qualifications in effect so long as required for the offering and resale of the Securities; provided that neither the Company nor any of the Guarantors shall be required to (i) qualify as a foreign corporation or other entity or as a dealer in securities in any such jurisdiction where it would not otherwise be required to so qualify, (ii) file any general consent to service of process in any such jurisdiction or (iii) subject itself to taxation in any such jurisdiction if it is not otherwise so subject.

(h) Lock-up Period. For a period commencing on the date hereof and ending on the 90th day after the date of the Offering Memorandum (the "Lock-Up Period"), the Company agrees not to, directly or indirectly (1) offer for sale, sell, pledge or otherwise dispose of (or enter into any transaction or device that is designed to, or could be expected to, result in the disposition by any person at any time in the future of) any shares of Common Stock or securities convertible into or exchangeable for Common Stock (other than the shares of Common Stock issued pursuant to an employee stock purchase plan, or any employee benefit plans, qualified stock option plans or other director or employee compensation plans existing on the date hereof or pursuant to currently outstanding options, warrants or rights not issued under one of those plans), or sell or grant options, rights or warrants with respect to any shares of Common Stock or securities convertible into or exchangeable for Common Stock (other than the grant of options pursuant to option plans existing on the date hereof), (2) enter into any swap or other derivatives transaction that transfers to another, in whole or in part, any of the economic benefits or risks of ownership of such shares of Common Stock, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of Common Stock or other securities, in cash or otherwise, (3) file or cause to be filed a registration statement, including any amendments, with respect to the registration of any shares of Common Stock or securities convertible, exercisable or exchangeable into Common Stock or any other securities of the Company (other than any registration statement on Form S-8) or (4) publicly disclose the intention to do any of the foregoing, in each case without the prior written consent of Barclays Capital Inc. and J.P. Morgan Securities LLC, on behalf of the Initial Purchasers, and to cause each officer, director and stockholder of the Company set forth on Schedule 3 hereto to furnish to the Representatives, on or before August 13, 2012, a letter or letters, substantially in the form of Annex E hereto (the "Lock-Up Agreements"); provided, however, that the foregoing shall not apply to (A) the sale of the Securities under this Agreement or the issuance of the Underlying Common Stock and (B)(i) Common Stock call option transactions with Barclays Bank PLC and/or other Initial Purchasers or their respective affiliates pursuant to the confirmation letters dated August 7, 2012 and (ii) warrant transactions with Barclays Bank PLC and/or other Initial Purchasers or their respective affiliates pursuant to the confirmation letters dated August 7, 2012.

(i) Conversion Price. Between the date hereof and the Closing Date (both dates included), the Company will not do any act or thing which, had the Firm Securities then been in issue, would result in an adjustment to the conversion price of the Firm Securities.

(j) Use of Proceeds. The Company will apply the net proceeds from the sale of the Securities as described in each of the Time of Sale Information and the Offering Memorandum under the heading “Use of proceeds”.

(k) Supplying Information. So long as any of the Securities or the Underlying Common Stock are outstanding and are “restricted securities” within the meaning of Rule 144(a)(3) under the Securities Act, the Company will, furnish at its expense to the Initial Purchasers, and, upon request, to the holders of the Securities or the Underlying Common Stock and prospective purchasers of the Securities or the Underlying Common Stock the information required by Rule 144A(d)(4) under the Securities Act (if any).

(l) DTC. The Company will assist the Initial Purchasers in arranging for the Securities to be eligible for clearance and settlement through The Depository Trust Company (“DTC”).

(m) No Resales by the Company. The Company will not, and will not permit any of its affiliates (as defined in Rule 144 under the Securities Act) to, resell any of the Securities that have been acquired by any of them, except for Securities purchased by the Company or any of its affiliates and resold in a transaction registered under the Securities Act.

(n) No Integration. Neither the Company nor any of its affiliates (as defined in Rule 501(b) of Regulation D) will, directly or through any agent, sell, offer for sale, solicit offers to buy or otherwise negotiate in respect of, any security (as defined in the Securities Act), that is or will be integrated with the sale of the Securities or the Underlying Common Stock in a manner that would require registration of the Securities or the Underlying Common Stock under the Securities Act.

(o) No General Solicitation or Directed Selling Efforts. None of the Company or any of its affiliates or any other person acting on its or their behalf (other than the Initial Purchasers, as to which no covenant is given) will solicit offers for, or offer or sell, the Securities or the Underlying Common Stock by means of any form of general solicitation or general advertising within the meaning of Rule 502(c) of Regulation D or in any manner involving a public offering within the meaning of Section 4(2) of the Securities Act.

(p) No Stabilization. Neither the Company nor any of the Guarantors will take, directly or indirectly, any action designed to or that could reasonably be expected to cause or result in any stabilization or manipulation of the price of the Securities.

(q) Reserve. The Company agrees to reserve and keep available at all times, free of preemptive rights, a sufficient amount of Underlying Common Stock to enable the Company to satisfy any obligations to issue Underlying Common Stock upon conversion of the Securities (other than the Guarantees).

(r) Common Stock Listing. The Company agrees to use its reasonable best efforts to list, subject to notice of issuance, the Underlying Common Stock issuable upon conversion of the Securities (other than the Guarantees) on the New York Stock Exchange, and to maintain a transfer agent and, if necessary under the jurisdiction of incorporation of the Company, a register for the Underlying Common Stock.

5. Certain Agreements of the Initial Purchasers. Each Initial Purchaser hereby represents and agrees that it has not and will not use, authorize use of, refer to, or participate in the planning for use of, any written communication that constitutes an offer to sell or the solicitation of an offer to buy the Securities other than (i) the Time of Sale Information and the Offering Memorandum, (ii) a written communication that contains no "issuer information" (as defined in Rule 433(h)(2) under the Securities Act) that was not included (including through incorporation by reference) in the Time of Sale Information or the Offering Memorandum, (iii) any written communication listed on Annex A or prepared pursuant to Section 4(c) above (including any electronic road show), (iv) any written communication prepared by such Initial Purchaser and approved by the Company in advance in writing or (v) any written communication relating to or that contains the terms of the Securities and/or other information that was included (including through incorporation by reference) in the Time of Sale Information or the Offering Memorandum.

6. Conditions of Initial Purchasers' Obligations. The obligation of each Initial Purchaser to purchase Securities on the Closing Date as provided herein is subject to the performance by the Company and each of the Guarantors of their respective covenants and other obligations hereunder and to the following additional conditions:

(a) Representations and Warranties. The representations and warranties of the Company and the Guarantors contained herein shall be true and correct on the date hereof and on and as of the Closing Date and any Option Closing Date; and the statements of the Company, the Guarantors and their respective officers made in any certificates delivered pursuant to this Agreement shall be true and correct on and as of the Closing Date and any Option Closing Date.

(b) No Downgrade. Subsequent to the earlier of (A) the Time of Sale and (B) the execution and delivery of this Agreement, (i) no downgrading shall have occurred in the rating accorded the Securities or any other debt securities or preferred stock issued or guaranteed by the Company or any of its subsidiaries by any "nationally recognized statistical rating organization", as such term is defined under Section 3(a)(62) of the Exchange Act; and (ii) no such organization shall have publicly announced that it has under surveillance or

review, or has changed its outlook with respect to, its rating of the Securities or of any other debt securities or preferred stock issued or guaranteed by the Company or any of its subsidiaries (other than an announcement with positive implications of a possible upgrading).

(c) No Material Adverse Change. No event or condition of a type described in Section 3(e) hereof shall have occurred or shall exist, which event or condition is not described in each of the Time of Sale Information (excluding any amendment or supplement thereto) and the Offering Memorandum (excluding any amendment or supplement thereto) the effect of which in the judgment of the Representatives makes it impracticable or inadvisable to proceed with the offering, sale or delivery of the Securities on the terms and in the manner contemplated by this Agreement, the Time of Sale Information and the Offering Memorandum.

(d) Officer's Certificate. The Representatives shall have received on and as of the Closing Date and any Option Closing Date a certificate of an executive officer of the Company and of each Guarantor who has specific knowledge of the Company's or such Guarantor's financial matters and is satisfactory to the Representatives (i) confirming that such officer has carefully reviewed the Time of Sale Information and the Offering Memorandum and, to the best knowledge of such officer, the representations set forth in Sections 3(a) and 3(b) hereof are true and correct, (ii) confirming that the other representations and warranties of the Company and the Guarantors in this Agreement are true and correct and that the Company and the Guarantors have complied with all agreements and satisfied all conditions on their part to be performed or satisfied hereunder at or prior to the Closing Date and (iii) to the effect set forth in paragraphs (b) and (c) above.

(e) Comfort Letters. On the date of this Agreement and on the Closing Date and any Option Closing Date, Ernst & Young LLP shall have furnished to the Representatives, at the request of the Company, letters, dated the respective dates of delivery thereof and addressed to the Initial Purchasers, in form and substance reasonably satisfactory to the Representatives, containing statements and information of the type customarily included in accountants' "comfort letters" to underwriters with respect to the financial statements and certain financial information contained or incorporated by reference in each of the Time of Sale Information and the Offering Memorandum; provided that the letter delivered on the Closing Date and any Option Closing Date shall use a "cut-off" date no more than three business days prior to the Closing Date and any Option Closing Date, as the case may be.

(f) Opinion of Counsel for the Company. Winstead PC, counsel for the Company, shall have furnished to the Representatives, at the request of the Company, their written opinion, dated the Closing Date and any Option Closing Date and addressed to the Initial Purchasers, in form and substance reasonably satisfactory to the Representatives, to the effect set forth in Annex C hereto.

(g) Opinion of Special Counsel for the Company. Latham and Watkins LLP, special counsel for the Company, shall have furnished to the Representatives, at the request of the Company, their written opinion, dated the Closing Date and any Option Closing Date and addressed to the Initial Purchasers, in form and substance reasonably satisfactory to the Representatives, to the effect set forth in Annex D hereto.

(h) Opinion of Counsel for the Initial Purchasers. The Representatives shall have received on and as of the Closing Date and any Option Closing Date an opinion of Vinson & Elkins LLP, counsel for the Initial Purchasers, with respect to such matters as the Representatives may reasonably request, and such counsel shall have received such documents and information as they may reasonably request to enable them to pass upon such matters.

(i) No Legal Impediment to Issuance. No action shall have been taken and no statute, rule, regulation or order shall have been enacted, adopted or issued by any federal, state or foreign governmental or regulatory authority that would, as of the Closing Date or any Option Closing Date, prevent the issuance or sale of the Securities (other than the Guarantees) or the issuance of the Guarantees; and no injunction or order of any federal, state or foreign court shall have been issued that would, as of the Closing Date or any Option Closing Date, prevent the issuance or sale of the Securities (other than the Guarantees) or the issuance of the Guarantees.

(j) Good Standing. The Representatives shall have received on and as of the Closing Date and any Option Closing Date satisfactory evidence of the good standing of the Company and the Guarantors in their respective jurisdictions of organization and their good standing in such other jurisdictions as the Representatives may reasonably request, in each case in writing or any standard form of telecommunication, from the appropriate governmental authorities of such jurisdictions.

(k) DTC. The Securities shall be eligible for clearance and settlement through DTC.

(l) Listing. The Company shall have used its reasonable best efforts to have the Underlying Common Stock issuable upon conversion of the Securities duly listed, subject to notice of issuance, on the New York Stock Exchange.

(m) Lock-up Agreements. The Lock-Up Agreements between the Representatives and the officers, directors and stockholders of the Company set forth on Schedule 3, delivered to the Representatives on or before August 13, 2012, shall be in full force and effect on the Closing Date and the Option Closing Date, as the case may be.

(n) Additional Documents. On or prior to the Closing Date and any Option Closing Date, the Company and the Guarantors shall have furnished to the Representatives such further certificates and documents as the Representatives may reasonably request.

The several obligations of the Initial Purchasers to purchase Additional Securities hereunder are subject to the delivery to the Representatives on the applicable Option Closing Date of such documents as the Representatives may reasonably request with respect to the good standing of the Company, the due authorization and issuance of the Additional Securities to be sold on such Option Closing Date and other matters related to the issuance of such Additional Securities.

All opinions, letters, certificates and evidence mentioned above or elsewhere in this Agreement shall be deemed to be in compliance with the provisions hereof only if they are in form and substance reasonably satisfactory to counsel for the Initial Purchasers.

7. Indemnification and Contribution.

(a) Indemnification of the Initial Purchasers. The Company and each of the Guarantors jointly and severally agree to indemnify and hold harmless each Initial Purchaser, its affiliates, directors and officers and each person, if any, who controls such Initial Purchaser within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, from and against any and all losses, claims, damages and liabilities (including, without limitation, reasonable legal fees and other expenses incurred in connection with any suit, action or proceeding or any claim asserted, as such fees and expenses are incurred), joint or several, that arise out of, or are based upon, any untrue statement or alleged untrue statement of a material fact contained in the Preliminary Offering Memorandum, any of the other Time of Sale Information, any Issuer Written Communication or the Offering Memorandum (or any amendment or supplement thereto) or any omission or alleged omission to state therein a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, in each case except insofar as such losses, claims, damages or liabilities arise out of, or are based upon, any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with any information relating to any Initial Purchaser furnished to the Company in writing by such Initial Purchaser through the Representatives expressly for use therein.

(b) Indemnification of the Company. Each Initial Purchaser agrees, severally and not jointly, to indemnify and hold harmless the Company, each of the Guarantors, each of their respective directors and officers and each person, if any, who controls the Company or any of the Guarantors within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act to the same extent as the indemnity set forth in paragraph (a) above, but only with respect to any losses, claims, damages or liabilities that arise out of, or are based upon,

any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with any information relating to such Initial Purchaser furnished to the Company in writing by such Initial Purchaser through the Representatives expressly for use in the Preliminary Offering Memorandum, any of the other Time of Sale Information, any Issuer Written Communication or the Offering Memorandum (or any amendment or supplement thereto), it being understood and agreed that the only such information consists of the following: the fourth and ninth paragraphs under the caption “Plan of Distribution” in the Offering Memorandum.

(c) Notice and Procedures. If any suit, action, proceeding (including any governmental or regulatory investigation), claim or demand shall be brought or asserted against any person in respect of which indemnification may be sought pursuant to either paragraph (a) or (b) above, such person (the “Indemnified Person”) shall promptly notify the person against whom such indemnification may be sought (the “Indemnifying Person”) in writing; provided that the failure to notify the Indemnifying Person shall not relieve it from any liability that it may have under paragraph (a) or (b) above except to the extent that it has been materially prejudiced (through the forfeiture of substantive rights or defenses) by such failure; and provided, further, that the failure to notify the Indemnifying Person shall not relieve it from any liability that it may have to an Indemnified Person otherwise than under paragraph (a) or (b) above. If any such proceeding shall be brought or asserted against an Indemnified Person and it shall have notified the Indemnifying Person thereof, the Indemnifying Person shall retain counsel reasonably satisfactory to the Indemnified Person (who shall not, without the consent of the Indemnified Person, be counsel to the Indemnifying Person) to represent the Indemnified Person and any others entitled to indemnification pursuant to this Section 7 that the Indemnifying Person may designate in such proceeding and shall pay the fees and expenses of such proceeding and shall pay the fees and expenses of such counsel related to such proceeding, as incurred. In any such proceeding, any Indemnified Person shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such Indemnified Person unless (i) the Indemnifying Person and the Indemnified Person shall have mutually agreed to the contrary; (ii) the Indemnifying Person has failed within a reasonable time to retain counsel reasonably satisfactory to the Indemnified Person; (iii) the Indemnified Person shall have reasonably concluded that there may be legal defenses available to it that are different from or in addition to those available to the Indemnifying Person; or (iv) the named parties in any such proceeding (including any impleaded parties) include both the Indemnifying Person and the Indemnified Person and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them. It is understood and agreed that the Indemnifying Person shall not, in connection with any proceeding or related proceeding in the same jurisdiction, be liable for the fees and expenses of more than one separate firm (in addition to any local counsel) for all Indemnified Persons, and that all such fees and expenses shall be reimbursed as they are incurred. Any such separate firm for

any Initial Purchaser, its affiliates, directors and officers and any control persons of such Initial Purchaser shall be designated in writing by the Representatives and any such separate firm for the Company, the Guarantors, their respective directors and officers and any control persons of the Company and the Guarantors shall be designated in writing by the Company. The Indemnifying Person shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the Indemnifying Person agrees to indemnify each Indemnified Person from and against any loss or liability by reason of such settlement or judgment. No Indemnifying Person shall, without the written consent of the Indemnified Person, effect any settlement of any pending or threatened proceeding in respect of which any Indemnified Person is or could have been a party and indemnification could have been sought hereunder by such Indemnified Person, unless such settlement (x) includes an unconditional release of such Indemnified Person, in form and substance reasonably satisfactory to such Indemnified Person, from all liability on claims that are the subject matter of such proceeding and (y) does not include any statement as to or any admission of fault, culpability or a failure to act by or on behalf of any Indemnified Person.

(d) Contribution. If the indemnification provided for in paragraphs (a) or (b) above is unavailable to an Indemnified Person or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then each Indemnifying Person under such paragraph, 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 (i) in such proportion as is appropriate to reflect the relative benefits received by the Company and the Guarantors on the one hand and the Initial Purchasers on the other from the offering of the Securities or (ii) if the allocation provided by clause (i) is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) but also the relative fault of the Company and the Guarantors on the one hand and the Initial Purchasers on the other in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative benefits received by the Company and the Guarantors on the one hand and the Initial Purchasers on the other shall be deemed to be in the same respective proportions as the net proceeds (before deducting expenses) received by the Company from the sale of the Securities and the total discounts and commissions received by the Initial Purchasers in connection therewith, as provided in this Agreement, bear to the aggregate offering price of the Securities. The relative fault of the Company and the Guarantors on the one hand and the Initial Purchasers on the other shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company or any Guarantor or by the Initial Purchasers and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

(e) Limitation on Liability. The Company, the Guarantors and the Initial Purchasers agree that it would not be just and equitable if contribution pursuant to this Section 7 were determined by pro rata allocation (even if the Initial Purchasers were treated as one entity for such purpose) or by any other method of allocation that does not take account of the equitable considerations referred to in paragraph (d) above. The amount paid or payable by an Indemnified Person as a result of the losses, claims, damages and liabilities referred to in paragraph (d) above shall be deemed to include, subject to the limitations set forth above, any legal or other expenses incurred by such Indemnified Person in connection with any such action or claim. Notwithstanding the provisions of this Section 7, in no event shall an Initial Purchaser be required to contribute any amount in excess of the amount by which the total discounts and commissions received by such Initial Purchaser with respect to the offering of the Securities exceeds the amount of any damages that such Initial Purchaser has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Initial Purchasers' obligations to contribute pursuant to this Section 7 are several in proportion to their respective purchase obligations hereunder and not joint.

(f) Non-Exclusive Remedies. The remedies provided for in this Section 7 are not exclusive and shall not limit any rights or remedies that may otherwise be available to any Indemnified Person at law or in equity.

8. Termination. This Agreement may be terminated in the sole discretion of the Representatives, by notice to the Company, if after the execution and delivery of this Agreement and on or prior to the Closing Date (i) trading generally shall have been suspended or materially limited on the New York Stock Exchange or the over-the-counter market; (ii) trading of any securities issued or guaranteed by the Company or any of the Guarantors shall have been suspended on any exchange or in any over-the-counter market; (iii) a general moratorium on commercial banking activities shall have been declared by federal or New York State authorities; or (iv) there shall have occurred any outbreak or escalation of hostilities or any change in financial markets or any calamity or crisis, either within or outside the United States, that, in the judgment of the Representatives after consultation with the Company, is material and adverse and makes it impracticable or inadvisable to proceed with the offering, sale or delivery, of the Securities on the terms and in the manner contemplated by this Agreement, the Time of Sale Information and the Offering Memorandum.

9. Defaulting Initial Purchaser.

(a) If, on the Closing Date or the Option Closing Date, as the case may be, any Initial Purchaser defaults on its obligation to purchase the Securities that it has agreed to purchase hereunder, the non-defaulting Initial Purchasers may in their discretion arrange for the purchase of such Securities by other persons

satisfactory to the Company on the terms contained in this Agreement. If, within 36 hours after any such default by any Initial Purchaser, the non-defaulting Initial Purchasers do not arrange for the purchase of such Securities, then the Company shall be entitled to a further period of 36 hours within which to procure other persons satisfactory to the non-defaulting Initial Purchasers to purchase such Securities on such terms. If other persons become obligated or agree to purchase the Securities of a defaulting Initial Purchaser, either the non-defaulting Initial Purchasers or the Company may postpone the Closing Date or the Option Closing Date, as the case may be, for up to five full business days in order to effect any changes that in the opinion of counsel for the Company or counsel for the Initial Purchasers may be necessary in the Time of Sale Information, the Offering Memorandum or in any other document or arrangement, and the Company agrees to promptly prepare any amendment or supplement to the Time of Sale Information or the Offering Memorandum that effects any such changes. As used in this Agreement, the term "Initial Purchaser" includes, for all purposes of this Agreement unless the context otherwise requires, any person not listed in Schedule 1 hereto that, pursuant to this Section 9, purchases Securities that a defaulting Initial Purchaser agreed but failed to purchase.

(b) If, after giving effect to any arrangements for the purchase of the Securities of a defaulting Initial Purchaser or Initial Purchasers by the non-defaulting Initial Purchasers and the Company as provided in paragraph (a) above, the aggregate principal amount of such Securities that remains unpurchased does not exceed one-tenth of the aggregate principal amount of all the Securities to be purchased on such date, then the Company shall have the right to require each non-defaulting Initial Purchaser to purchase the principal amount of Securities that such Initial Purchaser agreed to purchase hereunder on such date plus such Initial Purchaser's pro rata share (based on the principal amount of Securities that such Initial Purchaser agreed to purchase hereunder on such date) of the Securities of such defaulting Initial Purchaser or Initial Purchasers for which such arrangements have not been made.

(c) If, after giving effect to any arrangements for the purchase of the Securities of a defaulting Initial Purchaser or Initial Purchasers by the non-defaulting Initial Purchasers and the Company as provided in paragraph (a) above, the aggregate principal amount of such Securities that remains unpurchased exceeds one-tenth of the aggregate principal amount of all the Securities to be purchased on such date, or if the Company shall not exercise the right described in paragraph (b) above, then this Agreement or, with respect to the Option Closing Date, the obligation of the Initial Purchasers to purchase Additional Securities on the Option Closing Date, as the case may be, shall terminate without liability on the part of the non-defaulting Initial Purchasers. Any termination of this Agreement pursuant to this Section 9 shall be without liability on the part of the Company or the Guarantors, except that the Company and each of the Guarantors will continue to be liable for the payment of expenses as set forth in Section 10 hereof and except that the provisions of Section 7 hereof shall not terminate and shall remain in effect.

(d) Nothing contained herein shall relieve a defaulting Initial Purchaser of any liability it may have to the Company, the Guarantors or any non-defaulting Initial Purchaser for damages caused by its default.

10. Payment of Expenses.

(a) Whether or not the transactions contemplated by this Agreement are consummated or this Agreement is terminated, the Company and each of the Guarantors jointly and severally agree to pay or cause to be paid all costs and expenses incident to the performance of their respective obligations hereunder, including without limitation, (i) the costs incident to the authorization, issuance, sale, preparation and delivery of the Securities and any taxes payable in that connection; (ii) the costs incident to the preparation and printing of the Preliminary Offering Memorandum, any other Time of Sale Information, any Issuer Written Communication and the Offering Memorandum (including any amendment or supplement thereto) and the distribution thereof; (iii) the costs of reproducing and distributing this Agreement, the Indenture and the Global Notes; (iv) the fees and expenses of the Company's and the Guarantors' counsel and independent accountants; (v) the fees and expenses incurred in connection with the registration or qualification and determination of eligibility for investment of the Securities or the Underlying Common Stock under the laws of such jurisdictions as the Representatives may designate and the preparation, printing and distribution of a Blue Sky Memorandum (including the related fees and expenses of counsel for the Initial Purchasers); (vi) any fees charged by rating agencies for rating the Securities; (vii) the fees and expenses of the Trustee and any paying agent (including related fees and expenses of any counsel to such parties); (viii) all expenses and application fees incurred in connection with the approval of the Securities for book-entry transfer by DTC; (ix) all fees and expenses in connection with the listing of the Underlying Common Stock on the New York Stock Exchange, and (x) all expenses incurred by the Company in connection with any "road show" presentation to potential investors.

(b) If (i) this Agreement is terminated pursuant to Section 8(ii), (ii) the Company for any reason fails to tender the Securities for delivery to the Initial Purchasers or (iii) the Initial Purchasers decline to purchase the Securities for any reason permitted under this Agreement (other than pursuant to Section 8(i), (iii), or (iv)), the Company and each of the Guarantors jointly and severally agrees to reimburse the Initial Purchasers for all out-of-pocket costs and expenses (including the reasonable fees and expenses of their counsel) reasonably incurred by the Initial Purchasers in connection with this Agreement and the offering contemplated hereby.

11. Persons Entitled to Benefit of Agreement. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and any controlling persons referred to herein, and the affiliates, officers and directors of each Initial Purchaser referred to in Section 7 hereof. Nothing in this Agreement is intended or shall be construed to give any other person any legal or equitable right,

remedy or claim under or in respect of this Agreement or any provision contained herein. No purchaser of Securities from any Initial Purchaser shall be deemed to be a successor merely by reason of such purchase.

12. Survival. The respective indemnities, rights of contribution, representations, warranties and agreements of the Company, the Guarantors and the Initial Purchasers contained in this Agreement or made by or on behalf of the Company, the Guarantors or the Initial Purchasers pursuant to this Agreement or any certificate delivered pursuant hereto shall survive the delivery of and payment for the Securities and shall remain in full force and effect, regardless of any termination or completion of this Agreement or any investigation made by or on behalf of the Company, the Guarantors or the Initial Purchasers.

13. Certain Defined Terms. For purposes of this Agreement, (a) except where otherwise expressly provided, the term “affiliate” has the meaning set forth in Rule 405 under the Securities Act; (b) the term “business day” means any day other than a day on which banks are permitted or required to be closed in New York City; (c) the term “Exchange Act” means the Securities Exchange Act of 1934, as amended; (d) the term “subsidiary” has the meaning set forth in Rule 405 under the Securities Act; (e) the term “significant subsidiary” has the meaning set forth in Rule 3-05 of Regulation S-X under the Securities Act; and (f) the term “written communication” has the meaning set forth in Rule 405 under the Securities Act.

14. Miscellaneous.

(a) Authority of the Representatives. Any action by the Initial Purchasers hereunder may be taken by Barclays Capital Inc. on behalf of the Initial Purchasers, and any such action taken by Barclays Capital Inc. shall be binding upon the Initial Purchasers.

(b) Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if mailed or transmitted and confirmed by any standard form of telecommunication:

(i) if to the Representatives, shall be delivered or sent by hand delivery, mail, telex, overnight courier or facsimile transmission to Barclays Capital Inc., 745 Seventh Avenue, New York, New York 10019, Attention: Syndicate Registration, J.P. Morgan Securities LLC, 383 Madison Avenue, New York, New York 10179 (Fax: (212) 622-8358) Attention: Equity Syndicate Desk, and Wells Fargo Securities, LLC, 375 Park Avenue, New York, New York 10152, Attention: Equity Syndicate Department (Fax: (212) 214-5918), with a copy to Vinson & Elkins LLP, First City Tower, 1001 Fannin Street, Suite 2500, Houston, Texas 77002-6760, Attention: T. Mark Kelly (Fax: (713) 615-5531), and with a copy, in the case of any notice pursuant to Section 8(c), to the Director of Litigation, Office of the General Counsel, Barclays Capital Inc., 745 Seventh Ave., New York, New York 10019;

(ii) if to the Company and the Guarantors, shall be delivered or sent by hand delivery, mail, telex, overnight courier or facsimile transmission to Hornbeck Offshore Services, Inc., 103 Northpark Boulevard, Suite 300, Covington, Louisiana 70433 (fax: (985) 727-2006); Attention: Sam Giberga, General Counsel.

(c) Governing Law. This Agreement and any claim, controversy or dispute arising under or related to this Agreement shall be governed by and construed in accordance with the laws of the State of New York.

(d) Counterparts. This Agreement may be signed in counterparts (which may include counterparts delivered by any standard form of telecommunication), each of which shall be an original and all of which together shall constitute one and the same instrument.

(e) Amendments or Waivers. No amendment or waiver of any provision of this Agreement, nor any consent or approval to any departure therefrom, shall in any event be effective unless the same shall be in writing and signed by the parties hereto.

(f) Headings. The headings herein are included for convenience of reference only and are not intended to be part of, or to affect the meaning or interpretation of, this Agreement.

If the foregoing is in accordance with your understanding, please indicate your acceptance of this Agreement by signing in the space provided below.

Very truly yours,

HORNBECK OFFSHORE SERVICES, INC.

By /s/ James O. Harp, Jr.
James O. Harp, Jr.
Executive Vice President and
Chief Financial Officer

Guarantors:

Energy Services Puerto Rico, LLC
Hornbeck Offshore Services, LLC
Hornbeck Offshore Transportation, LLC
Hornbeck Offshore Operators, LLC
HOS-IV, LLC
Hornbeck Offshore Trinidad & Tobago, LLC
HOS Port, LLC

By /s/ James O. Harp, Jr.
James O. Harp, Jr.
Executive Vice President and
Chief Financial Officer

Accepted: August 7, 2012

BARCLAYS CAPITAL INC.

By /s/ Paul Robinson

J.P. MORGAN SECURITIES LLC

By /s/ Jason Wood

WELLS FARGO SECURITIES, LLC

By /s/ Jay Buckman

Schedule 1

Initial Purchaser	Principal Amount
Barclays Capital Inc.	$104,000,000
J.P. Morgan Securities LLC	104,000,000
Wells Fargo Securities, LLC	52,000,000
Total	$260,000,000

List of Guarantors

Energy Services Puerto Rico, LLC, a Delaware limited liability company

Hornbeck Offshore Services, LLC, a Delaware limited liability company

Hornbeck Offshore Transportation, LLC, a Delaware limited liability company

Hornbeck Offshore Operators, LLC, a Delaware limited liability company

HOS-IV, LLC, a Delaware limited liability company

Hornbeck Offshore Trinidad & Tobago, LLC, a Delaware limited liability company

HOS Port, LLC, a Delaware limited liability company

Parties to Lock-up Agreements

Todd M. Hornbeck

James O. Harp, Jr.

Carl G. Annessa

Samuel A. Giberga

John S. Cook

Larry D. Hornbeck

Bruce W. Hunt

Steven W. Krablin

Patricia B. Melcher

Bernie W. Stewart

John T. Rynd

Kevin Omar Meyers

William Herbert Hunt Trust Estate

Troy Hornbeck

Nicholas L. Swyka, Jr.

ANNEX A

a. Additional Time of Sale Information

1. Term sheet containing the terms of the securities, substantially in the form of Annex B.

ANNEX B

Final
August 7, 2012

Hornbeck Offshore Services, Inc.

Pricing Term Sheet

Pricing Term Sheet, dated August 7, 2012
to Preliminary Offering Memorandum dated August 6, 2012
Strictly Confidential

Issuer:	Hornbeck Offshore Services, Inc.
Ticker / Exchange for Common Stock:	HOS/ NYSE
Notes:	1.500% Convertible Senior Notes due 2019
Distribution:	Rule 144A without registration rights
Issue Price:	100%, plus accrued interest from August 13, 2012
Aggregate Principal Amount Offered:	$260 million ($300 million if the initial purchasers' option to purchase additional notes is exercised in full)
Interest Rate:	1.500% per annum, payable semi-annually
Conversion Premium:	37.5%
Initial Conversion Price:	Approximately $53.85 per share of common stock
Initial Conversion Rate:	18.5718 shares of common stock per $1,000 aggregate principal amount of notes
Interest Payment Dates:	March 1 and September 1, beginning March 1, 2013
Record Dates:	February 15 and August 15
Maturity:	September 1, 2019
Guarantees:	The notes will be fully and unconditionally guaranteed on a senior unsecured basis by the Company's domestic significant subsidiaries, which are the same subsidiaries that are guarantors of the Company's revolving credit facility and its outstanding senior notes. The liability of each guarantor under its respective subsidiary

	guarantee will be limited as necessary to the amount, if any, which would not have rendered such guarantor "insolvent" (as such term is defined under federal bankruptcy law and in the debtor and creditor law of New York state) or, under certain circumstances, left it with unreasonably small capital. The guarantee will be subject to release in connection with any sale or other disposition of all or substantially all of the assets of that guarantor (including by way of merger or consolidation, in accordance with the provisions of the indenture), in connection with any sale of all of the capital stock of a guarantor, in accordance with the provisions of the indenture, or upon the release of its guarantee of all other indebtedness of the Company's or any of the domestic subsidiaries.
Last Reported Sale Price on August 7, 2012:	$39.16
Use of Proceeds:	The Company estimates that the net proceeds from the offering will be approximately $251.9 million (or approximately $290.8 million if the initial purchasers exercise their option to purchase additional notes in full), after deducting initial purchaser discounts and fees and expenses of the offering. In addition, the Company expects to receive proceeds from the sale of warrants described under "Description of the Convertible Note Hedge and Warrant Transactions" in the Preliminary Offering Memorandum. The Company intends to apply a portion of the net proceeds from the sale of the notes and the proceeds from the sale of the warrants to fund the cost of the convertible note hedge transactions entered into between the Company and certain of the initial purchasers or their affiliates (in this capacity, the "option counterparties"). The Company expects to apply the remaining $230.4 million of the net proceeds, along with other available sources of cash, to retire the 1.625% convertible notes in November 2013, when such convertible notes are first subject to repurchase by the Company at the option of holders, or redemption at the Company's option, or for general corporate purposes, which may include retirement of other debt or funding for the acquisition, construction or retrofit of vessels. Until the net proceeds are used for such purposes, we may deposit them in interest-bearing accounts or invest them in short-term marketable securities. If the initial purchasers exercise their option to purchase additional notes in full, the aggregate net proceeds from this offering will be approximately $290.8 million. If the initial purchasers exercise their option to purchase additional notes, the Company intends to use a portion of the net proceeds from the sale of the additional notes to pay for additional convertible note hedge transactions, to be partially offset by the sale of additional warrants, in each case to with the option counterparties. Remaining net proceeds will be used, along with other available sources of cash, to retire the 1.625% convertible notes and for general corporate purposes, including retirement of other debt or funding for the acquisition, construction or retrofit of vessels.
Trade Date:	August 8, 2012

Closing Date:	August 13, 2012
CUSIP Number:	440543 AM8
ISIN:	US440543AM89
Joint Book-Running Managers:	Barclays Capital Inc. J.P. Morgan Securities LLC Wells Fargo Securities, LLC
Listing:	None
Convertible Note Hedge and Warrant Transactions:	The convertible note hedge transactions cover, subject to customary anti-dilution adjustments, the aggregate number of shares of the Company's common stock underlying the notes. The warrants sold to the option counterparties under the warrant transactions relate to, subject to customary anti-dilution adjustments, the same number of shares of the Company's common stock. The strike price of the convertible note hedge transactions will initially correspond to the Initial Conversion Price and is subject, with certain exceptions, to the adjustments applicable to the conversion price of the notes. The strike price of the warrants will initially equal $68.53 and is subject to customary anti-dilution adjustments.
Adjustment to Common Stock Delivered Upon a Conversion Upon a Fundamental Change:	The following table sets forth the number of additional shares to be added to the conversion rate per $1,000 principal amount of notes in connection with a fundamental change as defined in the Preliminary Offering Memorandum for each stock price and effective date set forth below, subject to adjustments as provided in the Preliminary Offering Memorandum:

	Stock Price												
Effective Date	$39.16	$40.00	$45.00	$50.00	$55.00	$60.00	$65.00	$70.00	$80.00	$90.00	$100.00	$120.00	$140.00
August 13, 2012	6.9644	6.6953	5.3506	4.3423	3.5679	2.9628	2.4813	2.0931	1.5152	1.1157	0.8309	0.4685	0.2627
September 1, 2013	6.9644	6.6397	5.2558	4.2249	3.4391	2.8295	2.3482	1.9632	1.3964	1.0105	0.7396	0.4018	0.2157
September 1, 2014	6.9644	6.5623	5.1333	4.0775	3.2799	2.6668	2.1875	1.8077	1.2567	0.8890	0.6359	0.3288	0.1659
September 1, 2015	6.9644	6.4615	4.9746	3.8875	3.0758	2.4597	1.9845	1.6132	1.0853	0.7429	0.5138	0.2468	0.1130
September 1, 2016	6.9644	6.3608	4.7878	3.6537	2.8207	2.2000	1.7306	1.3715	0.8768	0.5700	0.3739	0.1592	0.0609
September 1, 2017	6.9644	6.2554	4.5455	3.3364	2.4710	1.8450	1.3876	1.0503	0.6115	0.3613	0.2144	0.0714	0.0161
September 1, 2018	6.9644	6.1242	4.1569	2.8075	1.8883	1.2663	0.8478	0.5672	0.2541	0.1137	0.0495	0.0043	0.0000
September 1, 2019	6.9644	6.4282	3.6504	1.4282	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 on the table, in which case:

- if the stock price is between two stock price amounts in the table or the effective date is between two effective dates in the table, the number of additional shares will be determined by a straight-line interpolation between the number of additional shares set forth for the higher and lower stock price amounts and the two dates, as applicable, based on a 365-day year;
- if the stock price is greater than $140.00 per share (subject to adjustment), the conversion rate will not be increased; and
- if the stock price is less than $39.16 per share (subject to adjustment), the conversion rate will not be increased.

Notwithstanding the foregoing, in no event will the total number of the Company's common stock issuable upon conversion exceed 25.5362 per $1,000 principal amount of the notes, subject to adjustments in the same manner as the conversion rate as set forth under "Description of Notes—Conversion Rate Adjustments" in the Preliminary Offering Memorandum.

Additional Information

Capitalization Information:

After giving effect to the Company's use of approximately $21.5 million of the net proceeds from the notes offering to pay the cost of the convertible note hedge transactions described above (after such cost is partially offset by the proceeds to the Company from the sale of the warrant transactions described above), as of June 30, 2012:

- the as-adjusted amount of "Cash and cash equivalents" in the table set forth in the "Capitalization" section of the Preliminary Offering Memorandum would have been $621,951;
- the as-adjusted amount of "Additional paid-in capital" in such table would have been $630,620,
- the as-adjusted amount of "Total stockholders' equity" in such table would have been $1,072,191, and
- the as-adjusted "Total capitalization" in such table would have been $2,184,572,

in each case, determined in the manner described in such "Capitalization" section of the Preliminary Offering Memorandum.

This communication is intended for the sole use of the person to whom it is provided by the sender.

Purchasers should rely only on the information contained or incorporated by reference in the Preliminary Offering Memorandum, as supplemented by this final pricing term sheet, in making an investment decision with respect to the notes. A copy of the Preliminary Offering Memorandum can be obtained by contacting your Barclays Capital Inc. sales representative.

This communication shall not constitute an offer to sell or the solicitation of an offer to buy securities, nor shall there be any sale of these securities, in any state in which such solicitation or sale would be unlawful prior to registration or qualification of these securities under the laws of any such state.

The notes and the common stock issuable upon conversion of the Notes have not been registered under the Securities Act of 1933, as amended (the "Securities Act"), or any other state securities laws. Unless they are registered, the notes and any common stock issuable upon conversion of the notes may be offered only in transactions exempt from or not subject to registration under the Securities Act or any other state securities laws. Accordingly, the notes are only being offered to "qualified institutional buyers" (as defined in Rule 144A under the Securities Act).

ANY DISCLAIMERS OR OTHER NOTICES THAT MAY APPEAR BELOW ARE NOT APPLICABLE TO THIS COMMUNICATION AND SHOULD BE DISREGARDED. SUCH DISCLAIMERS OR OTHER NOTICES WERE AUTOMATICALLY GENERATED AS A RESULT OF THIS COMMUNICATION BEING SENT VIA BLOOMBERG OR ANOTHER EMAIL SYSTEM.

ANNEX C

Form of Opinion of Counsel for the Company and the Guarantors

(i) Each of the Company and the Guarantors has been duly incorporated as a corporation or formed as a limited liability company and is validly existing as a corporation or limited liability company in good standing under the laws of the State of Delaware, with corporate or limited liability company power and authority to own its properties and conduct its business as described in the Time of Sale Information;

(ii) the Company has an authorized capitalization as set forth in the Time of Sale Information, and all of the issued shares of capital stock of the Company have been duly authorized and validly issued and are fully paid and nonassessable;

(iii) each of the Company and the Guarantors has been duly qualified as a foreign corporation or limited liability company for the transaction of business and is in good standing under the laws of each other jurisdiction in which it owns or leases properties or conducts any business so as to require such qualification, except where the failure to be so qualified or in good standing in any such jurisdiction would not have a Material Adverse Effect;

(iv) each Subsidiary (as defined in the Indenture) of the Company (other than the Guarantors) has been duly formed as a limited liability company or other foreign entity and is validly existing as a limited liability company or other foreign entity in good standing under the laws of its jurisdiction of formation except to the extent that the failure to be so formed, validly existing or in good standing would not have a Material Adverse Effect on the Company; and all of the issued and outstanding membership or other equity interests of each such Subsidiary of the Company (including the Guarantors) have been duly authorized and validly issued, are fully paid and nonassessable, and are owned directly or indirectly by the Company, free and clear of all liens, encumbrances, equities or claims except to the extent as will not have a Material Adverse Effect on the Company;

(v) to such counsel's knowledge and other than as set forth in the Time of Sale Information, there are no legal or governmental proceedings pending to which the Company, the Guarantors, or any of their subsidiaries is a party or of which any property of the Company or any of its subsidiaries is the subject which, if determined adversely to the Company or any of its subsidiaries, would individually or in the aggregate have a Material Adverse Effect; and, to such counsel's knowledge, no such proceedings are threatened or contemplated by governmental authorities or threatened by others;

(vi) this Agreement has been duly authorized, executed and delivered by each of the Company and the Guarantors;

(vii) the Firm Securities have been duly authorized, executed, issued and delivered by the Company and constitute valid and legally binding obligations of the Company entitled to the benefits provided by the Indenture, enforceable against the

Company in accordance with their terms, except as limited by bankruptcy, insolvency, fraudulent conveyance, fraudulent transfer, moratorium, reorganization and other similar laws of general application affecting the rights and remedies of creditors and by general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law);

(viii) the Guarantees have been duly authorized, executed, issued and delivered by the Guarantors and constitute valid and legally binding obligations of the Guarantors entitled to the benefits provided by the Indenture, enforceable against the Guarantors in accordance with their terms, except as limited by bankruptcy, insolvency, fraudulent conveyance, fraudulent transfer, moratorium, reorganization and other similar laws of general application affecting the rights and remedies of creditors and by general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law);

(ix) the Underlying Common Stock reserved for issuance upon conversion of the Firm Securities has been duly authorized and reserved and, when issued upon conversion of the Firm Securities in accordance with the terms of the Firm Securities, will be validly issued, fully paid and non-assessable and the issuance of the Underlying Common Stock will not be subject to any preemptive or similar rights under the Company's Certificate of Incorporation or Bylaws or under the Delaware General Corporation Law; and the Underlying Common Stock conforms in all material respects to the descriptions thereof in the Time of Sale Information and the Final Memorandum;

(x) the Indenture has been duly authorized, executed and delivered by the Company and the Guarantors, and constitutes a valid and legally binding instrument of the Company and the Guarantors, enforceable against the Company and the Guarantors in accordance with its terms, except as limited by bankruptcy, insolvency, fraudulent conveyance, fraudulent transfer, moratorium, reorganization and other similar laws of general application affecting the rights and remedies of creditors and by general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law);

(xi) no consent, approval, authorization, order, registration or qualification of or with any court or governmental agency or body is required for the issue and sale of the Firm Securities, the issuance of the Underlying Common Stock upon the conversion of the Firm Securities or the consummation by the Company and the Guarantors of the transactions contemplated by this Agreement or the Indenture, except such as have been obtained and such consents, approvals, authorizations, registrations or qualifications as may be required under state securities or Blue Sky laws in connection with the purchase and distribution of the Firm Securities by the Initial Purchasers and except where failure to obtain such consent, approval, authorization, order, registration or qualification would not have a Material Adverse Effect; provided, however, that notwithstanding anything herein to the contrary, such counsel need express no opinion in this subparagraph (xi) as to compliance with the registration provisions of the Securities Act in relation to the Securities;

(xii) no registration of the Firm Securities or the Underlying Common Stock related to the Firm Securities under the Securities Act, and no qualification of an indenture under the Trust Indenture Act with respect thereto, is required for the issuance and sale of the Firm Securities to the Initial Purchasers and the offer, resale and delivery of the Firm Securities by the Initial Purchasers in the manner contemplated by this Agreement and the Time of Sale Information;

(xiii) none of the Company, the Guarantors or any of their subsidiaries is and, after giving effect to the offering and sale of the Firm Securities and the application of the proceeds thereof as described in the Time of Sale Information, will be required to register as an "investment company" as defined in the Investment Company Act;

(xiv) when the Firm Securities are issued and delivered pursuant to this Agreement, none of the Firm Securities will be of the same class (within the meaning of Rule 144A under the Securities Act) as securities of the Company that are listed on a national securities exchange registered under Section 6 of the Exchange Act or that are quoted in a United States automated inter-dealer quotation system;

(xv) the statements set forth in the Time of Sale Information and the Offering Memorandum under the captions "Description of Capital Stock," insofar as they purport to describe or summarize certain provisions of the Underlying Common Stock related to the Firm Securities, "United States Federal Income and Estate Tax Considerations," insofar as they purport to describe the legal matters, documents or proceedings referred to therein and under the caption "Plan of Distribution", insofar as they purport to describe the provisions of this Agreement, fairly present, in all material respects, the information called for with respect to such legal matters, documents or proceedings;

(xvi) the issue and sale of the Firm Securities, the issuance of the Underlying Common Stock related to the Firm Securities upon conversion of the Firm Securities and the compliance by the Company and the Guarantors with all of the provisions of the Firm Securities, the Indenture and this Agreement with respect to the Firm Securities and the consummation of the transactions contemplated herein and therein will not (a) conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument which is attached or incorporated by reference as an exhibit to the Company's annual report on Form 10-K for the year ended December 31, 2011 (the "Annual Report"), the quarterly reports on Form 10-Q for the quarters ended March 31, 2012 and June 30, 2012, or any Item 1.01 of any Form 8-K filed subsequent to the Annual Report, (b) result in any violation of the provisions of the Certificate of Incorporation or Bylaws of the Company or the certificate of formation or limited liability company agreement of any Guarantor, or (c) result in a violation of, to the knowledge of such counsel, any order of any court or governmental agency or body having jurisdiction over the Company, the Guarantors or any of their subsidiaries or any of their properties (except that such counsel need express no opinion with respect to compliance with the anti-fraud or similar provisions of any law, rule or regulation), except in the case of clauses (a) and (c) for such breaches or violations that could not reasonably be expected to have a Material Adverse Effect or that could violate public policy relating thereto.

Because the primary purpose of such counsel's engagement was not to establish factual matters and many of the statements in the Time of Sale Information, the Offering Memorandum and any amendment or supplement thereto, are wholly or partially nonlegal in character, such counsel may state that such counsel has not independently verified and is not passing upon and does not assume any responsibility for the accuracy, completeness or fairness of the statements contained therein (except for the applicable descriptions referenced in paragraphs (i), (ii), (v), (xi) and (xv)). Such counsel shall also state that they have participated in conferences with representatives of the Company and with representatives of its independent accountants and representatives of the Initial Purchasers and their counsel, at which conferences the contents of the Time of Sale Information and the Offering Memorandum and any amendment and supplement thereto and related matters were discussed. On the basis of the foregoing, such counsel hereby confirms that nothing has come to the attention of such counsel to cause such counsel to believe (except with respect to the financial statements and related schedules and the financial data derived therefrom, including the notes and schedules thereto and the auditor's report thereon or any other financial or accounting data contained or incorporated by reference in, or excluded from, the Time of Sale Information or the Offering Memorandum as to which such counsel need express no belief) that the Time of Sale Information, at the Time of Sale (which such counsel may assume to be the date of this Agreement), contained any untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, or that the Offering Memorandum or any amendment or supplement thereto, as of its date and the Closing Date, contained or contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (other than, in each case, the financial statements and related schedules and the financial data derived therefrom, including the notes and the schedules thereto and the auditor's report thereon or any other financial or accounting data contained or incorporated by reference therein, as to which such counsel need express no belief).

In rendering such opinion, such counsel may rely as to matters of fact on certificates of responsible officers of the Company and the Guarantors and public officials that are furnished to the Initial Purchasers.

The opinion of Winstead PC described above shall be rendered to the Initial Purchasers at the request of the Company and shall so state therein.

ANNEX D

Form of Opinion of Special Counsel for the Company and the Guarantors

Latham and Watkins LLP, special counsel for the Company, shall have furnished to the Initial Purchasers their written opinion, dated the Closing Date and any Option Closing Date, in form and substance satisfactory to the Initial Purchasers, to the effect that the statements set forth in the Time of Sale Information and the Offering Memorandum under the caption “Description of Notes,” insofar as they purport to describe or summarize certain provisions of the Securities and the Indenture, are accurate descriptions or summaries in all material respects.

LOCK-UP LETTER AGREEMENT

Barclays Capital Inc.
J.P. Morgan Securities LLC
Wells Fargo Securities, LLC
As Representatives of the several
Initial Purchasers named in Schedule 1,
c/o Barclays Capital Inc.
745 Seventh Avenue
New York, New York 10019

Ladies and Gentlemen:

The undersigned understands that you and certain other firms (the "Initial Purchasers") propose to enter into a Purchase Agreement (the "Purchase Agreement") providing for the purchase by the Initial Purchasers of convertible senior notes (the "Securities") of Hornbeck Offshore Services, Inc., a Delaware corporation (the "Company") and that the Initial Purchasers propose to reoffer the Securities (the "Offering." The Securities will be convertible into cash and shares of the Company's common stock, par value $0.01 per share (the "Common Stock").

In consideration of the execution of the Purchase Agreement by the Initial Purchasers, and for other good and valuable consideration, the undersigned hereby irrevocably agrees that, without the prior written consent of Barclays Capital Inc. and J.P. Morgan Securities LLC, on behalf of the Initial Purchasers, the undersigned will not, directly or indirectly, (1) offer for sale, sell, pledge, or otherwise dispose of (or enter into any transaction or device that is designed to, or could be expected to, result in the disposition by any person at any time in the future of) any shares of Common Stock (including, without limitation, shares of Common Stock that may be deemed to be beneficially owned by the undersigned in accordance with the rules and regulations of the Securities and Exchange Commission and shares of Common Stock that may be issued upon exercise of any options or warrants) or securities convertible into or exercisable or exchangeable for Common Stock, (2) enter into any swap or other derivatives transaction that transfers to another, in whole or in part, any of the economic benefits or risks of ownership of shares of Common Stock, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of Common Stock or other securities, in cash or otherwise, (3) make any demand for or exercise any right or cause to be filed a registration statement, including any amendments thereto, with respect to the registration of any shares of Common Stock or securities convertible into or exercisable or exchangeable for Common Stock or any other securities of the Company or (4) publicly disclose the intention to do any of the foregoing, for a period commencing on the date hereof and ending on the 90th day after the date of the Offering Memorandum relating to the Offering (such 90-day period, the "Lock-Up

Period”). The foregoing sentence shall not apply to (a) sales, pledges or disposals of shares of Common Stock that were acquired by the undersigned in the open market after the date of the Offering Memorandum, provided that no filing under the Securities Exchange Act of 1934, as amended, shall be required or shall be voluntarily made in connection with any such sale, pledge or disposition (other than a filing on a Form 5, Schedule 13D or Schedule 13G (or 13D-A or 13G-A) made after the expiration of the 90-day period referred to above), (b) bona fide gifts, sales or other dispositions of shares of any class of the Company’s capital stock, in each case that are made exclusively between and among the undersigned or members of the undersigned’s family, or affiliates of the undersigned, including its partners (if a partnership) or members (if a limited liability company); provided that it shall be a condition to any such transfer that (i) the transferee/donee agrees to be bound by the terms of the lock-up letter agreement (including, without limitation, the restrictions set forth in the preceding sentence) to the same extent as if the transferee/donee were a party hereto, (ii) no filing by any party (donor, donee, transferor or transferee) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), shall be required or shall be voluntarily made in connection with such transfer or distribution (other than a filing on a Form 5, Schedule 13D or Schedule 13G (or 13D-A or 13G-A) made after the expiration of the 90-day period referred to above), and (iii) each party (donor, donee, transferor or transferee) shall not be required by law (including without limitation the disclosure requirements of the Securities Act of 1933, as amended, and the Exchange Act) to make, and shall agree to not voluntarily make, any public announcement of the transfer or disposition, (c) transfers or sales of Common Stock pursuant to a plan complying with Rule 10b5-1 of the Regulations of the Securities Exchange Act of 1934, as amended, that has been entered into by the undersigned prior to the date of this Lock-Up Letter Agreement or (d) transfers, sales or disposals of shares of Common Stock that were issued in connection with the exercise of stock options expiring on March 13, 2013, whether pursuant to a 10b5-1 plan entered into after the date hereof or otherwise.

In furtherance of the foregoing, the Company and its transfer agent are hereby authorized to decline to make any transfer of securities if such transfer would constitute a violation or breach of this Lock-Up Letter Agreement.

It is understood that, if the Company notifies the Initial Purchasers that it does not intend to proceed with the Offering, if the Purchase Agreement does not become effective, or if the Purchase Agreement (other than the provisions thereof which survive termination) shall terminate or be terminated prior to payment for and delivery of the Securities, the undersigned will be released from its obligations under this Lock-Up Letter Agreement.

The undersigned understands that the Company and the Initial Purchasers will proceed with the Offering in reliance on this Lock-Up Letter Agreement.

Whether or not the Offering actually occurs depends on a number of factors, including market conditions. Any Offering will only be made pursuant to a Purchase Agreement, the terms of which are subject to negotiation between the Company and the Initial Purchasers.

[Signature page follows]

The undersigned hereby represents and warrants that the undersigned has full power and authority to enter into this Lock-Up Letter Agreement and that, upon request, the undersigned will execute any additional documents necessary in connection with the enforcement hereof. Any obligations of the undersigned shall be binding upon the heirs, personal representatives, successors and assigns of the undersigned.

Very truly yours,

By: _____
Name:
Title:

Dated: _____

NEWS RELEASE
12-017

Contacts: Todd Hornbeck, CEO
Jim Harp, CFO
Hornbeck Offshore Services
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Ken Dennard, Managing Partner
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For Immediate Release

HORNBECK OFFSHORE CLOSES $300,000,000 OFFERING OF 1.500% CONVERTIBLE SENIOR NOTES

Initial Purchasers Exercise Option to Purchase Additional $40,000,000 in Full

August 13, 2012 — Covington, Louisiana — Hornbeck Offshore Services, Inc. (NYSE: HOS) (the "Company") today announced the closing of its previously announced offering of $260.0 million aggregate principal amount of convertible senior notes due 2019 (the "Convertible Notes") that were offered to qualified institutional buyers pursuant to Rule 144A under the Securities Act of 1933, as amended (the "Securities Act"). In addition, the Company announced that the initial purchasers exercised their option in full to purchase an additional $40.0 million in principal amount of the Convertible Notes, which also closed today.

The Convertible Notes will bear interest at a fixed rate of 1.500% per year and are guaranteed on a senior unsecured basis by the same subsidiaries of the Company that currently guarantee its other outstanding senior notes. The Convertible Notes are convertible into cash, shares of the Company's common stock or a combination of cash and shares of the Company's common stock, at the Company's election, based on the applicable conversion rate at such time. The Convertible Notes have an initial conversion rate of 18.5718 shares of the Company's common stock per $1,000 principal amount of the Convertible Notes (which is equal to an initial conversion price of approximately $53.85 per share of the Company's common stock), representing an initial conversion premium of approximately 37.5% above the closing price of $39.16 per share of the Company's common stock on August 7, 2012. The Convertible Notes will mature on September 1, 2019, unless repurchased or converted in accordance with their terms prior to such date. Prior to June 1, 2019, the Convertible Notes will be convertible only upon the occurrence of certain events and during certain periods, and thereafter, at any time until the close of business on the second scheduled trading day immediately preceding the maturity date.

The net proceeds from this offering, including proceeds resulting from the exercise of the initial purchasers' option to purchase an additional $40.0 million in principal amount of new Convertible Notes, are approximately $290.8 million, after deducting discounts, commissions and estimated expenses. The Company used approximately $73.0 million of the combined net proceeds of the offering and proceeds from the sale of warrants referred to below to fund the cost of convertible note hedge transactions that it has entered into with counterparties that include affiliates of the initial purchasers (the "Option Counterparties"). Each of the convertible note hedge transactions involves the purchase of call options with exercise prices equal to the conversion price of the Convertible Notes, and are intended to limit exposure to dilution to the Company's stockholders upon the potential future conversion of the Convertible Notes.

In addition, the Company entered into separate warrant transactions with the Option Counterparties resulting in gross proceeds to the Company of approximately $48.2 million. The warrant transactions have an initial strike price of $68.53 per share, subject to certain adjustments, which is 75% higher than the closing price of the Company's common stock on August 7, 2012. The warrants cover a number of shares of the Company's common stock equal to the number of shares of common stock underlying the Convertible Notes, subject to certain adjustments. The warrant transactions could separately have a dilutive effect to the extent that the market value per share of the Company's common stock exceeds the applicable strike price of the warrants.

The Company intends to use the remaining net proceeds from the sale of the Convertible Notes and the sale of the warrants, along with other available sources of cash, to retire its 1.625% senior convertible notes due 2026, which are first subject to repurchase by the Company at the option of holders of such convertible notes, on November 15, 2013, and subject to redemption at the Company's option on or after November 15, 2013, in each case at par plus accrued and unpaid interest, or for general corporate purposes, which may include retirement of other debt or funding for the acquisition, construction or retrofit of vessels.

The Company has been advised that, in connection with establishing their initial hedge of the convertible note hedge and warrant transactions, the Option Counterparties and/or their affiliates have entered into various cash-settled over-the-counter derivative transactions with respect to shares of the Company's common stock concurrently with, or shortly after, the pricing of the Convertible Notes. This activity could have the effect of increasing or preventing a decline in the price of the Company's common stock or the Convertible Notes. In addition, the Option Counterparties and/or their affiliates may modify their hedge positions by unwinding these derivative transactions, entering into or unwinding additional cash-settled over-the-counter derivative transactions with respect to the Company's common stock and/or purchasing or selling shares of the Company's common stock or other of the Company's securities in secondary market transactions from time to time prior to the maturity of the Convertible Notes (and are likely to do so during any conversion period related to a conversion of Convertible Notes).

This news release is being issued pursuant to Rule 135c under the Securities Act, and is neither an offer to sell nor a solicitation of an offer to buy any of these securities and shall not constitute an offer, solicitation or sale in any jurisdiction in which such offer, solicitation or sale is unlawful. These securities will not be registered under the Securities Act or any state securities laws, and unless so registered, may not be offered or sold except pursuant to an exemption from the registration requirements of the Securities Act and applicable state securities laws.

Forward-Looking Statements

This news release contains forward-looking statements, including, in particular, statements about the Company's plans and intentions with respect to the use of proceeds of the Convertible Notes. These have been based on the Company's current assumptions, expectations and projections about future events. Although the Company believes that the expectations reflected in these forward-looking statements are reasonable, the Company can give no assurance that the expectations will prove to be correct.

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